



# Finance Act 1989

## 1989 CHAPTER 26

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance. [27th July 1989]

<sup>XIX2</sup>Most Gracious Sovereign, WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Editorial Information

**XI** The text of ss. 1-5, 8(2), 15-17, 28, 29, 187(1), 188, Sch. 17 Pt. I was taken from SIF Group 40:1 (Customs and Excise: Customs and Excise Duties), the text of ss. 18-27, 29, 186(2), 187(1), 188, Sch. 3, Sch. 17 Pt. III was taken from SIF Group 40:2 (Customs and Excise: Value added Tax and Car Tax), the text of ss. 30-90, 91(1)(3), 92(1)(2)(4)-(7), 93-95, 96(1)(2)(4), 97-121, 130, 138, 142-170, 178-180, 182, 186(1)(3), 187(1), 188, Schs. 4-13, Sch. 17 Pts IV-VI, VIII, X was taken from SIF Group 63:1 (Income, Corporation and Capital Gains Taxes: Income and Corporation Taxes), the text of ss. 91(2)(3), 92(3)-(7), 96(3), 107, 122-137, 139-141, 186(1)(3), 187, 188, Sch. 12 para. 6, Schs. 14, 15, Sch. 17 Pts. VII, XIV was taken from SIF Group 63:2 (Income, Corporation and Capital Gains Taxes: Capital Gains Tax), the text of ss. 138(6)-(12), 171, 172, 178, 179(1)(d)(e)(3)(4), 180(4)(7), 186(1)(3), 187(1), 188, Sch. 17 Pt. X was taken from SIF Group 65 (Inheritance Tax), the text of ss. 181, 187(1), 188, Sch. 16, Sch. 17 Pt. XI was taken from SIF Group 96 (Posts and Telecommunications), the text of ss. 185, 187, 188, Sch. 17 Pt. XIV was taken from SIF Group 98:5 (Property, England and Wales: Tithe), the text of ss. 183, 187, 188, Sch. 17 Pts. XII, XIV was taken from SIF Group 99:3 (Public Finance and Economic Controls: National Debt), the text of ss. 6, 7, 8(1), 9-14, 187(1), 188, Schs. 1, 2, Sch. 17 Pt. II was taken from SIF Group 107:2 (Road Traffic: Vehicle Excise Duty), the text of ss. 142(9)(10), 184, 187(1), 188, Sch. 17 Pt. XIII was taken from SIF Group 110 (Savings Banks) and the text of ss. 173-178, 179(1)(f)(4), 180(5)(7), 186(1), 187(1), 188, Sch. 17 Pt. IX was taken from SIF Group 114 (Stamp Duty). This Act is presented basically in the form in which it appears in the 1990 Edition of

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The Taxes Acts edited by the Inland Revenue and published by HMSO (any references in commentary to volumes 1, 2, etc are to volumes of that edition). The style of editing differs from that applicable to most Acts published in Statutes in Force.

- X2** General amendments to Tax Acts, Income Tax Acts, and/or Corporation Tax Acts made by legislation after 1.2.1991 are noted against [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#) but not against each Act

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

- C1** General amendments etc. to Tax Acts (or Income Tax Acts or Corporation Tax Acts as the case may be) made by [Taxes Management Act 1970 \(c. 9, SIF 63:1\)](#), [s. 41A\(7\)](#) (as added by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), [s. 95\(1\)\(2\)](#)), [British Telecommunications Act 1981 \(c. 38, SIF 96\)](#), [s. 82\(2\)\(7\)](#); [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [s. 72\(3\)](#); [Finance Act 1984 \(c. 43, SIF 63:1\)](#), ss. 82(6), 85(2), 89(1)(7), 96(1)(7), 98(7), Sch. 9 para. 3(2)(9), Sch. 16 paras. 6, 12 and [Finance Act 1985 \(c. 54, SIF 63:1\)](#), ss. 72(1), 74(5), [Sch. 23 para. 15\(4\)](#), S.I. 1987/530, regs. 11(2), 13(1), 14, [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [ss. 4, 6, 7, 9, 32, 34, 78, 134, 135, 141, 142, 185, 191, 193, 194, 195, 200, 203, 209, 212, 213, 219, 247, 253, 272, 287, 314, 315, 317, 318, 325, 326, 327, 345, 350, 351, 368, 375, 381, 397, 414, 432, 440, 442, 446, 458, 460, 461, 463, 463\(2\)\(3\)](#) (as added by [Finance Act 1990 \(c. 29, SIF 63:1\)](#), [s. 50\(2\)](#)), 468, 474, 475, 486, 490, 491, 503, 511, 518, 524, 532, 544, 550, 556, 558, 569, 572, 582, 595, 601, 613, 617, 619, 621, 639, 656, 660, 663, 676, 689, 691, 694, 700, 701, 714, 716, 739, 743, 754, 763, 776, 780, 781, 782, 787, 789, 811, 828, 829, 832, 833, 834, 835, 837, 838, 839, 840, 841, 842, Sch. 2 para. 5, Sch. 4 para. 5, Sch. 13 para. 10, Sch. 16 para. 10, Sch. 21 para. 6, Sch. 26 para. 1, Sch. 27 para. 20, [Finance Act 1988 \(c. 39, SIF 63:1\)](#), ss. 66, 127(1)(6), [Sch. 12 para. 6](#), [Capital Allowances Act 1990 \(c. 1, SIF 63:1\)](#), [ss. 28\(1\), 68\(8\), 74, 82, 83\(5\), 148\(5\), 163\(4\), 164\(2\)](#), S.I. 1990/627 and [Finance Act 1990 \(c. 29, SIF 63:1\)](#), [s. 25\(10\)](#)

**PART I**

CUSTOMS AND EXCISE, VALUE ADDED TAX AND CAR TAX

**CHAPTER I**

CUSTOMS AND EXCISE

*Hydrocarbon oil duties*

**1 Rates.**

- (1) ..... <sup>F1</sup>
- (2) In section 13A of that Act (rebate on unleaded petrol), for “£0.0202” there shall be substituted “£0.0272”.
- (3) ..... <sup>F1</sup>
- (4) This section shall be deemed to have come into force at 6 o’clock in the evening of 14th March 1989.

**Textual Amendments**

- F1** [S. 1\(1\)\(3\)](#) repealed by [Finance Act 1990 \(c. 29, SIF 40:1\)](#), s. 132, Sch. 19 Pt. I Note

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## 2 Reliefs.

- (1) The following section shall be inserted after section 20A of the <sup>M1</sup>Hydrocarbon Oil Duties Act 1979—

### “20AA Power to allow reliefs.

- (1) The Commissioners may make regulations allowing reliefs as regards—
- (a) any duty of excise which has been charged in respect of hydrocarbon oil, petrol substitute, spirits used for making power methylated spirits, or road fuel gas;
  - (b) any amount which has been paid to the Commissioners under section 12(2) above;
  - (c) any amount which would (apart from the regulations) be payable to the Commissioners under section 12(2) above.
- (2) The regulations may include such provision as the Commissioners think fit in connection with allowing reliefs, and in particular may—
- (a) provide for relief to take the form of a repayment or remission;
  - (b) provide for relief to be allowed in cases or classes of case set out in the regulations;
  - (c) provide for relief to be allowed to the extent set out in the regulations;
  - (d) provide for relief to be allowed subject to conditions imposed by the regulations;
  - (e) provide for relief to be allowed subject to such conditions as the Commissioners may impose on the person claiming relief;
  - (f) provide for the taking of samples of hydrocarbon oil in order to ascertain whether relief should be allowed or has been properly allowed;
  - (g) make provision as to administration (which may include provision requiring the making of applications for relief);
  - (h) make different provision in relation to different cases or classes of case;
  - (i) include such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient.
- (3) The conditions which may be imposed as mentioned in subsection (2)(d) or (e) above may include conditions as to the physical security of premises, the provision (by bond or otherwise) of security for payment, or such other matters as the Commissioners think fit.
- (4) Where a person contravenes or fails to comply with any regulation made under this section or any condition imposed by or under such a regulation—
- (a) he shall be liable on summary conviction to a penalty of three times the value of any goods in respect of which the contravention or failure occurred or a penalty of an amount represented by level 3 on the standard scale, whichever is the greater, and
  - (b) any goods in respect of which the contravention or failure occurred shall be liable to forfeiture.

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- (5) A reference in this section to a duty of excise includes a reference to any addition to such duty by virtue of section 1 of the Excise Duties (Surcharges or Rebates) Act 1979.
- (6) Schedule 5 to this Act shall have effect with respect to any sample of hydrocarbon oil taken in pursuance of regulations made under this section.”
- (2) In consequence of subsection (1) above, in paragraph 6 of Schedule 5 to the <sup>M2</sup>Hydrocarbon Oil Duties Act 1979 after “section” there shall be inserted “20AA or”.

**Marginal Citations**

- M1** 1979c. 5.  
**M2** 1979 c. 5.

*Alcoholic liquor duties*

**3 Original gravity of beer.**

- (1) In section 3(5) of the <sup>M3</sup>Alcoholic Liquor Duties Act 1979 (under which the gravity of worts as ascertained by the proper officer is relevant for certain purposes) for the words from “proper officer” to the end there shall be substituted the words “brewer in accordance with subsection (2) above and recorded by him in pursuance of regulations made under section 49 below.”
- (2) This section applies to worts if the brewer ascertains their gravity in accordance with section 3(2) of the Alcoholic Liquor Duties Act 1979, for the purpose of the record kept by him in pursuance of regulations under section 49 of that Act, on or after the day on which this Act is passed.

**Marginal Citations**

- M3** 1979 c. 4.

**4 Blending made-wines etc.**

- (1) Section 55 of the Alcoholic Liquor Duties Act 1979 (charge of excise duty on made-wine) shall be amended as follows.
- (2) In subsection (5) (which, where certain conditions are satisfied, lifts the requirement to hold a licence for premises where made-wine is produced), after paragraph (d) there shall be added “and
- (e) he does not blend or otherwise mix—
- (i) two or more made-wines, or
- (ii) one or more made-wines and one or more wines,
- so as to produce made-wine the rate of duty applicable to which is higher than the rate applicable to at least one of the constituent liquors. ”
- (3) After subsection (5) there shall be inserted—

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“(5A) For the purposes of subsection (5) above—

- (a) the rate of duty applicable to any made-wine is that which is or would be chargeable under subsection (1) above on its importation into the United Kingdom; and
- (b) the rate of duty applicable to any wine is that which is or would be chargeable under subsection (1) of section 54 above on its importation into the United Kingdom.”

(4) This section shall have effect in relation to the blending or other mixing of made-wines, or of made-wines and wines, on or after the day on which this Act is passed.

## 5 Description as beer.

Section 73 of the <sup>M4</sup>Alcoholic Liquor Duties Act 1979(which prohibits anyone from describing as beer any substance on which beer duty has not been paid) shall cease to have effect.

### Marginal Citations

M4 1979 c. 4.

## *Vehicles excise duty*

## 6 Rates.

(1) The <sup>M5</sup>Vehicles (Excise) Act 1971 (“the 1971 Act”)and the <sup>M6</sup>Vehicles (Excise) Act (Northern Ireland)1972 (“the 1972 Act”) shall be amended as follows.

(2) For the words—

- (a) “in the second column of” in paragraph 1 of Schedule 2 to the 1971Act (rates of duty on hackney carriages), and
- (b) “in column 2 of” in paragraph 1 of Schedule 2 to the 1972 Act,

there shall be substituted the words “in relation to its seatingcapacity in the Table in”; and for the Table in Part II of each of thoseSchedules there shall be substituted the Table set out in Part I of Schedule1 to this Act.

(3) ..... F2

(5) In paragraph 2 of Schedule 4A to the 1971 Act and the 1972 Act (rates of duty for vehicles carrying or drawing exceptional loads) for “£1,600” there shall be substituted “£3,100”.

(6) In—

- (a) subsection (5) of section 16 of the 1971 Act (rates of duty for tradelicences), including that subsection as set out in paragraph 12 of Part I ofSchedule 7 to that Act, and
  - (b) subsection (6) of section 16 of the 1972 Act, including that subsectionas set out in paragraph 12 of Part I of Schedule 9 to that Act,
- for “£85” and “£17” there shall be substituted “£100” and “£20” respectively.

(7) This section shall apply in relation to licences taken out after 14thMarch 1989.

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#### Textual Amendments

**F2** S. 6(3)(4), Sch. 1 Pt. II, Sch. 2 para. 3 repealed by Finance Act 1990 (c. 29, SIF 58), s. 132, Sch. 19 Pt. II Note 3

#### Marginal Citations

**M5** 1971 c. 10.  
**M6** 1972 c. 10 (N.I.).

### 7 Community buses.

- (1) Section 38(1) of the <sup>M7</sup>Vehicles (Excise) Act 1971 shall be amended as follows.
- (2) Before the definition of “conditional sale agreement” there shall be inserted—
 

““community bus” means a vehicle used on public roads solely in accordance with a community bus permit (within the meaning of section 22 of the Transport Act 1985), and not used for providing a service under an agreement providing for service subsidies (within the meaning of section 63(10)(b) of that Act);”.
- (3) In the definition of “hackney carriage”, there shall be added at the end the words “but does not include a community bus”.

#### Marginal Citations

**M7** 1971 c. 10.

### 8 Special machines.

- (1) The amendments of the Vehicles (Excise) Act 1971 and the <sup>M8</sup>Vehicles (Excise) Act (Northern Ireland) 1972 set out in Schedule 2 to this Act shall have effect for the purpose of, or in connection with, replacing certain existing classes of vehicles chargeable with duty under Schedule 3 to each of those Acts with a single class of vehicles, namely that of special machines; and shall so have effect in relation to licences taken out after 14th March 1989.
- (2) As from 15th March 1989, paragraph 2 of Schedule 1 to the <sup>M9</sup>Hydrocarbon Oil Duties Act 1979 (vehicles which are not road vehicles within the meaning of that Act) shall have effect with the substitution of the following sub-paragraph for sub-paragraph (b)
 

“(b) a special machine within the meaning of Schedule 3 to that Act;”.

#### Marginal Citations

**M8** 1972 c. 10 (N.I.).  
**M9** 1979 c. 5.

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## **9 Recovery vehicles.**

In paragraph 8(2)(d) of Part I of Schedule 3 to each of the Vehicles(Excise) Act 1971 and the Vehicles (Excise) Act (Northern Ireland) 1972 the words “any load other than” shall be omitted.

## **10 Powers of Secretary of State with respect to assignment of registration marks.**

(1) Section 19 of each of the Vehicles (Excise) Act 1971 and the Vehicles(Excise) Act (Northern Ireland) 1972 (registration and registration marks) shall be amended as follows.

(2) After subsection (1) there shall be inserted—

“(1A) The Secretary of State may, in such circumstances as he may determine—

- (a) assign a registration mark to a vehicle to which another registration mark has been previously assigned;
- (b) assign to a vehicle (whether on its first registration or not) a registration mark previously assigned to another vehicle;
- (c) (whether in connection with an assignment falling within either of the preceding paragraphs or not) withdraw any registration mark for the time being assigned to a vehicle;
- (d) re-assign to a vehicle a registration mark previously assigned to it but subsequently withdrawn.”

(3) In subsection (2), after the words “registration mark” there shall be inserted the words “for the time being”.

(4) Nothing in this section shall be construed as affecting the operation of—

- (a) either of the Acts referred to in subsection (1) above, or
- (b) any regulations made under either of those Acts,

in relation to any time before the day on which this Act is passed.

## **11 Retention of registration mark pending transfer to another vehicle.**

(1) The Secretary of State may by regulations provide for a person in whose name a vehicle is registered to be granted a right, exercisable on a single occasion falling within a specified period, to have the registration mark for the time being assigned to the vehicle assigned to some other vehicle, being a vehicle registered—

- (a) in that person’s name, or
- (b) in the name of some other person nominated by him in accordance with the regulations.

(2) Regulations under this section may, in particular, make provision—

- (a) for the manner in which an application for the grant of such a right (referred to in the following provisions of this section as a “right of retention”) is to be made to the Secretary of State;
- (b) for the payment of a specified fee on the making of such an application and for the whole or part of the fee to be retained whether or not the application is granted;

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- (c) for requiring the vehicle to which the registration mark in question is for the time being assigned to be made available for inspection at a place designated by or under the regulations;
  - (d) for authorising the Secretary of State to refuse such an application on such grounds as he thinks fit;
  - (e) with respect to the manner in which rights of retention are to be exercisable;
  - (f) for enabling the period referred to in subsection (1) above to be extended by the Secretary of State if he thinks fit in the circumstances of any particular case;
  - (g) for rights of retention to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law);
  - (h) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle in pursuance of a right of retention;
  - (i) for authorising the Secretary of State to revoke a right of retention—
    - (i) if it appears to him that there are special reasons for doing so, or
    - (ii) in any other specified circumstances;
  - (j) for the payment, in connection with the assignment of a registration mark in pursuance of a right of retention, of such charge as is for the time being prescribed by virtue of section 12(1) of the <sup>M10</sup>Finance Act 1976;
  - (k) with respect to such incidental, consequential or supplemental matters as appear to the Secretary of State to be necessary or expedient for the purposes of the regulations.
- (3) Regulations under this section may make different provision for different cases or circumstances.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The assignment by the Secretary of State of any registration mark to a vehicle in pursuance of a right of retention shall be without prejudice to the subsequent exercise by him, in relation to the mark, of any of his powers under subsection (1A) of the principal section (as amended by section 10 above).
- (6) In this section—
- “the principal section” means—
    - (a) section 19 of the <sup>M11</sup>Vehicles (Excise) Act 1971, or
    - (b) in relation to Northern Ireland, section 19 of the <sup>M12</sup>Vehicles (Excise) Act (Northern Ireland) 1972;
  - “right of retention” means such a right as is mentioned in subsection (1) above; and
  - “specified” means specified in regulations under this section.
- (7) Expressions used in this section or in section 12 below which are also used in the principal section have the same meaning as in that section.

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**Marginal Citations**

**M10** 1976 c. 40.

**M11** 1971 c. 10.



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**M12** 1972 c. 10(N.I.).

## **12 Sale by Secretary of State of rights to particular registration marks.**

- (1) This section shall apply to such registration marks that either—
  - (a) have never been assigned to a vehicle, or
  - (b) have been so assigned but (as a result of having been subsequently withdrawn) are not for the time being so assigned,as the Secretary of State may from time to time determine.
- (2) The Secretary of State may by regulations make a scheme providing for registration marks to which this section applies to be assigned to vehicles registered in the names of, or of the nominees of, persons who have acquired rights under the scheme to have the marks in question so assigned.
- (3) Regulations under this section may, in particular, make provision—
  - (a) for a person to acquire a right under the scheme to have a particular registration mark to which this section applies assigned to a vehicle registered—
    - (i) in his name, or
    - (ii) in the name of some other person nominated by him in accordance with the scheme,on payment of such sum as is payable in accordance with the scheme in respect of the acquisition of that right;
  - (b) with respect to—
    - (i) the manner in which agreements for the sale of such rights (referred to in the following provisions of this section as “relevant rights”) may be effected,
    - (ii) the terms which may be contained in, or incorporated into, such agreements, and
    - (iii) rights and liabilities arising in connection with such agreements otherwise than under any such terms;
  - (c) for enabling the Secretary of State to determine as he thinks fit—
    - (i) the prices at which particular relevant rights are to be sold or (as the case may be) the reserve prices applicable to the sale of any such rights, or
    - (ii) the manner in which any such prices are to be determined;
  - (d) with respect to the manner in which relevant rights are to be exercisable;
  - (e) for relevant rights to be exercisable only on a single occasion falling within a specified period (subject to any provision made by virtue of paragraph (f) below);
  - (f) for enabling any such period to be extended by the Secretary of State if he thinks fit in the circumstances of any particular case;
  - (g) for relevant rights to be non-transferable (but without prejudice to the vesting of any such right in a person by operation of law);
  - (h) with respect to the conditions which must be satisfied before a registration mark may be assigned to a vehicle in pursuance of a relevant right;
  - (i) for authorising the Secretary of State to revoke a relevant right—
    - (i) if it appears to him that there are special reasons for doing so, or
    - (ii) in any other specified circumstances;

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- (j) for the payment, in connection with the assignment of a registration mark in pursuance of a relevant right, of such charge as is for the time being prescribed by virtue of section 12(1) of the <sup>M13</sup> Finance Act 1976;
  - (k) with respect to such incidental, consequential or supplemental matters as appear to the Secretary of State to be necessary or expedient for the purposes of a scheme under this section.
- (4) Without prejudice to the generality of subsection (3)(b) above, regulations under this section may make provision for authorising the Secretary of State to make arrangements with other persons whereby such persons—
- (a) are given authority (whether irrevocable or otherwise) to act on his behalf in offering for sale, and entering into agreements for the sale of, relevant rights in the case of such registration marks, and during such periods, as he may determine;
  - (b) are required to account to him for sums due to him under such agreements whether they have received any amounts due from the purchasers under the agreements or not; and
  - (c) may become entitled or subject to such rights or liabilities of the Secretary of State in connection with such agreements as may be specified.
- (5) Regulations under this section may make different provision for different cases or circumstances, and may, in particular, exempt assignments of any specified class or description from any charge payable by virtue of subsection (3)(j) above.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Any sums received by the Secretary of State in respect of the sale of relevant rights shall be paid into the Consolidated Fund.
- (8) Section 11(5) above shall apply for the purposes of this section as if the reference to a right of retention were a reference to a relevant right.
- (9) In this section—
- “relevant right” means such a right as is mentioned in subsection (3)(a) above; and
  - “specified” means specified in regulations under this section.

#### **Marginal Citations**

**M13** 1976 c. 40.

### **13 Registration documents.**

In section 23 of the <sup>M14</sup> Vehicles Excise Act 1971 as set out in paragraph 20 of Part I of Schedule 7 to that Act, in subsection (1)(d) and (e) (regulations about registration books), for the word “books”, in each place where it occurs, there shall be substituted the word “documents”.

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**Marginal Citations**

M14 1971 c. 10.

**14 Dishonoured cheques.**

(1) After section 26 of the Vehicles (Excise) Act 1971 there shall be inserted—

**“26A Dishonoured cheques: additional liability in certain cases.**

- (1) Where a person has been convicted of an offence under section 102 of the Customs and Excise Management Act 1979 (payment for licence by dishonoured cheque) in relation to a licence issued under this Act, the court shall, in addition to any penalty which it may impose under that section, order him to pay an amount equal to one twelfth of the appropriate annual rate of duty for each month or part of a month in the relevant period.
- (2) The relevant period for the purposes of this section is the period which—
  - (a) begins with the first day of the period for which the licence was applied for or, if it is later, the day on which the licence first was to have effect, and
  - (b) ends with whichever is the earliest of the following, namely—
    - (i) the end of the month in which the order is made;
    - (ii) the date on which the licence was due to expire;
    - (iii) the end of the month during which the licence was delivered up; and
    - (iv) the end of the month preceding that in which a new licence for the licensed vehicle first had effect.
- (3) The appropriate annual rate of duty for the purposes of this section is the annual rate of duty which, at the beginning of the relevant period, was appropriate to a vehicle of the description specified in the application.
- (4) Where an order has previously been made against a person under section 9 of this Act to pay an amount for a month or part of a month in the case of a vehicle, the amount which he is ordered to pay under this section in the case of the vehicle shall be calculated as if no part of that month were comprised in the relevant period.”

<sup>F3</sup>(2) .....

(3) In section 9 of the <sup>M15</sup> Vehicles (Excise) Act 1971 (additional liability for keeping unlicensed vehicle) after subsection (3) there shall be inserted—

“(3A) Where an order has previously been made against a person under section 26A of this Act to pay an amount for a month or part of a month in the case of a vehicle, the amount which he is ordered to pay under this section in the case of the vehicle shall be calculated as if no part of that month were comprised in the relevant period.”

<sup>F3</sup>(4) .....

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(5) In section 34 of the Vehicles (Excise) Act 1971 (establishing amount of penalty on plea of guilty by absent accused)—

- (a) after the words “section 8 of this Act” there shall be inserted the words “, or under section 102 of the <sup>M16</sup> Customs and Excise Management Act 1979 in relation to a licence issued under this Act,”, and
- (b) after the words “section 9(1)” in each place where they occur there shall be inserted the words “or, as the case may be, 26A(1)”.

<sup>F3</sup>(6) .....

(7) This section shall apply in relation to licences taken out on or after the day on which this Act is passed.

#### Textual Amendments

**F3** S. 14(2)(4)(6) repealed (1.10.1991) by Finance Act 1991 (c. 31, SIF 107:2), ss. 10, 123, Sch. 19 Pt.IV; S.I. 1991/2021, art.2.

#### Marginal Citations

**M15** 1971 c. 10.

**M16** 1979 c. 2.

### General

#### 15 Estimation of excise duty.

(1) Section 116A of the Customs and Excise Management Act 1979 (power to estimate excise duties) shall be amended as mentioned in subsections (2) and (3) below.

(2) In subsection (1)—

- (a) after the words “excise duty” there shall be inserted “to which this section applies”, and
- (b) for “the occupier of an excise warehouse or a distiller” there be substituted “a revenue trader”.

(3) The following subsection shall be inserted after subsection (2)—

“(3) This section applies to any excise duty other than one in relation to which provision for estimation is made by the Betting and Gaming Duties Act 1981 (that is to say, general betting, gaming licence and bingo duties).”

#### 16 Time limits for proceedings.

(1) After section 146 of the Customs and Excise Management Act 1979 there shall be inserted—

##### “146A Time limit for proceedings.

- (1) Except as otherwise provided in the customs and excise Acts, and notwithstanding anything in any other enactment, the following provisions shall apply in relation to proceedings for an offence under those Acts.

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- (2) Proceedings for an indictable offence shall not be commenced after the end of the period of 20 years beginning with the day on which the offence was committed.
  - (3) Proceedings for a summary offence shall not be commenced after the end of the period of 3 years beginning with that day but, subject to that, may be commenced at any time within 6 months from the date on which sufficient evidence to warrant the proceedings came to the knowledge of the prosecuting authority.
  - (4) For the purposes of subsection (3) above, a certificate of the prosecuting authority as to the date on which such evidence as is there mentioned came to that authority's knowledge shall be conclusive evidence of that fact.
  - (5) In the application of this section to Scotland—
    - (a) in subsection (3), “proceedings for an indictable offence” means proceedings on indictment;
    - (b) in subsection (3), “proceedings for a summary offence” means summary proceedings.
  - (6) In the application of this section to Northern Ireland—
    - (a) “indictable offence” means an offence which, if committed by an adult, is punishable on conviction on indictment (whether only on conviction on indictment, or either on conviction on indictment or on summary conviction);
    - (b) “summary offence” means an offence which, if committed by an adult, is punishable only on summary conviction.
  - (7) In this section, “prosecuting authority” means the Commissioners and includes, in Scotland, the procurator fiscal.”
- (2) Section 147(1) of that Act shall cease to have effect.
  - (3) In section 28(5) of the <sup>M17</sup> Vehicles (Excise) Act 1971, for the words “section 147(1)” there shall be substituted the words “section 146A”.
  - (4) This section shall have effect in relation to offences committed on or after the day on which this Act is passed.

**Marginal Citations**

M17 1971 c. 10.

## 17 Disbursements in Port of London.

In section 17 of the <sup>M18</sup> Customs and Excise Management Act 1979 (general rule that customs and excise receipts, after deduction of disbursements, are to be paid into the Commissioners' General Account at the Bank of England) paragraph (a) of subsection (5) (special rule that disbursements in Port of London are to be paid out of that Account) shall cease to have effect.

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**Marginal Citations**

**M18** 1979 c. 2.

## CHAPTER II

### VALUE ADDED TAX

*Zero-rating etc.*

**18 Buildings and land.**

Schedule 3 to this Act (which makes provision about value added tax on supplies relating to buildings and land) shall have effect.

**19 Sewerage services and water.**

(1) Group 2 (sewerage services and water) of Schedule 5 (zero-rating) to the <sup>M19</sup>Value Added Tax Act 1983 shall be amended as follows.

(2) In item 1, there shall be substituted for paragraph (b)—

“(b) emptying of any cesspools, septic tanks or similar receptacles which are used otherwise than in connection with the carrying on in the course of a business of a relevant industrial activity.”

(3) In item 2, there shall be inserted at the beginning the words “The supply, for use otherwise than in connection with the carrying on in the course of a business of a relevant industrial activity, of”.

(4) The following shall be inserted at the end—

*“Note: “Relevant industrial activity” means any activity described in any of Divisions 1 to 5 of the 1980 edition of the publication prepared by the Central Statistical Office and known as the Standard Industrial Classification.”*

(5) This section shall have effect in relation to supplies made on or after 1st July 1990.

**Marginal Citations**

**M19** 1983 c. 55.

**20 News services.**

(1) In Schedule 5 to the Value Added Tax Act 1983 Group 6 (news services) shall be omitted.

(2) This section shall have effect in relation to supplies made on or after 1st April 1989.

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## 21 Fuel and power.

- (1) For Group 7 (fuel and power) of Schedule 5 to the Value Added Tax Act 1983 there shall be substituted—

“Group 7—Fuel and Power for Domestic or Charity Use  
Item No.

- 1 Supplies for qualifying use of—
- (a) coal, coke or other solid substances held out for sale solely as fuel;
  - (b) coal gas, water gas, producer gases or similar gases;
  - (c) petroleum gases, or other gaseous hydrocarbons, whether in a gaseous or liquid state;
  - (d) fuel oil, gas oil or kerosene; or
  - (e) electricity, heat or air-conditioning.

Notes:

- (1) “Qualifying use” means—
- (a) domestic use; or
  - (b) use by a charity otherwise than in the course or furtherance of a business.
- (2) The following supplies are always for domestic use—
- (a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;
  - (b) a supply of wood, peat or charcoal not intended for sale by the recipient;
  - (c) a supply to a person at any premises of piped gas (that is, gas within paragraph (b) of item 1, or petroleum gas in a gaseous state, provided through pipes) where the gas (together with any other piped gas provided to him at the premises by the same supplier) was not provided at a rate exceeding 150 therms a month;
  - (d) a supply of petroleum gas in a liquid state where the gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the gas is not intended for sale by the recipient;
  - (e) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such gas;
  - (f) a supply of not more than 2,300 litres of fuel oil, gas oil or kerosene;
  - (g) a supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.
- (3) Supplies not within Note (2) are for domestic use if and only if the goods supplied are for use in—
- (a) a building, or part of a building, which consists of a dwelling or number of dwellings;

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- (b) a building, or part of a building, used for a relevant residential purpose;
  - (c) self-catering holiday accommodation;
  - (d) a caravan; or
  - (e) a houseboat.
- (4) Use for a relevant residential purpose means use as—
- (a) a home or other institution providing residential accommodation for children;
  - (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;
  - (c) a hospice;
  - (d) residential accommodation for students or school pupils;
  - (e) residential accommodation for members of any of the armed forces;
  - (f) a monastery, nunnery or similar establishment; or
  - (g) an institution which is the sole or main residence of at least 90 percent. of its residents,
- except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.
- (5) Self-catering holiday accommodation includes any accommodation advertised or held out as such.
- (6) “Houseboat” means a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion.
- (7) Where there is a supply of goods partly for qualifying use and partly not—
- (a) if at least 60 per cent. of the goods are supplied for qualifying use, the whole supply shall be treated as a supply for qualifying use; and
  - (b) in any other case, an apportionment shall be made to determine the extent to which the supply is a supply for qualifying use.
- (8) Paragraph (a) of item 1 shall be deemed to include combustible materials put up for sale for kindling fires but shall not include matches upon which a duty of customs or excise has been or is to be charged.
- (9) Paragraphs (b) and (c) of item 1 do not include any road fuel gas (within the meaning of the Hydrocarbon Oil Duties Act 1979) on which a duty of excise has been charged or is chargeable.
- (10) Paragraph (d) of item 1 does not include hydrocarbon oil on which a duty of excise has been or is to be charged without relief from, or rebate of, such duty by virtue of the provisions of the Hydrocarbon Oil Duties Act 1979.
- (11) “Fuel oil” means heavy oil which contains in solution an amount of asphaltenes of not less than 0.5 per cent. or which contains less than 0.5 per cent. but not less than 0.1 per cent. of asphaltenes and has a closed flash point not exceeding 150°C.



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- (12) “Gas oil” means heavy oil of which not more than 50 per cent. by volume distils at a temperature not exceeding 240°C and of which more than 50 per cent. by volume distils at a temperature not exceeding 340°C.
- (13) “Kerosene” means heavy oil of which more than 50 per cent. by volume distils at a temperature not exceeding 240°C.
- (14) “Heavy oil” shall have the same meaning as in the Hydrocarbon Oil Duties Act 1979.”

(2) This section shall have effect in relation to supplies made on or after 1st July 1990.

## 22 Protective boots and helmets.

- (1) In item 2 of Group 17 (protective boots and helmets) of Schedule 5 to the <sup>M20</sup>Value Added Tax Act 1983 there shall be inserted at the beginning the words “The supply to a person for use otherwise than by employees of his of”.
- (2) In Note (5) to that Group (supply of certain goods to include supply of certain services in respect of such goods) there shall be inserted at the end the words “, but, in the case of goods comprised in item 2, only if the goods are for use otherwise than by employees of the person to whom the services are supplied.”
- (3) This section shall have effect in relation to supplies made on or after 1st April 1989.

### Marginal Citations

M20 1983 c. 55.

## 23 Incorrect certificates.

(1) The following section shall be inserted in the <sup>M21</sup>Finance Act 1985 after section 13—

### “13A Incorrect certificates as to zero-rating etc.

- (1) Subject to subsections (3) and (4) below, where—
  - (a) a person to whom one or more supplies are, or are to be, made gives to the supplier—
    - (i) a certificate that the supply or supplies fall, or will fall, wholly or partly within Group 7, 8 or 8A of Schedule 5, or Group 1 of Schedule 6, to the principal Act; or
    - (ii) a certificate such as is mentioned in paragraph 13(4)(f) of Schedule 3 to the Finance Act 1989 relating to the supply or supplies; and
  - (b) the certificate is incorrect,  
the person giving the certificate shall be liable to a penalty.
- (2) The amount of the penalty shall be equal to the difference between the amount of the tax which would have been chargeable on the supply or supplies if the certificate had been correct and the amount of tax actually so chargeable.

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- (3) The giving of a certificate shall not give rise to a penalty under this section if the person who gave it satisfies the Commissioners or, on appeal, a value added tax tribunal that there is a reasonable excuse for his having given it.
- (4) Where by reason of giving a certificate a person is convicted of an offence (whether under the principal Act or otherwise), the giving of the certificate shall not also give rise to a penalty under this section.”
- (2) This section shall have effect in relation to certificates given on or after the day on which this Act is passed.

#### Marginal Citations

M21 1985 c. 54.

#### *Other provisions*

#### 24 Recovery of overpaid VAT.

- (1) Where a person has paid an amount to the Commissioners by way of value added tax which was not tax due to them, they shall be liable to repay the amount to him.
- (2) The Commissioners shall only be liable to repay an amount under this section on a claim being made for the purpose.
- (3) It shall be a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.
- (4) No amount may be claimed under this section after the expiry of 6 years from the date on which it was paid, except where subsection (5) below applies.
- (5) Where an amount has been paid to the Commissioners by reason of a mistake, a claim for the repayment of the amount under this section may be made at any time before the expiry of 6 years from the date on which the claimant discovered the mistake or could with reasonable diligence have discovered it.
- (6) A claim under this section shall be made in such form and manner and shall be supported by such documentary evidence as the Commissioners prescribe by regulations; and regulations under this subsection may make different provision for different cases.
- (7) Except as provided by this section, the Commissioners shall not be liable to repay an amount paid to them by way of value added tax by virtue of the fact that it was not tax due to them.
- (8) The preceding provisions of this section apply to an amount paid before, as well as to an amount paid after, the day on which this section comes into force, except where the Commissioners have received a claim for repayment of the amount before that day.
- (9) The following paragraph shall be inserted at the end of section 40(1) of the <sup>M22</sup>Value Added Tax Act 1983 (appeals)—
- “(s) a claim for the repayment of an amount under section 24 of the Finance Act 1989 (recovery of overpaid tax).”

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- (10) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (11) Section 45 of the Value Added Tax Act 1983 (orders) shall not apply to subsection (10) above.

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

**C2** Power of appointment conferred by s. 24(10) fully exercised(1.1.1990): [S.I. 1989/2271, art. 2](#)

**Marginal Citations**

**M22** 1983 c. 55.

## 25 Administration etc.

- (1) Schedule 7 to the Value Added Tax Act 1983 (administration, collection and enforcement) shall be amended as follows.
- (2) In paragraph 2 (accounting for and payment of tax) for paragraphs (b) and (c) of sub-paragraph (4) there shall be substituted—
- “(b) with respect to the making of entries in accounts for the purpose of making adjustments, whether for the correction of errors or otherwise; and
- (c) for the making of financial adjustments in connection with the making of entries in accounts for the purpose mentioned in paragraph (b) above.”
- (3) In paragraph 7(1) (power to require the keeping of records) after the word “may” there shall be inserted the words “by regulations”.
- (4) After paragraph 7(1) there shall be inserted—
- “(1A) Regulations under sub-paragraph (1) above may make different provision for different cases and may be framed by reference to such records as may be specified in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.”
- (5) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (6) Section 45 of the Value Added Tax Act 1983 (orders) shall not apply to subsection (5) above.

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

**C3** Power of appointment conferred by s. 25(5) fully exercised(4.12.1989): [S.I. 1989/2271, art. 3](#)

## 26 Input tax on self-supplies.

At the end of subsection (3) of section 15 of the <sup>M23</sup>Value Added Tax Act 1983 (input tax allowable under section 14) there shall be added—

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- “(d) preventing input tax on a supply which, under or by virtue of any provision of this Act, a person makes to himself from being allowable as attributable to that supply.”

**Marginal Citations**

**M23** 1983 c.55.

**CHAPTER III**

MISCELLANEOUS

**27 Relief from car tax where vehicle leased to the handicapped.**

- (1) After section 5 of the <sup>M24</sup>Car Tax Act 1983 there shall be inserted the following section—

**“5A Relief where vehicle leased to the handicapped.**

- (1) This section applies where on the date when, apart from subsection (2) (a) below, tax on a chargeable vehicle would become due from a person registered under this Act, there is held by him or on his behalf a certificate of a person to whom the vehicle is sold (“the lessor”) that the lessor intends to supply the vehicle to another in such circumstances that the supply will be a zero-rated supply by virtue of item 12 of Group 14 (letting on hire of motor vehicles to the handicapped) of Schedule 5 to the Value Added Tax Act 1983.

- (2) Tax on the vehicle—

- (a) shall not be payable by the registered person, but  
 (b) if, within the period of three years beginning with that date, the lessor supplies the vehicle in any circumstances other than those mentioned in subsection (1) above, shall be payable by the lessor and shall become due and payable at the time of the supply.

- (3) In this section—

“certificate” means a certificate in a form for the time being approved by the Commissioners, and

“supply” has the same meaning as in the Value Added Tax Act 1983.”

- (2) In section 5 of the Car Tax Act 1983 (liability and payment), in subsection (1), at the end of paragraph (a), there shall be inserted the words “subject to section 5A below”.
- (3) The powers conferred by Schedule 1 to that Act to require accounts and records to be preserved and produced shall be exercisable also in relation to any certificate which has been held by or on behalf of a registered person for the purposes of section 5A of that Act.
- (4) In paragraph 13 of that Schedule (restriction on registration of chargeable vehicles), after sub-paragraph (c) there shall be inserted “or

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- (d) that, by virtue of section 5A of this Act, tax on it has not become due and payable.”

**Marginal Citations**

M24 1983 c. 53.

**28 Reliefs from duties and taxes for persons enjoying certain immunities and privileges.**

- (1) After section 13 of the <sup>M25</sup> Customs and Excise Duties (General Reliefs) Act 1979 there shall be inserted the following sections—

**“13A Reliefs from duties and taxes for persons enjoying certain immunities and privileges.**

- (1) The Commissioners may by order make provision for conferring in respect of any persons to whom this section applies reliefs, by way of remission or repayment, from payment by them or others of duties of customs or excise, value added tax or car tax.
- (2) An order under this section may make any relief for which it provides subject to such conditions binding the person in respect of whom the relief is conferred and, if different, the person liable apart from the relief for payment of the tax or duty (including conditions which are to be complied with after the time when, apart from the relief, the duty or tax would become payable) as may be imposed by or under the order.
- (3) An order under this section may include any of the provisions mentioned in subsection (4) below for cases where—
- (a) relief from payment of any duty of customs or excise, value added tax or car tax chargeable on any goods, or on the supply of any goods or services or the importation of any goods has been conferred (whether by virtue of an order under this section or otherwise) in respect of any person to whom this section applies, and
- (b) in the case of goods, provision for forfeiture of the goods.
- (4) The provisions referred to in subsection (3) above are—
- (a) provision for payment to the Commissioners of the tax or duty by—
- (i) the person liable, apart from the relief, for its payment, or
- (ii) any person bound by the condition, or
- (iii) any person who is or has been in possession of the goods or has received the benefit of the services,
- or for two or more of those persons to be jointly and severally liable for such payment, and
- (5) An order under this section—
- (a) may contain such incidental and supplementary provisions as the Commissioners think necessary or expedient, and
- (b) may make different provision for different cases.
- (6) In this section and section 13C of this Act—

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“duty of customs” includes any agricultural levy within the meaning of section 6 of the European Communities Act 1972 chargeable on goods imported into the United Kingdom, and

“duty of excise” means any duty of excise chargeable on goods and includes any addition to excise duty by virtue of section 1 of the Excise Duties (Surcharges or Rebates) Act 1979.

- (7) For the purposes of this section and section 13C of this Act, where in respect of any person to whom this section applies relief is conferred (whether by virtue of an order under this section or otherwise) in relation to the use of goods by any persons or for any purposes, the relief is to be treated as conferred subject to a condition binding on him that the goods will be used only by those persons or for those purposes.
- (8) Nothing in any order under this section shall be construed as authorising a person to import any thing in contravention of any prohibition or restriction for the time being in force with respect to it under or by virtue of any enactment.

### **13B Persons to whom section 13A applies.**

- (1) The persons to whom section 13A of this act applies are—
- (a) any person who, for the purposes of any provision of the Visiting Forces Act 1952 or the International Headquarters and Defence Organisations Act 1964 is—
    - (i) a member of a visiting force or of a civilian component of such a force or a dependant of such a member, or
    - (ii) a headquarters, a member of a headquarters or a dependant of such a member,
  - (b) any person enjoying any privileges or immunities under or by virtue of—
    - (i) the Diplomatic Privileges Act 1964,
    - (ii) the Commonwealth Secretariat Act 1966,
    - (iii) the Consular Relations Act 1968,
    - (iv) the International Organisations Act 1968, or
    - (v) the Overseas Development and Co-operation Act 1980,
  - (c) any person enjoying, under or by virtue of section 2 of the European Communities Act 1972, any privileges or immunities similar to those enjoyed under or by virtue of the enactments referred to in paragraph (b) above.
- (2) The Secretary of State may by order amend subsection (1) above to include any persons enjoying any privileges or immunities similar to those enjoyed under or by virtue of the enactments referred to in paragraph (b) of that subsection.
- (3) No order shall be made under this section unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

### **13C Offence where relieved goods used, etc., in breach of condition.**

- (1) Subsection (2) below applies where—

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- (a) any relief from payment of any duty of customs or excise, value added tax or car tax chargeable on, or on the supply or importation of, any goods has been conferred (whether by virtue of an order under section 13A of this Act otherwise) in respect of any person to whom that section applies subject to any condition as to the persons by whom or the purposes for which the goods may be used, and
  - (b) if the tax or duty has subsequently become payable, it has not been paid.
- (2) If any person—
- (a) acquires the goods for his own use, where he is not permitted by the condition to use them, or for use for a purpose that is not permitted by the condition or uses them for such a purpose, or
  - (b) acquires the goods for use, or causes or permits them to be used, by a person not permitted by the condition to use them or by a person for a purpose that is not permitted by the condition or disposes of them to a person not permitted by the condition to use them,
- with intent to evade payment of any tax or duty that has become payable or that, by reason of the disposal, acquisition or use, becomes or will become payable, he is guilty of an offence.
- (3) For the purposes of this section—
- (a) in the case of a condition as to the persons by whom goods may be used, a person is not permitted by the condition to use them unless he is a person referred to in the condition as permitted to use them, and
  - (b) in relation to a condition as to the purposes for which goods may be used, a purpose is not permitted by the condition unless it is a purpose referred to in the condition as a permitted purpose,
- and in this section “dispose” includes “lend” and “let on hire”, and “acquire” shall be interpreted accordingly.
- (4) A person guilty of an offence under this section may be detained and shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum or of three times the value of the goods (whichever is the greater), or to imprisonment for a term not exceeding six months, or to both, or
  - (b) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding seven years, or to both.”
- (2) Section 13C of the <sup>M26</sup> Customs and Excise Duties (General Reliefs) Act 1979 inserted by subsection (1) above shall have effect where relief is conferred on or after the day on which this Act is passed.
- (3) In section 17 of the Customs and Excise Duties (General Reliefs) Act 1979, in subsection (3), for “or 13” there shall be substituted “13 or 13A” and, in subsection (4), for “or 13(1)” there shall be substituted “13(1) or 13A”.

**Marginal Citations**

**M25** 1979 c. 3.

**M26** 1979 c. 3.

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## 29 Recovery of overpaid excise duty and car tax.

- (1) This section applies to proceedings for restitution of an amount paid to the Commissioners of Customs and Excise by way of excise duty or car tax.
- (2) Proceedings to which this section applies shall not be dismissed by reason only of the fact that the amount was paid by reason of a mistake of law.
- (3) In any proceedings to which this section applies it shall be a defence that repayment of an amount would unjustly enrich the claimant.
- (4) This section shall have effect in relation to proceedings commenced on or after the day on which this Act is passed.

## PART II

### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

## CHAPTER I

### GENERAL

#### *Income tax rates and allowances*

## 30 Charge and rates of income tax for 1989-90.

- (1) Income tax shall be charged for the year 1989-90, and the basic rate of tax shall be 25 per cent.
- (2) The higher rate at which income tax is charged for the year 1989-90 in respect of so much of an individual's total income as exceeds the basic rate limit (20,700) shall be 40 per cent.

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

**C4** For earlier years see Table C, Vol. 1

## 31 Age allowance.

- (1) In section 257 of the Taxes Act 1988—
  - (a) in subsection (3) (increased allowance for those aged 80 and over) for “80”, wherever occurring, there shall be substituted “75”, and
  - (b) in subsection (5) (age allowance withdrawn by two-thirds of amount by which income exceeds a specified limit) for “two-thirds” there shall be substituted “one half”.
- (2) This section shall have effect for the year 1989-90.



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

**C5** For earlier years see Table E(1), Vol. 1

**32 Operative date for PAYE.**

For the year 1989-90, sections 1(5) and 257(10) of the Taxes Act 1988 (which specify the date from which indexed changes in the basic rate limit and in allowances are to be brought into account for the purposes of PAYE) shall have effect as if for the reference to 5th May there were substituted a reference to 18th May.

**33 Married couples.**

- (1) Sections 257 to 257F and 265 of the <sup>M27</sup>Taxes Act 1988, as inserted for the year 1990-91 and subsequent years by the Finance Act 1988, shall be amended as follows.
- (2) In section 257(1) for “£2,605” there shall be substituted “£2,785”.
- (3) In section 257(2) for “£3,180” there shall be substituted “£3,400”.
- (4) In section 257(3)—
  - (a) for “80” there shall be substituted “75”, and
  - (b) for “£3,310” there shall be substituted “£3,540”.
- (5) In section 257(5)—
  - (a) for “£10,600” there shall be substituted “£11,400”, and
  - (b) for “two-thirds” there shall be substituted “one half”.
- (6) In section 257A(1) for “£1,490” there shall be substituted “£1,590”.
- (7) In section 257A(2) for “£1,855” there shall be substituted “£1,985”.
- (8) In section 257A(3)—
  - (a) for “80” there shall be substituted “75”, and
  - (b) for “£1,895” there shall be substituted “£2,025”.
- (9) In section 257A(5)—
  - (a) for “£10,600” there shall be substituted “£11,400”, and
  - (b) for “two-thirds” there shall be substituted “one half”.
- (10) In sections 257B(2), 257D(8) and 265(3) after paragraph (b) there shall be inserted “or  
(c) on account of any payments to which section 593(2) or 639(3) applies.”.
- (11) In section 257E(1)(b) for “80” there shall be substituted “75”.
- (12) In section 257E(2)(a) for “£3,180” there shall be substituted “£3,400”.
- (13) In section 257E(2)(b) for “£3,310” there shall be substituted “£3,540”.

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

**C6** See [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [s. 257](#) for 1989–1990 and see [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), [257–257E](#) for 1990–1991

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### Marginal Citations

M27 1988 c. 39.

*Corporation tax rates etc.*

## 34 Charge and rate of corporation tax for financial year 1989.

Corporation tax shall be charged for the financial year 1989 at the rate of 35 per cent.

### Modifications etc. (not altering text)

C7 For earlier years see Table K, Vol. 1

## 35 Corporation tax: small companies.

- (1) For the financial year 1989—
  - (a) the small companies' rate shall be 25 per cent., and
  - (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.
- (2) In section 13(3) of that Act (limits of marginal relief), in paragraphs (a) and (b)—
  - (a) for “£100,000” there shall be substituted “£150,000”, and
  - (b) for “£500,000” there shall be substituted “£750,000”.
- (3) Subsection (2) above shall have effect for the financial year 1989 and subsequent financial years; and where by virtue of that subsection section 13 of the Taxes Act 1988 has effect with different relevant maximum amounts in relation to different parts of a company's accounting period, then for the purposes of that section those parts shall be treated as if they were separate accounting periods and the profits and basic profits of the company for that period shall be apportioned between those parts.

### Modifications etc. (not altering text)

C8 For earlier years see Table K, Vol. 1

C9 For earlier years see Table L, Vol. 1

*Receipts basis etc.*

## 36 Schedule E: revised Cases.

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) In paragraph 1 of section 19(1) the following Cases shall be substituted for Cases I, II and III—

“Case I: any emoluments for any year of assessment in which the person holding the office or employment is resident and ordinarily resident in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section) and to

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section 193(1) if in the year of assessment concerned he performs the duties of the office or employment wholly or partly outside the United Kingdom;

Case II: any emoluments, in respect of duties performed in the United Kingdom, for any year of assessment in which the person holding the office or employment is not resident (or, if resident, not ordinarily resident) in the United Kingdom, subject however to section 192 if the emoluments are foreign emoluments (within the meaning of that section);

Case III: any emoluments for any year of assessment in which the person holding the office or employment is resident in the United Kingdom (whether or not ordinarily resident there) so far as the emoluments are received in the United Kingdom;”.

(3) The following paragraph shall be inserted after paragraph 4 of section 19(1)—

Where (apart from this paragraph) emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following rules shall apply for the purposes of the Cases set out in paragraph 1 above—

- (a) if in the year concerned the office or employment has never been held, the emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held;
- (b) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.”

(4) Subsection (2) above shall apply where the year of assessment mentioned in the substituted Case I, II or III is 1989-90 or a subsequent year of assessment.

(5) Subsection (3) above shall apply where each of the years mentioned in the new paragraph 4A(a) or (b) (as the case may be) is 1989-90 or a subsequent year of assessment.

### **37 Schedule E: assessment on receipts basis.**

(1) The following sections shall be inserted immediately before section 203 of the Taxes Act 1988—

#### **“202A Assessment on receipts basis.**

(1) As regards any particular year of assessment—

- (a) income tax shall be charged under Cases I and II of Schedule E on the full amount of the emoluments received in the year in respect of the office or employment concerned;
- (b) income tax shall be charged under Case III of Schedule E on the full amount of the emoluments received in the United Kingdom in the year in respect of the office or employment concerned.

(2) Subsection (1) above applies—

- (a) whether the emoluments are for that year or for some other year of assessment;

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- (b) whether or not the office or employment concerned is held at the time the emoluments are received or (as the case may be) received in the United Kingdom.
- (3) Where subsection (1) above applies in the case of emoluments received, or (as the case may be) received in the United Kingdom, after the death of the person who held the office or employment concerned, the charge shall be a charge on his executors or administrators; and accordingly income tax—
- (a) shall be assessed and charged on the executors or administrators, and
  - (b) shall be a debt due from and payable out of the deceased's estate.
- (4) Section 202B shall have effect for the purposes of subsection (1)(a) above.

**202B Receipts basis: meaning of receipt.**

- (1) For the purposes of section 202A(1)(a) emoluments shall be treated as received at the time found in accordance with the following rules (taking the earlier or earliest time in a case where more than one rule applies)—
- (a) the time when payment is made of or on account of the emoluments;
  - (b) the time when a person becomes entitled to payment of or on account of the emoluments;
  - (c) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the emoluments are credited in the company's accounts or records, the time when sums on account of the emoluments are so credited;
  - (d) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is determined before the period ends, the time when the period ends;
  - (e) in a case where the emoluments are from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the emoluments for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.
- (2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
- (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
- (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
- (5) In subsection (1) above “director” means—
- (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that board or similar body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company.

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- (6) In subsection (1) above “director”, in relation to a company, also includes any person in accordance with whose directions or instructions the company’s directors (as defined in subsection (5) above) are accustomed to act; and for this purpose a person is not to be deemed to be a person in accordance with whose directions or instructions the company’s directors are accustomed to act by reason only that the directors act on advice given by him in a professional capacity.
- (7) Subsections (1) to (6) above shall have effect subject to subsections (8) to (11) below.
- (8) In a case where section 141(1)(a), 142(1)(a), 143(1)(a) or 148(4) treats a person as receiving or being paid an emolument or emoluments at a particular time, for the purposes of section 202A(1)(a) the emolument or emoluments shall be treated as received at that time; and in such a case subsections (1) to (6) above shall not apply.
- (9) In a case where section 145(1) treats a person as receiving emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the period referred to in section 145(1); and in such a case subsections (1) to (6) above shall not apply.
- (10) In a case where section 154(1), 157(1), 158(1), 160(1), 160(2), 162(6) or 164(1) treats an amount as emoluments, for the purposes of section 202A(1)(a) the emoluments shall be treated as received in the year referred to in section 154(1) or the other provision concerned; and in such a case subsections (1) to (6) above shall not apply.
- (11) In a case where—
  - (a) emoluments take the form of a benefit not consisting of money, and
  - (b) subsection (8), (9) or (10) above does not apply,for the purposes of section 202A(1)(a) the emoluments shall be treated as received at the time when the benefit is provided; and in such a case subsections (1) to (6) above shall not apply.”
- (2) This section shall apply where the year of assessment mentioned in the new section 202A(1) is 1989-90 or a subsequent year of assessment even if the emoluments concerned are for a year of assessment before 1989-90.
- (3) This section shall not apply in the case of emoluments of an office or employment held by a person who died before 6th April 1989.

### **38 Schedule E: unpaid emoluments.**

- (1) This section applies to emoluments of an office or employment if—
  - (a) they are emoluments for a year of assessment (a relevant year) before 1989-90,
  - (b) they fall within Case I or II of Schedule E as the Case applies for years before 1989-90,
  - (c) they have not been paid before 6th April 1989, and
  - (d) they have been received on or after 6th April 1989 and before 6th April 1991;and section 202B of the Taxes Act 1988 shall apply for the purposes of paragraph (d) above as it applies for the purposes of section 202A(1)(a) of that Act.

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- (2) The emoluments shall be charged to income tax only by reference to the year of assessment in which they are received.
- (3) Any adjustments consequential on this section (such as the amendment of assessments or the repayment or setting-off of tax paid) shall be made.
- (4) This section shall not apply to emoluments of an office or employment held by a person who died before 6th April 1989.
- (5) This section shall not apply if the only emoluments of the office or employment not paid before 6th April 1989 are emoluments for a period consisting of or falling within the period beginning with 5th March 1989 and ending with 5th April 1989.
- (6) This section shall not apply unless—
  - (a) written notice that it is to apply is given to the inspector before 6th April 1991,
  - (b) the notice is given by or on behalf of the person who holds or held the office or employment concerned, and
  - (c) the notice states the amount of the emoluments falling within subsection(1) above.
- (7) Subsection (8) below applies where emoluments of an office or employment have been or fall to be computed by reference to the accounts basis as regards the year 1987-88 or years of assessment including that year.
- (8) In deciding for the purposes of subsection (1)(a) above whether emoluments are emoluments for a particular year, the emoluments of the office or employment for the year or (as the case may be) years mentioned in subsection(7) above, and for the year 1988-89, shall be computed by reference to that basis.
- (9) In deciding whether subsection (8) above applies in a particular case, any request to revoke the application of the accounts basis shall be ignored if—
  - (a) it is made after 5th April 1989, or
  - (b) it is made before 6th April 1989 otherwise than in writing.
- (10) In the application of this section to emoluments of an office or employment under or with a person carrying on business as an authorised Lloyd’s underwriting agent, the references in subsections (1)(d) and (6)(a) above to 6th April 1991 shall be construed as references to 6th April 1994.
- (11) Subsection (10) above shall not apply unless the duties of the office or employment relate wholly or mainly to the underwriting agency business.
- (12) The reference in subsection (10) above to an authorised Lloyd’s underwriting agent is to a person permitted by the Council of Lloyd’s to act as an underwriting agent at Lloyd’s.
- (13) If in a particular case it appears to the Board reasonable to do so they may direct that subsections (1)(d) and (6)(a) above shall have effect in relation to that case as if for the references to 6th April 1991 or (as the case may be) 6th April 1994 there were substituted references to such later date as they may specify in the direction.
- (14) In this section “the accounts basis” means the basis commonly so called (under which emoluments for a year of assessment are computed by reference to the emoluments for a period other than the year of assessment).

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### **39 Schedule E: unremitted emoluments.**

- (1) This section applies to emoluments of an office or employment if—
  - (a) they are emoluments for a year of assessment (a relevant year) before 1989-90,
  - (b) they are received in the United Kingdom after 5th April 1989, and
  - (c) had this Act not been passed they would have fallen within Case III of Schedule E.
- (2) The emoluments shall be treated as if they were not emoluments for the relevant year.
- (3) But they shall be treated as if they were emoluments for the year of assessment in which they are received in the United Kingdom and as if they fell within Case III as substituted by section 36 above; and accordingly income tax shall be charged, in accordance with section 202A of the Taxes Act 1988, by reference to the year of assessment in which the emoluments are received in the United Kingdom.

### **40 Schedule E: emoluments already paid.**

- (1) Subsection (2) below applies to emoluments of an office or employment if—
  - (a) they are emoluments for a year of assessment after 1988-89,
  - (b) they have been paid before 6th April 1989, and
  - (c) they fall within Case I or II of Schedule E as substituted by section 36 above.
- (2) The emoluments shall be treated as if they were received, within the meaning of section 202B of the Taxes Act 1988, on 6th April 1989; and accordingly income tax shall be charged, in accordance with section 202A of that Act, by reference to the year 1989-90.
- (3) Subsection (4) below applies to emoluments of an office or employment if—
  - (a) they are emoluments for a year of assessment after 1988-89,
  - (b) they have been received in the United Kingdom before 6th April 1989, and
  - (c) they fall within Case III of Schedule E as substituted by section 36 above.
- (4) The emoluments shall be treated as if they were received in the United Kingdom on 6th April 1989; and accordingly income tax shall be charged, in accordance with section 202A of the Taxes Act 1988, by reference to the year 1989-90.

### **41 Schedule E: pensions etc.**

- (1) This section applies in relation to the following pensions and other benefits—
  - (a) a pension, stipend or annuity chargeable to income tax under Schedule E by virtue of paragraph 2, 3 or 4 of section 19(1) of the Taxes Act 1988;
  - (b) a pension or annual payment chargeable to income tax under Schedule E by virtue of section 133 of that Act (voluntary pensions);
  - (c) income support chargeable to income tax under Schedule E by virtue of section 151 of that Act;
  - (d) a pension chargeable to income tax under Schedule E by virtue of section 597 of that Act (retirement benefit schemes);
  - (e) a benefit chargeable to income tax under Schedule E by virtue of section 617(1) of that Act (social security benefits).

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- (2) As regards any particular year of assessment income tax shall be charged on the amount of the pension or other benefit accruing in respect of the year; and this shall apply irrespective of when any amount is actually paid in respect of the pension or other benefit.
- (3) This section shall apply where the year of assessment mentioned in subsection (2) above is 1989-90 or a subsequent year of assessment.

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

**C10** S. 41 extended (3.5.1994) by 1994 c. 9, s. 139(3)

**42 Schedule E: supplementary.**

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) In section 131(2) (interaction of Cases) the words “for the same or another chargeable period” shall be omitted.
- (3) In section 149(1) (sick pay chargeable as emoluments of employment for a certain period) the words “for that period” and the words “for that or any other period” shall be omitted.
- (4) Section 170 (profit-related pay charged for year of assessment in which it is paid) shall cease to have effect.
- (5) In paragraph 2(2) of Schedule 12 (foreign earnings) for the words from “emoluments from” to “year of assessment” there shall be substituted the words “emoluments for the year of assessment from the relevant employment in respect of which such a deduction is allowed”.
- (6) This section shall apply for the year 1989-90 and subsequent years of assessment.

**43 Schedule D: computation.**

- (1) Subsection (2) below applies where—
  - (a) a calculation is made of profits or gains which are to be charged under Schedule D and are for a period of account ending after 5th April 1989,
  - (b) relevant emoluments would (apart from that subsection) be deducted in making the calculation, and
  - (c) the emoluments are not paid before the end of the period of nine months beginning with the end of that period of account.
- (2) The emoluments—
  - (a) shall not be deducted in making the calculation mentioned in subsection(1) (a) above, but
  - (b) shall be deducted in calculating profits or gains which are to be charged under Schedule D and are for the period of account in which the emoluments are paid.
- (3) Subsections (4) and (5) below apply where—
  - (a) a calculation such as is mentioned in subsection (1)(a) above is made,



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- (b) the calculation is made before the end of the period of nine months beginning with the end of the period of account concerned,
  - (c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and
  - (d) the emoluments have not been paid when the calculation is made.
- (4) It shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of that period of nine months.
- (5) But the calculation shall be adjusted if—
  - (a) the emoluments are paid after the calculation is made but before the end of that period of nine months,
  - (b) a claim to adjust the calculation is made to the inspector, and
  - (c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.
- (6) In the application of this section to the calculation of a person's profits or gains as an authorised Lloyd's underwriting agent—
  - (a) the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to three years and nine months, and
  - (b) the reference in subsection (5)(c) above to two years shall be construed as a reference to five years.
- (7) The reference in subsection (6) above to an authorised Lloyd's underwriting agent is to a person permitted by the Council of Lloyd's to act as an underwriting agent at Lloyd's.
- (8) In a case where the period of account mentioned in subsection (1)(a) above begins before 6th April 1989 and ends before 6th April 1990, the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to eighteen months.
- (9) In this section "period of account" means a period for which an account is made up.
- (10) For the purposes of this section "relevant emoluments" are emoluments for a period after 5th April 1989 allocated either—
  - (a) in respect of particular offices or employments (or both), or
  - (b) generally in respect of offices or employments (or both).
- (11) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—
  - (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;
  - (b) potential emoluments are paid when they become relevant emoluments which are paid.
- (12) In deciding for the purposes of this section whether emoluments are paid at any time after 5th April 1989, section 202B of the Taxes Act 1988 (time when emoluments are treated as received) shall apply as it applies for the purposes of section 202A(1)(a) of that Act, but reading "paid" for "received" throughout.
- (13) In section 436(1)(b) of the Taxes Act 1988 (profits to be computed in accordance with provisions of that Act applicable to Case I of Schedule D) the reference to that Act shall be deemed to include a reference to this section.

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#### **44 Investment and insurance companies: computation.**

- (1) Subsection (2) below applies where—
  - (a) a calculation is made for the purposes of corporation tax of the profits of an investment company for an accounting period ending after 5th April 1989,
  - (b) relevant emoluments would (apart from that subsection) be deducted in making the calculation, and
  - (c) the emoluments are not paid before the end of the period of nine months beginning with the end of the relevant period of account.
- (2) The emoluments—
  - (a) shall not be deducted in making the calculation mentioned in subsection(1) (a) above, but
  - (b) shall be deducted in calculating for the purposes of corporation tax the profits of the company concerned for the accounting period in which the emoluments are paid.
- (3) Subsections (4) and (5) below apply where—
  - (a) a calculation such as is mentioned in subsection (1)(a) above is made,
  - (b) the calculation is made before the end of the period of nine months beginning with the end of the relevant period of account,
  - (c) relevant emoluments would (apart from subsection (2) above) be deducted in making the calculation, and
  - (d) the emoluments have not been paid when the calculation is made.
- (4) It shall be assumed for the purpose of making the calculation that the emoluments will not be paid before the end of that period of nine months.
- (5) But the calculation shall be adjusted if—
  - (a) the emoluments are paid after the calculation is made but before the end of that period of nine months,
  - (b) a claim to adjust the calculation is made to the inspector by or on behalf of the company concerned, and
  - (c) the claim is made before the end of the period of two years beginning with the end of the period of account concerned.
- (6) In a case where the accounting period mentioned in subsection (1)(a) above begins before 6th April 1989 and ends before 6th April 1990, the references in subsections (1)(c), (3)(b), (4) and (5)(a) above to nine months shall be construed as references to eighteen months.
- (7) In this section “investment company” has the same meaning as in Part IV of the Taxes Act 1988.
- (8) For the purposes of this section “relevant emoluments” are emoluments for a period after 5th April 1989 allocated either—
  - (a) in respect of particular offices or employments (or both), or
  - (b) generally in respect of offices or employments (or both).
- (9) This section applies in relation to potential emoluments as it applies in relation to relevant emoluments, and for this purpose—

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- (a) potential emoluments are amounts or benefits reserved in the accounts of an employer, or held by an intermediary, with a view to their becoming relevant emoluments;
  - (b) potential emoluments are paid when they become relevant emoluments which are paid.
- (10) For the purpose of this section the relevant period of account is the period of account which—
- (a) includes the accounting period concerned, or
  - (b) begins when the accounting period concerned begins and ends when the accounting period concerned ends.
- (11) In deciding for the purposes of this section whether emoluments are paid at any time after 5th April 1989, section 202B of the Taxes Act 1988 (time when emoluments are treated as received) shall apply as it applies for the purposes of section 202A(1)(a) of that Act, but reading “paid” for “received” throughout.
- (12) Where the profits of a company carrying on life assurance business are not charged under Case I of Schedule D, this section shall apply in calculating the profits as it applies in calculating the profits of an investment company; but the effect of section 86 below shall be ignored in construing subsection(1)(b) above.
- (13) In a case where, apart from this subsection and by virtue of subsection(2)(b) above as it applies by virtue of subsection (12) above, emoluments fall to be deducted in calculating profits for a particular accounting period—
- (a) subsection (2)(b) above shall have effect subject to section 86 below;
  - (b) in construing section 86 the emoluments shall be treated as expenses for that accounting period.

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

- C11** S. 44 modified (23.3.1999 with effect with respect to accounting periods of insurance companies ending on or after 1.7.1999) by [S.I. 1999/498, regs. 1, 9](#)

**45 PAYE: meaning of payment.**

- (1) The Taxes Act 1988 shall be amended as follows.
- (2) The following section shall be inserted after section 203—

**“203A PAYE: meaning of payment.**

- (1) For the purposes of section 203 and regulations under it a payment of, or on account of, any income assessable to income tax under Schedule E shall be treated as made at the time found in accordance with the following rules(taking the earlier or earliest time in a case where more than one rule applies)—
  - (a) the time when the payment is actually made;
  - (b) the time when a person becomes entitled to the payment;
  - (c) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and sums on account of the income are credited in

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- the company's accounts or records, the time when sums on account of the income are so credited;
- (d) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is determined before the period ends, the time when the period ends;
  - (e) in a case where the income is income from an office or employment with a company, the holder of the office or employment is a director of the company and the amount of the income for a period is not known until the amount is determined after the period has ended, the time when the amount is determined.
- (2) Subsection (1)(c), (d) or (e) above applies whether or not the office or employment concerned is that of director.
  - (3) Paragraph (c), (d) or (e) of subsection (1) above applies if the holder of the office or employment is a director of the company at any time in the year of assessment in which the time mentioned in the paragraph concerned falls.
  - (4) For the purposes of the rule in subsection (1)(c) above, any fetter on the right to draw the sums is to be disregarded.
  - (5) Subsections (5) and (6) of section 202B shall apply for the purposes of subsection (1) above as they apply for the purposes of section 202B(1)."
- (3) Section 203(4) (regulations may define payment) shall cease to have effect.
  - (4) Subsection (2) above shall have effect to determine whether anything occurring on or after the day on which this Act is passed constitutes a payment for the purposes mentioned in the new section 203A.
  - (5) But if an event occurring before the day on which this Act is passed constituted a payment of or on account of income for the purposes mentioned in the new section 203A, nothing occurring on or after that day shall constitute a payment of or on account of the same income for those purposes.

### *Interest*

#### **46 Relief for interest.**

For the year 1989-90 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

#### **47 Close company loans: business expansion scheme.**

In section 360 of the Taxes Act 1988 (loans to buy interest in close company), after subsection (3) there shall be inserted—

“(3A) Interest shall not be eligible for relief under section 353 by virtue of paragraph (a) of subsection (1) above in respect of shares acquired on or after 14th March 1989 if at any time the person by whom they are acquired, or that person's husband or wife, makes a claim for relief in respect of the munder Chapter III of Part VII.”

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#### **48 Close company loans: material interest.**

(1) In section 360 of the Taxes Act 1988 for subsection (4) there shall be substituted—

“(4) Subject to section 360A, in this section expressions to which a meaning is assigned by Part XI have that meaning.”

(2) The following section shall be inserted after that section—

##### **“360A Meaning of “material interest” in section 360.**

(1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest in a company—

- (a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or
- (b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.

(2) Subject to the following provisions of this section, in subsection (1) above “associate”, in relation to an individual, means—

- (a) any relative or partner of the individual;
- (b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor (“settlement” and “settlor” having the same meaning as in section 681(4)); and
- (c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.

(3) In relation to any loan made after 5th April 1987, there shall be disregarded for the purposes of subsection (2)(c) above—

- (a) the interest of the trustees of an approved profit sharing scheme (within the meaning of section 187) in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and
- (b) any rights exercisable by those trustees by virtue of that interest.

(4) In relation to any loan made on or after the day on which the Finance Act 1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.

(5) In subsection (4) above “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.

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- (6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—
- (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates, has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 percent. of the ordinary share capital of the company.
- (7) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of subsection (6) above in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.
- (8) In relation to any loan made before 14th November 1986, where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, subsection (2)(c) above shall have effect as if for the reference to the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased there were substituted a reference to any person (other than the individual) interested in the settlement or estate, but subject to subsection (9) below.
- (9) Subsection (8) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—
- (a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or
  - (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;
- and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.
- (10) In this section “relative” means husband or wife, parent or remoter forebear, child or remoter issue or brother or sister.”

### *Benefits in kind*

#### **49 Car benefits.**

- (1) In Schedule 6 to the Taxes Act 1988 (taxation of directors and others in respect of cars) for Part I (tables of flat rate cash equivalents) there shall be substituted—

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**“PART I**

**TABLES OF FLAT RATE CASH EQUIVALENTS**

table A

**CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND HAVING A CYLINDER CAPACITY**

<b>Cylinder capacity of car in cubic centimetres</b>	<b>Age of car at end of relevant year of assessment</b>	
	<b>Under 4 years</b>	<b>4 years or more</b>
1400 or less	£1,400	£950
More than 1400 but not more than 2000	£1,850	£1,250
More than 2000	£2,950	£1,950

table B

**CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND NOT HAVING A CYLINDER CAPACITY**

<b>Original market value of car</b>	<b>Age of car at end of relevant year of assessment</b>	
	<b>Under 4 years</b>	<b>4 years or more</b>
Less than £6,000	£1,400	£950
£6,000 or more but less than £8,500	£1,850	£1,250
£8,500 or more but not more than £19,250	£2,950	£1,950

table B

**CARS WITH AN ORIGINAL MARKET VALUE OF MORE THAN £19,250**

<b>Original market value of car</b>	<b>Age of car at end of relevant year of assessment</b>	
	<b>Under 4 years</b>	<b>4 years or more</b>
More than £19,250 but not more than £29,000	£3,850	£2,600
More than £29,000	£6,150	£4,100”

(2) This section shall have effect for the year 1989-90 and subsequent years of assessment.

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## 50 Security assets and services.

- (1) For the purposes of this section a security asset is an asset which improves personal security, and a security service is a service which improves personal security.
- (2) In a case where—
  - (a) a security asset or security service is provided for an employee by reason of his employment, or is used by an employee, and
  - (b) the cost is wholly or partly borne by or on behalf of a person (the provider) other than the employee,
 in charging tax under Schedule E on the emoluments from the employment a deduction shall be allowed of an amount equal to so much of the cost so borne as falls to be included in the emoluments of the employment.
- (3) In a case where—
  - (a) a security asset or security service is provided for or used by an employee,
  - (b) expenses in connection with the provision or use are incurred out of the emoluments of the employment, and
  - (c) the expenses are reimbursed by or on behalf of a person (the provider) other than the employee,
 in charging tax under Schedule E on the emoluments from the employment a deduction shall be allowed of an amount equal to the amount of the expenses.
- (4) Subsection (2) or (3) above shall not apply unless the asset or service is provided for or used by the employee to meet a threat which—
  - (a) is a special threat to his personal physical security, and
  - (b) arises wholly or mainly by virtue of the particular employment concerned.
- (5) Subsection (2) or (3) above shall not apply unless the provider has the meeting of that threat as his sole object in wholly or partly bearing the cost or reimbursing the expenses (as the case may be).
- (6) Subsection (2) or (3) above shall not apply in the case of a service unless the benefit resulting to the employee consists wholly or mainly of an improvement of his personal physical security.
- (7) Subsection (2) or (3) above shall not apply in the case of an asset unless the provider intends the asset to be used solely to improve personal physical security.

## 51 Assets used partly for security.

- (1) In a case where—
  - (a) apart from section 50(7) above, section 50(2) above would apply in the case of an asset, and
  - (b) the provider intends the asset to be used partly to improve personal physical security,
 section 50(2) shall nevertheless apply, but only so as to allow a deduction of the appropriate proportion of the amount there mentioned.
- (2) For the purposes of subsection (1) above the appropriate proportion of the amount mentioned in section 50(2) above is such proportion of that amount as is attributable to the provider's intention that the asset be used to improve personal physical security.



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- (3) In a case where—
- (a) apart from section 50(7) above, section 50(3) above would apply in the case of an asset, and
  - (b) the provider intends the asset to be used partly to improve personal physical security,
- section 50(3) shall nevertheless apply, but only so as to allow a deduction of the appropriate proportion of the amount there mentioned.
- (4) For the purposes of subsection (3) above the appropriate proportion of the amount mentioned in section 50(3) above is such proportion of that amount as is attributable to the provider’s intention that the asset be used to improve personal physical security.

## **52 Security: supplementary.**

- (1) If the provider intends the asset to be used solely to improve personal physical security, but there is another use for the asset which is incidental to improving personal physical security, that other use shall be ignored in construing section 50(7) above.
- (2) The fact that an asset or service improves the personal physical security of any member of the employee’s family or household, as well as that of the employee, shall not prevent section 50(2) or (3) above from applying.
- (3) In sections 50 and 51 above and this section—
- (a) references to an asset do not include references to a car, a ship or an aircraft,
  - (b) references to an asset or service do not include references to a dwelling, grounds appurtenant to a dwelling, or living accommodation,
  - (c) references to an asset include references to equipment and a structure (such as a wall),
  - (d) references to an employee are to a person who holds an employment, and
  - (e) references to an employment include references to an office.
- (4) For the purposes of sections 50 and 51 above and this section in their application to an asset, it is immaterial whether or not the asset becomes affixed to land (whether constituting a dwelling or otherwise).
- (5) For the purposes of sections 50 and 51 above and this section in their application to an asset, it is immaterial whether or not the employee is or becomes entitled to the property in the asset or (in the case of a fixture) an estate or interest in the land concerned.
- (6) Sections 50 and 51 above and this section apply where expenditure is incurred on or after 6th April 1989 in or towards bearing a cost or in reimbursing expenses (as the case may be).

## **53 Employees earning £8,500 or more and directors.**

- (1) For section 167 of the Taxes Act 1988 (which defines “director’s or higher-paid employment” for the purposes of Chapter II of Part V) there shall be substituted—

### **“167 Employment to which this Chapter applies.**

- (1) This Chapter applies—

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- (a) to employment as a director of a company (but subject to subsection (5) below), and
  - (b) to employment with emoluments at the rate of £8,500 a year or more.
- (2) For this purpose emoluments are to be calculated—
- (a) on the basis that they include all such amounts as come, or would but for section 157(3) come, into charge under this Chapter or section 141, 142, 143 or 145, and
  - (b) without any deduction under section 198, 201 or 332(3).
- (3) Where a person is employed in two or more employments by the same employer and either—
- (a) the total of the emoluments of those employments (applying this section) is at the rate of £8,500 a year or more, or
  - (b) this Chapter applies (apart from this subsection) to one or more of those employments,
- this Chapter shall apply to all the employments.
- (4) All employees of a partnership or body over which an individual or another partnership or body has control are to be treated for the purposes of this section (but not for any other purpose) as if the employment were an employment by the individual or by that other partnership or body as the case may be.
- (5) This Chapter shall not apply to a person's employment by reason only of its being employment as a director of a company (without prejudice to its application by virtue of subsection (1)(b) or (3) above) if he has no material interest in the company and either—
- (a) his employment is as a full-time working director; or
  - (b) the company is non-profit making (meaning that neither does it carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property) or is established for charitable purposes only.”
- (2) In consequence of subsection (1) above—
- (a) for the heading to Chapter II of Part V of the Taxes Act 1988 there shall be substituted “EMPLOYEES EARNING £8,500 OR MORE AND DIRECTORS”;
  - (b) the words “employment to which this Chapter applies” shall be substituted for the words “director's or higher-paid employment” in sections 153(1), 154(1), 157(1), 158(1), 160(1) and (2), 162(1), 163(1) and 165(6)(b) of that Act;
  - (c) for section 160(3) of that Act there shall be substituted—
- “(3) Where—
- (a) there was outstanding, at any time when a person was in employment to which this Chapter applies, the whole or part of a loan to him (or a relative of his) the benefit of which was obtained by reason of his employment, and
  - (b) that employment has terminated or ceased to be employment to which this Chapter applies,

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- subsection (2) above applies as if the employment had not terminated or, as the case may be, had not ceased to be employment to which this Chapter applies.”;
- (d) in section 162(5) of that Act, after the words “section 160(2)” there shall be inserted the words “(and where appropriate section 160(3))”;
  - (e) for section 162(7) of that Act there shall be substituted—
    - “(7) If at the time of the event giving rise to a charge by virtue of subsection (6) above the employment in question has terminated, that subsection shall apply as if it had not.”
  - (f) the words “ employment to which Chapter II of Part V applies ” shall be substituted for the words from “director’s” to “section 167)” in sections 332(2) (c) and 418(3)(a) of that Act;
  - (g) the words “ employment to which Chapter II of Part V of the principal Act applies ” shall be substituted for the words “director’s or higher paid employment” in section 15(3)(a) of the <sup>M28</sup>Taxes Management Act 1970.

**Marginal Citations**  
M28 1970 c. 9.

*Medical insurance*

**54 Relief.**

- (1) This section applies where—
  - (a) on or after 6th April 1990 an individual makes a payment in respect of a premium under a contract of private medical insurance (whenever issued),
  - (b) the contract meets the requirement in subsection (2) below as to the person or persons insured,
  - (c) at the time the payment is made the contract is an eligible contract,
  - (d) the individual making the payment does not make it out of resources provided by another person for the purpose of enabling it to be made, and
  - (e) the individual making the payment is not entitled to claim any relief or deduction in respect of it under any other provision of the Tax Acts.
- (2) The requirement mentioned in subsection (1)(b) above is that the contract insures—
  - (a) an individual who at the time the payment is made is aged 60 or over and resident in the United Kingdom,
  - (b) individuals each of whom at that time is aged 60 or over and resident in the United Kingdom, or
  - (c) two individuals who are married to each other at that time, at least one of whom is aged 60 or over at that time, and each of whom is resident in the United Kingdom at that time.
- (3) If the payment is made by an individual who at the time it is made is resident in the United Kingdom (whether or not he is the individual or one of the individuals insured by the contract) it shall be deducted from or set off against his income for the year of assessment in which it is made; but relief under this subsection shall be given only on a claim made for the purpose, except where subsections (4) to (6) below apply.

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- (4) In such cases and subject to such conditions as the Board may specify in regulations, relief under subsection (3) above shall be given in accordance with subsections (5) and (6) below.
- (5) An individual who is entitled to such relief in respect of a payment may deduct and retain out of it an amount equal to income tax on it at the basic rate for the year of assessment in which it is made.
- (6) The person to whom the payment is made—
  - (a) shall accept the amount paid after deduction in discharge of the individual's liability to the same extent as if the deduction had not been made, and
  - (b) may, on making a claim, recover from the Board an amount equal to the amount deducted.
- (7) The Treasury may make regulations providing that in circumstances prescribed in the regulations—
  - (a) an individual who has made a payment in respect of a premium under a contract of private medical insurance shall cease to be and be treated as not having been entitled to relief under subsection (3) above; and
  - (b) he or the person to whom the payment was made (depending on the terms of the regulations) shall account to the Board for tax from which relief has been given on the basis that the individual was so entitled.
- (8) Regulations under subsection (7) above may include provision adapting or modifying the effect of any enactment relating to income tax in order to secure the performance of any obligation imposed under paragraph (b) of that subsection.
- (9) In this section—
  - (a) references to a premium, in relation to a contract of insurance, are to any amount payable under the contract to the insurer, and
  - (b) references to an individual who is resident in the United Kingdom at anytime include references to an individual who is at that time performing duties which are treated by virtue of section 132(4)(a) of the Taxes Act 1988 as performed in the United Kingdom.

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

**C12** For regulations see S.I. 1989/2387 and S.I. 1989/2389 (in Part III Vol. 5 under "Private medical insurance")

**55 Eligible contracts.**

- (1) This section has effect to determine whether a contract is at a particular time (the relevant time) an eligible contract for the purposes of section 54 above.
- (2) A contract is an eligible contract at the relevant time if—
  - (a) it was entered into by an insurer who at the time it was entered into was a qualifying insurer and was approved by the Board for the purposes of this section,
  - (b) the period of insurance under the contract does not exceed one year (commencing with the date it was entered into),

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- (c) the contract is not connected with any other contract at the relevant time and has not been connected with any other contract at any time since it was entered into,
  - (d) no benefit has been provided by virtue of the contract other than an approved benefit, and
  - (e) the contract meets one or more of the three conditions set out below.
- (3) The first condition is that the contract is certified by the Board under section 56 below at the relevant time.
- (4) The second condition is that, at the time the contract was entered into, it conformed with a standard form certified by the Board as a standard form of eligible contract.
- (5) The third condition is that, at the time the contract was entered into, it conformed with a form varying from a standard form so certified in no other respect than by making additions—
- (a) which were (at the time the contract was entered into) certified by the Board as compatible with an eligible contract when made to that standard form, and
  - (b) which (at that time) satisfied any conditions subject to which the additions were so certified.
- (6) Where a contract is varied, and the relevant time falls after the time the variation takes effect, subsections (1) to (5) above shall have effect as if “entered into” read “varied” in each place where it occurs in subsections (4) and (5) above.
- (7) For the purposes of this section a contract is connected with another contract at any time if—
- (a) they are simultaneously in force at that time,
  - (b) either of them was entered into with reference to the other, or with a view to enabling the other to be entered into on particular terms, or with a view to facilitating the other being entered into on particular terms, and
  - (c) the terms on which either of them was entered into would have been significantly less favourable to the insured if the other had not been entered into.
- (8) For the purposes of this section each of the following is a qualifying insurer—
- (a) an insurer lawfully carrying on in the United Kingdom business of any of the classes specified in Part I of Schedule 2 to the <sup>M29</sup>Insurance Companies Act 1982;
  - (b) an insurer not carrying on business in the United Kingdom but carrying on business in another member State and being either a national of a member State or a company or partnership formed under the law of any part of the United Kingdom or another member State and having its registered office, central administration or principal place of business in a member State.
- (9) For the purposes of this section a benefit is an approved benefit if it is provided in pursuance of a right of a description mentioned in section 56(3)(a) below.

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**Marginal Citations**

M29 1982 c.50.

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## 56 Certification of contracts.

- (1) The Board shall certify a contract under this section if it satisfies the conditions set out in subsection (3) below; and the certification shall be expressed to take effect from the time the conditions are satisfied, and shall take effect accordingly.
- (2) The Board shall revoke a certification of a contract under this section if it comes to their notice that the contract has ceased to satisfy the conditions set out in subsection (3) below; and the revocation shall be expressed to take effect from the time the conditions ceased to be satisfied, and shall take effect accordingly.
- (3) The conditions referred to above are that—
  - (a) the contract either provides indemnity in respect of all or any of the costs of all or any of the treatments, medical services and other matters for the time being specified in regulations made by the Treasury, or in addition to providing indemnity of that description provides cash benefits falling within rules for the time being so specified,
  - (b) the contract does not confer any right other than such a right as is mentioned in paragraph (a) above or is for the time being specified in regulations made by the Treasury,
  - (c) the premium under the contract is in the Board’s opinion reasonable, and
  - (d) the contract satisfies such other requirements as are for the time being specified in regulations made by the Treasury.
- (4) The certification of a contract by the Board under this section shall cease to have effect if the contract is varied; but this is without prejudice to the application of the preceding provisions of this section to the contract as varied.
- (5) Where the Board refuse to certify a contract under this section, or they revoke a certification, an appeal may be made to the Special Commissioners by—
  - (a) the insurer, or
  - (b) any person who (if the policy were certified) would be entitled to relief under section 54 above.
- (6) Where a contract is certified under this section, or a certification is revoked or otherwise ceases to have effect, any adjustments resulting from the certification or from its revocation or ceasing to have effect shall be made.
- (7) Subsection (6) above applies where a certification or revocation takes place on appeal as it applies in the case of any other certification or revocation.
- (8) In this section the reference to a premium, in relation to a contract of insurance, is to any amount payable under the contract to the insurer.

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

**C13** For regulations see [S.I. 1989/2389](#) (in Part III Vol. 5 under “Private medical insurance”)

## 57 Medical insurance: supplementary.

- (1) The Board may by regulations—

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- (a) provide that a claim under section 54(3) or (6)(b) above shall be made in such form and manner, shall be made at such time, and shall be accompanied by such documents, as may be prescribed;
  - (b) make provision, in relation to payments in respect of which a person is entitled to relief under section 54 above, for the giving by insurers in such circumstances as may be prescribed of certificates of payment in such form as may be prescribed to such persons as may be prescribed;
  - (c) provide that a person who provides (or has at any time provided) insurance under contracts of private medical insurance shall comply with any notice which is served on him by the Board and which requires him within a prescribed period to make available for the Board's inspection documents (of a prescribed kind) relating to such contracts;
  - (d) provide that persons of such a description as may be prescribed shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about contracts of private medical insurance;
  - (e) make provision with respect to the approval of insurers for the purposes of section 55 above and the withdrawal of approval for the purposes of that section;
  - (f) make provision for and with respect to appeals against decisions of the Board with respect to the giving or withdrawal of approval of insurers for the purposes of section 55 above;
  - (g) make provision with respect to the certification by the Board of standard forms of eligible contract and variations from standard forms of eligible contract certified by them;
  - (h) make provision for and with respect to appeals against decisions of the Board with respect to the certification of standard forms of eligible contract or variations from standard forms of eligible contract certified by them;
  - (i) provide that certification, or the revocation of a certification, under section 56 above shall be carried out in such form and manner as may be prescribed;
  - (j) make provision with respect to appeals against decisions of the Board with respect to certification or the revocation of certification under section 56 above;
  - (k) make provision generally as to administration in connection with sections 54 to 56 above.
- (2) The words “ Regulations under section 57 of the Finance Act 1989 ” shall be added at the end of each column in the Table in section 98 of the <sup>M30</sup>Taxes Management Act 1970 (penalties for failure to furnish information etc.).
- (3) The following provisions of the Taxes Management Act 1970, namely—
- (a) section 29(3)(c) (excessive relief),
  - (b) section 30 (tax repaid in error etc.),
  - (c) section 88 (interest), and
  - (d) section 95 (incorrect return or accounts),
- shall apply in relation to the payment of an amount claimed under section 54(6)(b) above to which the claimant was not entitled as if it had been income tax repaid as a relief which was not due.
- (4) In sections 257B(2), 257D(8) and 265(3) of the Taxes Act 1988 after paragraph (c) there shall be inserted “or

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- (d) on account of any payments to which section 54(5) of the Finance Act 1989 applies”.
- (5) In subsection (1) above—  
 “eligible contract” has the meaning given by section 55 above, and  
 “prescribed” means prescribed by or, in relation to form, under the regulations.

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

**C14** See S.I. 1989/2387 (in Part III Vol. 5 under “Private medical insurance”)

**Marginal Citations**

**M30** 1970 c. 9.

*Charities*

**58 Payroll deduction scheme.**

- (1) In section 202(7) of the Taxes Act 1988 (which limits to £240 the deductions attracting relief) for “£240” there shall be substituted “£480”.
- (2) This section shall have effect for the year 1989-90 and subsequent years of assessment.

**59 Covenanted subscriptions.**

- (1) In determining whether a payment made to a charity within subsection (2) below is—
- (a) an annual payment for the purposes of the Tax Acts, or
  - (b) a payment to which section 125(1) of the Taxes Act 1988 applies, or
  - (c) a covenanted payment to charity within the meaning given by section 660(3) of that Act,
- there shall be disregarded any consideration for the payment which is of a kind described in subsection (3) below.
- (2) A charity is within this subsection if its sole or main purpose is—
- (a) the preservation of property for the public benefit, or
  - (b) the conservation of wildlife for the public benefit.
- (3) The consideration referred to in subsection (1) above is the right of admission—
- (a) to view property the preservation of which is the sole or main purpose of the charity, or
  - (b) to observe wildlife the conservation of which is the sole or main purpose of the charity.
- (4) In subsection (3) above “right of admission” refers to admission of the person making the payment (or of any member of his family who may be admitted because of the payment) either free of the charges normally payable for admission by members of the public, or on payment of a reduced charge.
- (5) Subsection (1) above shall not apply unless the opportunity to make payments of the kind in question is available to members of the public.



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- (6) For the purposes of this section—
  - (a) “charity” means a body of persons or trust established for charitable purposes only, and
  - (b) the bodies mentioned in section 507 shall each be treated as having been so established.
- (7) This section shall apply to payments due on or after 14th March 1989.

**60 British Museum and Natural History Museum.**

- (1) In subsection (1) of section 507 of the Taxes Act 1988 (which gives tax exemption to the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission) after paragraph (b) there shall be inserted—
  - “(c) the Trustees of the British Museum;
  - (d) the Trustees of the British Museum (Natural History);” and subsection (2) of that section (which gives partial tax exemption to those Trustees) shall cease to have effect.
- (2) In section 339(9) of that Act, for the words from “the Trustees” (where those words first occur) to “History) and” there shall be substituted the words “each of the bodies mentioned in section 507, and in subsections (1) to (5) above includes”.
- (3) In section 660(4) of that Act, for the words from “the Trustees” to “England” there shall be substituted the words “the bodies mentioned in section 507”.
- (4) Subsection (1) above shall apply in relation to accounting periods ending on or after 14th March 1989, and subsections (2) and (3) above shall apply to payments due on or after that day.

*Profit-related pay, share schemes etc.*

**61 Profit-related pay.**

Schedule 4 to this Act (which amends the provisions of the Taxes Act 1988 relating to profit-related pay) shall have effect.

**62 Savings-related share option schemes.**

- (1) Part III of Schedule 9 to the Taxes Act 1988 (requirements applicable to savings-related share option schemes) shall be amended as follows.
- <sup>F4</sup>(2) . . . . .
- (3) In paragraph 25(b) (requirement that price at which share may be acquired under scheme be not less than 90 per cent. of market value), for the words “90 per cent.” there shall be substituted the words “80 per cent.”.
- (4) Subsection (2) above shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

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#### Textual Amendments

- F4** S. 62(2) repealed (1.9.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 40, 123, Sch. 19 Pt. V Note 10; S.I. 1991/1741, art. 2

### <sup>F5</sup> 63 Profit sharing schemes.

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#### Textual Amendments

- F5** S. 63 repealed (having effect for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, Sch. 19 Pt. V Note 6.

### 64 Share option and profit sharing schemes: shares of consortium member.

In paragraph 10 of Schedule 9 to the Taxes Act 1988, paragraph (c)(ii) (which requires a consortium member to hold not less than three-twentieths of share capital of grantor company etc. if member's shares are to qualify as scheme shares) shall cease to have effect.

### 65 Employee share schemes: material interest.

In Schedule 9 to the Taxes Act 1988 the following paragraph shall be inserted after paragraph 39—

#### Shares subject to an employee benefit trust

- “40 (1) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (3) below applies in relation to him.
- (2) In this paragraph “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8.
- (3) This sub-paragraph applies in relation to an individual if at any time on or after 14th March 1989—
- (a) the individual, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,
- has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company.
- (4) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.”

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## 66 Priority share allocations for employees etc.

- (1) In relation to offers made on or after 11th October 1988, section 68 of the <sup>M31</sup>Finance Act 1988 (which provides for the benefits derived from priority rights in share offers to be disregarded in certain circumstances) shall have effect with the following amendments.
- (2) In subsection (1), the words from “at the fixed price” to “tendered” shall be omitted.
- (3) After that subsection there shall be inserted—
  - “(1A) Where the price payable by the director or employee is less than the fixed price or the lowest price successfully tendered, subsection (1) above shall not apply to the benefit represented by the difference in price.”
- (4) In subsection (2), for paragraph (a) (priority shares not to exceed 10 percent. of shares subject to the offer) there shall be substituted—
  - “(a) that the aggregate number of shares subject to the offer that may be allocated as mentioned in subsection (1)(b) above does not exceed the limit specified in subsection (2A) below or, as the case may be, either of the limits specified in subsection (2B) below”.
- (5) After subsection (2) there shall be inserted—
  - “(2A) Except where subsection (2B) below applies, the limit relevant for the purposes of subsection (2)(a) above is 10 per cent. of the shares subject to the offer (including the shares that may be allocated as mentioned in subsection (1)(b) above).
  - (2B) Where the offer is part of arrangements which include one or more other offers to the public of shares of the same class, the limits relevant for the purposes of subsection (2)(a) above are—
    - (a) 40 per cent. of the shares subject to the offer (including the shares that may be allocated as mentioned in subsection (1)(b) above), and
    - (b) 10 per cent. of all the shares of the class in question (including the shares that may be so allocated) that are subject to any of the offers forming part of the arrangements.”

### Marginal Citations

M31 1988 c. 39.

### *Employee share ownership trusts*

## 67 Tax relief.

- (1) This section applies where—
  - (a) a company expends a sum in making a payment by way of contribution to the trustees of a trust which is a qualifying employee share ownership trust at the time the sum is expended,
  - (b) at that time, the company or a company which it then controls has employees who are eligible to benefit under the terms of the trust deed,
  - (c) at that time the company is resident in the United Kingdom,

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- (d) before the expiry of the expenditure period the sum is expended by the trustees for one or more of the qualifying purposes, and
  - (e) before the end of the claim period a claim for relief under this section is made.
- (2) In such a case the sum—
- (a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade carried on by the company, or
  - (b) if the company is an investment company or a company in the case of which section 75 of the Taxes Act 1988 applies by virtue of section 76 of that Act, shall be treated as expenses of management.
- (3) For the purposes of subsection (1)(b) above, the question whether one company is controlled by another shall be construed in accordance with section 840 of the Taxes Act 1988.
- (4) For the purposes of subsection (1)(d) above each of the following is a qualifying purpose—
- (a) the acquisition of shares in the company which established the trust;
  - (b) the repayment of sums borrowed;
  - (c) the payment of interest on sums borrowed;
  - (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
  - (e) the meeting of expenses.
- (5) For the purposes of subsection (1)(d) above the expenditure period is the period of nine months beginning with the day following the end of the period of account in which the sum is charged as an expense of the company, or such longer period as the Board may allow by notice given to the company.
- (6) For the purposes of subsection (1)(e) above the claim period is the period of two years beginning with the day following the end of the period of account in which the sum is charged as an expense of the company.
- (7) For the purposes of this section the trustees of an employee share ownership trust shall be taken to expend sums paid to them in the order in which the sums are received by them (irrespective of the number of companies making payments).

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

**C15** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of assets to employee share ownership trusts

**68 Principal charges to tax.**

- (1) This section applies where a chargeable event (within the meaning of section 69 below) occurs in relation to the trustees of an employee share ownership trust.
- (2) In such a case—
- (a) the trustees shall be treated as receiving, when the event occurs, annual profits or gains whose amount is equal to the chargeable amount (within the meaning of section 70 below),

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- (b) the profits or gains shall be chargeable to tax under Case VI of Schedule D for the year of assessment in which the event occurs, and
  - (c) the rate at which the tax is chargeable shall be a rate equal to the sum of the basic rate and the additional rate for the year of assessment in which the event occurs.
- (3) If the whole or any part of the tax assessed on the trustees is not paid before the expiry of the period of six months beginning with the day on which the assessment becomes final and conclusive, a notice of liability to tax under this subsection may be served on a qualifying company and the tax or the part unpaid (as the case may be) shall be payable by the company on service of the notice.
- (4) Where a notice of liability is served under subsection (3) above—
- (a) any interest which is due on the tax or the part (as the case may be) and has not been paid by the trustees, and
  - (b) any interest accruing due on the tax or the part (as the case may be) after the date of service,
- shall be payable by the company.
- (5) Where a notice of liability is served under subsection (3) above and any amount payable by the company (whether on account of tax or interest) is not paid by the company before the expiry of the period of three months beginning with the date of service, the amount unpaid may be recovered from the trustees (without prejudice to the right to recover it instead from the company).
- (6) For the purposes of this section each of the following is a qualifying company—
- (a) the company which established the employee share ownership trust;
  - (b) any company falling within subsection (7) below.
- (7) A company falls within this subsection if, before it is sought to serve a notice of liability on it under subsection (3) above—
- (a) it has paid a sum to the trustees, and
  - (b) the sum has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.

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

**C16** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**69 Chargeable events.**

- (1) For the purposes of section 68 above each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) the transfer of securities by the trustees, if the transfer is not a qualifying transfer;
  - (b) the transfer of securities by the trustees to persons who are at the time of the transfer beneficiaries under the terms of the trust deed, if the terms on which the transfer is made are not qualifying terms;
  - (c) the retention of securities by the trustees at the expiry of the period of seven years beginning with the date on which they acquired them;

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- (d) the expenditure of a sum by the trustees for a purpose other than aqualifying purpose.
- (2) For the purposes of subsection (1)(a) above a transfer is a qualifyingtransfer if it is made to a person who at the time of the transfer is abeneficiary under the terms of the trust deed.
- (3) For the purposes of subsection (1)(a) above a transfer is also aqualifying transfer if—
- (a) it is made to the trustees of a scheme which at the time of the transfer is a profit sharing scheme approved under Schedule 9 to the Taxes Act 1988, and
  - (b) it is made for a consideration which is not less than the price thesecurities might reasonably be expected to fetch on a sale in the open market.
- (4) For the purposes of subsection (1)(b) above a transfer of securities is made on qualifying terms if—
- (a) all the securities transferred at the same time are transferred on similar terms,
  - (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed when the transfer is made, and
  - (c) securities are transferred to all such beneficiaries who have accepted.
- (5) For the purposes of subsection (1)(d) above each of the following is aqualifying purpose—
- (a) the acquisition of shares in the company which established the trust;
  - (b) the repayment of sums borrowed;
  - (c) the payment of interest on sums borrowed;
  - (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
  - (e) the meeting of expenses.
- (6) For the purposes of subsection (4) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.
- (7) In ascertaining for the purposes of this section whether particular securities are retained, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later.
- (8) For the purposes of this section trustees—
- (a) acquire securities when they become entitled to them (subject to the exceptions in subsection (9) below);
  - (b) transfer securities to another person when that other becomes entitled to them;
  - (c) retain securities if they remain entitled to them.
- (9) The exceptions are these—
- (a) if securities are issued to trustees in exchange in circumstances mentioned in section 85(1) of the <sup>M32</sup>Capital Gains Tax Act 1979, they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged;
  - (b) if trustees become entitled to securities as a result of a reorganisation, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent (construing “reorganisation” and “original shares” in accordance with section 77 of that Act).

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- (10) If trustees agree to take a transfer of securities, for the purposes of this section they shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (11) If trustees agree to transfer securities to another person, for the purposes of this section the other person shall be treated as becoming entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.
- (12) For the purposes of this section the following are securities—
  - (a) shares;
  - (b) debentures.

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

**C17** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**C18** Definition employed for purposes of Finance Act 1990 (c. 29) s. 36—*roll-over relief where replacement asset owned*

**Marginal Citations**

**M32** 1979 c. 14.

**70 Chargeable amounts.**

- (1) This section has effect to determine the chargeable amount for the purposes of section 68 above.
- (2) If the chargeable event falls within section 69(1)(a), (b) or (c) above the following rules shall apply—
  - (a) if the event constitutes a disposal of the securities by the trustees for the purposes of the Capital Gains Tax Act 1979, the chargeable amount is an amount equal to the sums allowable under section 32(1)(a) and (b) of that Act;
  - (b) if the event does not constitute such a disposal, the chargeable amount is an amount equal to the sums which would be so allowable had the trustees made a disposal of the securities for the purposes of that Act at the time the chargeable event occurs.
- (3) If the chargeable event falls within section 69(1)(d) above the chargeable amount is an amount equal to the sum concerned.

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

**C19** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**71 Further charges to tax: borrowing.**

- (1) This section applies where—
  - (a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees of an employee share ownership trust,

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- (b) at the time the event occurs anything is outstanding in respect of the principal of an amount or amounts borrowed at any time by the trustees, and
  - (c) the chargeable event is one as regards which section 72(2)(b) below applies.
- (2) In the following provisions of this section—
- (a) “the initial chargeable event” means the event referred to in subsection (1)(a) above, and
  - (b) “the total outstanding amount” means the total amount outstanding, at the time the initial chargeable event occurs, in respect of the principal of an amount or amounts borrowed at any time by the trustees.
- (3) If any of the total outstanding amount is repaid after the initial chargeable event occurs, a further chargeable event shall occur in relation to the trustees at the end of the year of assessment in which the repayment is made.
- (4) In such a case—
- (a) the trustees shall be treated as receiving, when the further event occurs, annual profits or gains whose amount is equal to the chargeable amount,
  - (b) the profits or gains shall be chargeable to tax under Case VI of Schedule D for the year of assessment at the end of which the further event occurs, and
  - (c) the rate at which the tax is chargeable shall be a rate equal to the sum of the basic rate and the additional rate for the year of assessment at the end of which the further event occurs.
- (5) Subject to subsection (6) below, for the purposes of subsection (4) above the chargeable amount is an amount equal to the aggregate of the total outstanding amount repaid in the year of assessment.
- (6) In a case where section 72(2)(b) below had effect in the case of the initial chargeable event, for the purposes of subsection (4) above the chargeable amount is an amount equal to the smaller of—
- (a) the aggregate of the total outstanding amount repaid in the year of assessment, and
  - (b) an amount found by applying the formula A-B-C.
- (7) For the purposes of subsection (6) above—
- (a) A is the amount which would be the chargeable amount for the initial chargeable event apart from section 72(2) below,
  - (b) B is the chargeable amount for the initial chargeable event, and
  - (c) C is the amount (if any) found under subsection (8) below.
- (8) If, before the further chargeable event occurs, one or more prior chargeable events have occurred in relation to the trustees by virtue of the prior repayment of any of the total outstanding amount found for the time the initial chargeable event occurs, the amount found under this subsection is an amount equal to the chargeable amount for the prior chargeable event or to the aggregate of the chargeable amounts for the prior chargeable events (as the case may be).
- (9) In a case where—
- (a) a chargeable event (within the meaning of section 69 above) occurs in relation to the trustees in circumstances mentioned in subsection (1) above,
  - (b) a sum falls to be included in the total outstanding amount found for the time the event occurs,



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- (c) another chargeable event (within the meaning of that section) occurs in relation to the trustees in circumstances mentioned in subsection (1) above, and
  - (d) the same sum or a part of it would (apart from this subsection) fall to be included in the total outstanding amount found for the time the event occurs, the sum or part (as the case may be) shall not be included in the total outstanding amount found for the time the other chargeable event occurs.
- (10) In ascertaining for the purposes of this section whether a repayment is in respect of a particular amount, amounts borrowed earlier shall be taken to be repaid before amounts borrowed later.
- (11) Subsections (3) to (7) of section 68 above shall apply where tax is assessed by virtue of this section as they apply where tax is assessed by virtue of that section.

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

**C20** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of assets to employee share ownership trusts

**72 Limit on chargeable amount.**

- (1) For the purposes of this section each of the following is a chargeable event in relation to the trustees of an employee share ownership trust—
- (a) an event which is a chargeable event by virtue of section 69 above;
  - (b) an event which is a chargeable event by virtue of section 71 above.
- (2) If a chargeable event (the event in question) occurs in relation to the trustees of an employee share ownership trust, the following rules shall apply—
- (a) the amount which would (apart from this subsection) be the chargeable amount for the event in question shall be aggregated, for the purposes of paragraph (b) below, with the chargeable amounts for other chargeable events (if any) occurring in relation to the trustees before the event in question,
  - (b) if the amount which would (apart from this subsection) be the chargeable amount for the event in question (or the aggregate found under paragraph (a) above, if there is one) exceeds the deductible amount, the chargeable amount for the event in question shall be the amount it would be apart from this subsection less an amount equal to the excess, and
  - (c) section 70(2) and (3) and section 71(5) above shall have effect subject to paragraph (b) above.
- (3) For the purposes of subsection (2) above the deductible amount (as regards the event in question) is an amount equal to the total of the sums falling within subsection (4) below.
- (4) A sum falls within this subsection if it has been received by the trustees before the occurrence of the event in question and—
- (a) it has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, before the occurrence of that event, or
  - (b) it would fall to be so deducted or treated if a claim for relief under section 67 above had been made immediately before the occurrence of that event.

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

**C21** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**73 Information.**

- (1) An inspector may by notice in writing require a return to be made by the trustees of an employee share ownership trust if they have at any time received a sum which has been deducted as mentioned in section 67(2)(a) above or treated as mentioned in section 67(2)(b) above.
- (2) Where he requires such a return to be made the inspector shall specify the information to be contained in it.
- (3) The information which may be specified is information the inspector needs for the purposes of sections 68 to 72 above, and may include information about—
  - (a) sums received (including sums borrowed) by the trustees;
  - (b) expenditure incurred by them;
  - (c) assets acquired by them;
  - (d) transfers of assets made by them.
- (4) The information which may be required under subsection (3)(a) above may include the persons from whom the sums were received.
- (5) The information which may be required under subsection (3)(b) above may include the purpose of the expenditure and the persons receiving any sums.
- (6) The information which may be specified under subsection (3)(c) above may include the persons from whom the assets were acquired and the consideration furnished by the trustees.
- (7) The information which may be included under subsection (3)(d) above may include the persons to whom assets were transferred and the consideration furnished by them.
- (8) In a case where a sum has been deducted as mentioned in section 67(2)(a) above, or treated as mentioned in section 67(2)(b) above, the inspector shall send to the trustees to whom the payment was made a certificate stating—
  - (a) that a sum has been so deducted or so treated, and
  - (b) what sum has been so deducted or so treated.
- (9) In the Table in section 98 of the <sup>M33</sup>Taxes Management Act 1970 (penalties for failure to comply with notices etc.) at the end of the first column there shall be inserted— “Section 73 of the Finance Act 1989”.

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

**C22** See Finance Act 1990 (c. 29) ss.31–40—*roll-over relief for disposal of assets to employee share ownership trusts*

**Marginal Citations**

**M33** 1970 c. 9.

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## 74 Interpretation.

Schedule 5 to this Act shall have effect to determine whether, for the purposes of sections 67 to 73 above, a trust is at a particular time—

- (a) an employee share ownership trust;
- (b) a qualifying employee share ownership trust.

### Modifications etc. (not altering text)

**C23** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of assets to employee share ownership trusts

*Pensions etc.*

## 75 Retirement benefits schemes.

Schedule 6 to this Act (which relates to retirement benefits schemes) shall have effect.

## 76 Non-approved retirement benefits schemes.

- (1) In computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of any expenses falling within subsection (2) or (3) below; and no expenses falling within either of those subsections shall be treated for the purposes of section 75 of the Taxes Act 1988 (investment companies) as expenses of management.
- (2) Expenses fall within this subsection if—
  - (a) they are expenses of providing benefits pursuant to a relevant retirement benefits scheme, and
  - (b) the benefits are not ones in respect of which a person is on receipt chargeable to income tax.
- (3) Expenses fall within this subsection if—
  - (a) they are expenses of paying any sum pursuant to a relevant retirement benefits scheme with a view to the provision of any benefits, and
  - (b) the sum is not one which when paid is treated as the income of a person by virtue of section 595(1) of the Taxes Act 1988 (sum paid with a view to the provision of any relevant benefits for an employee).
- (4) No sum shall be deducted in respect of any expenses falling within subsection (5) or (6) below—
  - (a) in computing the amount of the profits or gains to be charged under Case I or Case II of Schedule D, or
  - (b) by virtue of section 75 of the Taxes Act 1988,unless the sum has actually been expended.
- (5) Expenses fall within this subsection if—
  - (a) they are expenses of providing benefits pursuant to a relevant retirement benefits scheme, and
  - (b) the benefits are ones in respect of which a person is on receipt chargeable to income tax.

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- (6) Expenses fall within this subsection if—
- (a) they are expenses of paying any sum pursuant to a relevant retirement benefits scheme with a view to the provision of any benefits, and
  - (b) the sum is one which when paid is treated as the income of a person by virtue of section 595(1) of the Taxes Act 1988.
- (7) In this section—
- “retirement benefits scheme” has the same meaning as in Chapter I of Part XIV of the Taxes Act 1988, and
- references to a relevant retirement benefits scheme are references to a retirement benefits scheme which is not of a description mentioned in section 596(1)(a), (b) or (c) of the Taxes Act 1988.
- (8) This section has effect in relation to expenses incurred on or after the day on which this Act is passed.

## 77 Personal pension schemes.

Schedule 7 to this Act (which relates to personal pension schemes) shall have effect.

*Unit trusts etc.*

78, 79. .... F6

### Textual Amendments

F6 Ss. 78, 79 repealed by Finance Act 1990 (c. 29, SIF 58), s.132, Sch. 19 Pt. IV Note

## 80 Gilt unit trusts.

- (1) Where, in the case of a certified unit trust and apart from this subsection, section 468(5) of the Taxes Act 1988 would apply as regards a distribution period beginning after 31st December 1989, section 468(5) shall not apply in the case of the trust as regards that period.
- (2) Where by virtue of subsection (1) above the last distribution period as regards which section 468(5) applies in the case of a certified unit trust is one beginning on or before, and ending after, 31st December 1989, the trustees' liability to income tax in respect of any source of income chargeable under Case III of Schedule D shall be assessed as if they had ceased to possess the source of income on the last day of that distribution period.
- (3) But where section 67 of the Taxes Act 1988 applies by virtue of subsection (2) above, it shall apply with the omission from subsection (1)(b) of the words from “and shall” to “this provision”.
- (4) For the purposes of this section “certified unit trust” means, as respects a distribution period, a unit trust scheme in the case of which—

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- (a) an order under section 78 of the <sup>M34</sup> Financial Services Act 1986 is in force during the whole or part of the accounting period in which the distribution period falls, and
- (b) a certificate under section 78(8) of that Act, certifying that the scheme complies with the conditions necessary for it to enjoy the rights conferred by the UCITS directive, has been issued before or at any time during that accounting period.

(5) In this section—

“distribution period” has the same meaning as in section 468 of the Taxes Act 1988,

“the UCITS directive” means the directive of the Council of the European Communities, dated 20th December 1985, on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No. 85/611/EEC), and

“unit trust scheme” has the same meaning as in section 469 of the Taxes Act 1988.

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**Marginal Citations**

**M34** 1986 c. 60.

## 81 Offshore funds operating equalisation arrangements.

- (1) In section 758 of the Taxes Act 1988 (offshore funds operating equalisation arrangements) in subsection (6) (reference to section 78 of the <sup>M35</sup> Capital Gains Tax Act 1979 not to include reference to it as applied by section 82) for the words “but not” there shall be substituted the words “and a reference to section 78”.
- (2) This section shall apply where a conversion of securities occurs on or after 14th March 1989; and “conversion of securities” here has the same meaning as in section 82 of the Capital Gains Tax Act 1979.

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**Marginal Citations**

**M35** 1979 c. 14.

### *Life assurance*

## 82 Calculation of profits.

- (1) Where the profits of an insurance company in respect of its life assurance business are, for the purposes of the Taxes Act 1988, computed in accordance with the provisions of that Act applicable to Case I of Schedule D, then, in calculating the profits for any period of account,—
  - (a) there shall be taken into account as an expense (so far as not so taken into account apart from this section) any amounts which [<sup>F7</sup>are allocated to, and any amounts of [<sup>F8</sup>tax or] foreign tax which are expended on behalf of, policy holders or annuitants in respect of the period]; and

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- (b) if, at the end of the period, the company has an unappropriated surplus on valuation, as shown in its return for the purposes of the <sup>M36</sup> Insurance Companies Act 1982, then, subject to subsection (3) below, the closing liabilities of the period may include such amount, forming part of that surplus, as is required to meet the reasonable expectations of policyholders or annuitants with regard to bonuses or other additions to benefit of a discretionary nature.
- (2) For the purposes of this section an amount is allocated to policy holders or annuitants if, and only if,—
- (a) bonus payments are made to them; or
  - (b) reversionary bonuses are declared in their favour or a reduction is made in the premiums payable by them;
- and the amount of the allocation is, in a case within paragraph (a) above, the amount of the payments and, in a case within paragraph (b) above, the amount of the liabilities assumed by the company in consequence of the declaration or reduction.
- (3) The amount which, apart from this subsection, would be included in the closing liabilities of a period of account by virtue of subsection (1)(b) above shall be reduced or, as the case may be, extinguished by deducting there from the total of the amounts which—
- (a) for periods of account ending before 14th March 1989 have been excluded, by virtue of section 433 of the Taxes Act 1988, as being reserved for policyholders or annuitants, and
  - (b) have not before that date either been allocated to or expended on behalf of policy holders or annuitants or been treated as profits of an accounting period on ceasing to be so reserved.
- (4) Where the closing liabilities of a period of account include an amount by virtue of subsection (1)(b) above, the like amount shall be included in the opening liabilities of the next following period of account.
- (5) This section has effect with respect to periods of account ending on or after 14th March 1989; and the following provisions of this section shall apply for the purposes of the application of this section to any such period which begins before that date (in this section referred to as a “straddling period”).
- (6) For the purposes referred to in subsection (5) above, it shall be assumed that the straddling period consists of two separate periods of account,—
- (a) the first beginning at the beginning of the straddling period and ending on 13th March 1989 (in this section referred to as “the first notional period”); and
  - (b) the second beginning on 14th March 1989 and ending at the end of the straddling period (in this section referred to as “the second notional period”);
- and any reference in subsection (7) or subsection (8) below to a time apportionment is a reference to an apportionment made by reference to the respective lengths of the two notional periods.
- (7) To determine the profits of the first notional period and the amount excluded from the profits of that period by virtue of section 433 of the Taxes Act 1988 as being reserved for policy holders or annuitants,—
- (a) in the first instance the profits of the straddling period and the amount so excluded from those profits shall be computed as if subsections (1) to (4) above did not apply with respect to any part of the straddling period; and

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- (b) there shall then be determined that part of the profits and the amount computed under paragraph (a) above which, on a time apportionment, is properly attributable to the first notional period.
- (8) To determine the profits of the second notional period,—
- (a) in the first instance the profits of the straddling period shall be computed as if subsections (1) to (4) above applied to the whole of the straddling period; and
  - (b) there shall then be determined that part of the profits computed under paragraph (a) above which, on a time apportionment, is properly attributable to the second notional period.

#### Textual Amendments

- F7** Finance Act 1990 (c. 29) s. 43(1)(3)—*deemed always to have had effect. Previously*  
“, in respect of the period, are allocated to or expended on behalf of policy holders or annuitants”
- F8** Words  
“tax or”  
*omitted when s.82(1)(2)(4) and s. 83 applied to profits chargeable under Schedule D (see [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#) s. 441)*

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

- C24** S. 82 modified (31.7.1992 with effect for accounting periods beginning on and after 1.1.1990) by [S.I. 1992/1655, regs. 1, 17](#)  
S. 82 modified (23.3.1999 with effect with respect to accounting periods of insurance companies ending on or after 1.7.1999) by [S.I. 1999/498, regs. 1, 10](#)
- C25** S. 82 subs. (1)(2) and (4) and s. 83 *apply to profits chargeable under Schedule D (see [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 441)*  
S. 82(1)(2)(4) applied (with modifications) (1.5.1995) by [1988 c. 1, s. 439B\(3\)\(a\)](#) (as inserted (1.5.1995) by [1998 c. 36, s. 51, Sch. 8 Pt. I para. 27\(1\)](#) (with [Sch. 8 paras. 55\(2\), 57\(1\)](#)))
- C26** See [S.I. 1989/2417, reg. 5](#) (in Part III Vol.5) *for modification applicable to life or endowment business carried on by registered friendly societies (but [S.I. 1989/2417](#) was revoked (31.7.1992) by [S.I. 1992/1655, regs. 1, 22](#) and deemed never to have had effect).*

#### Marginal Citations

- M36** [1982 c.50](#).

### 83 Receipts to be brought into account.

- (1) Where the profits of an insurance company in respect of its life assurance business are, for the purposes of the Taxes Act 1988, computed in accordance with the provisions of that Act applicable to Case I of Schedule D, then, so far as referable to that business, the following items, as brought into account for a period of account (and not otherwise), namely,—
- (a) the company’s investment income from the assets of its long-term business fund, and
  - (b) any increase in the value (whether realised or not) of those assets,
- shall be taken into account as receipts of the period; and if for any period of account there is a reduction in the value referred to in paragraph (b) above (as brought into account for the period), that reduction shall be taken into account as an expense of that period.

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- (2) Except in so far as regulations made by the Treasury otherwise provide, in subsection (1) above “brought into account” means brought into account in the revenue account prepared for the purposes of the <sup>M37</sup> Insurance Companies Act 1982.
- (3) Subject to subsection (5) below, this section has effect with respect to periods of account ending on or after 1st January 1990; and the following provisions of this section shall apply for the purposes of the application of this section to any such period which begins before that date (in this section referred to as a “straddling period”).
- (4) Subject to subsection (5) below, for the purposes referred to in subsection (3) above, it shall be assumed that the straddling period consists of two separate periods of account,
- (a) the first beginning at the beginning of the straddling period and ending on 31st December 1989 (in this section referred to as “the first notional period”); and
- (b) the second beginning on 1st January 1990 and ending at the end of the straddling period (in this section referred to as “the second notional period”);
- and any reference in subsection (6) or subsection (7) below to a time apportionment is a reference to an apportionment made by reference to the respective lengths of the two notional periods.
- (5) In the case of any company which, by notice in writing given to the inspector on or before 31st December 1992, so elects,—
- (a) subsections (3) and (4)(b) above shall have effect as if for “1st January 1990” there were substituted “14th March 1989”; and
- (b) subsection (4)(a) above shall have effect as if for “31st December” there were substituted “13th March”.
- (6) To determine the profits of the first notional period,—
- (a) in the first instance the profits of the straddling period shall be computed as if subsections (1) and (2) above did not apply with respect to any part of that period; and
- (b) there shall then be determined that part of the profits computed under paragraph (a) above which, on a time apportionment, is properly attributable to the first notional period.
- (7) To determine the profits of the second notional period,—
- (a) in the first instance the profits of the straddling period shall be computed as if subsections (1) and (2) above applied with respect to the whole of that period; and
- (b) there shall then be determined that part of the profits computed under paragraph (a) above which, on a time apportionment, is properly attributable to the second notional period.

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

- C27** S. 82 subs. (1)(2) and (4) and s. 83 apply to profits chargeable under Schedule D (see Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 441)
- C28** S. 83 modified (retrospective to 1.1.1995) by S.I. 1997/473, regs. 1(2), 33, 34
- C29** See Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 432B to E—rules for determining amounts referable to life assurance business
- C30** S. 83(1) restricted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 65(2)(d)(5)



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**C31** See S.I. 1989/2417, **reg. 5** (in Part III Vol. 5) for the omission of subs. (2) in the case of life endowment business carried on by registered friendly societies (but S.I. 1989/2417 was revoked (31.7.1992) by S.I. 1992/1655, **regs. 1, 22** and deemed never to have had effect).  
S. 83(2) modified (31.7.1992 with effect for accounting periods beginning on and after 1.1.1990) by S.I. 1992/1655, **regs. 1, 18**.

#### Marginal Citations

**M37** 1982c. 50.

VALID FROM 01/05/1995

#### [<sup>F9</sup>83A Meaning of “brought into account”.

- (1) In section 83 “brought into account” means brought into account in an account which is recognised for the purposes of that section.
- (2) Subject to the following provisions of this section and to any regulations made by the Treasury, the accounts recognised for the purposes of that section are—
  - (a) a revenue account prepared for the purposes of the Insurance Companies Act 1982 in respect of the whole of the company’s long term business;
  - (b) any separate revenue account required to be prepared under that Act in respect of a part of that business.

Paragraph (b) above does not include accounts required in respect of internal linked funds.
- (3) Where there are prepared any such separate accounts as are mentioned in subsection (2)(b) above, reference shall be made to those accounts rather than to the account for the whole of the business.
- (4) If in any such case the total of the items brought into account in the separate accounts is not equal to the total amount brought into account in the account prepared for the whole business, there shall be treated as having been required and prepared a further separate revenue account covering the balance.
- (5) Where a company carries on both ordinary long term business and industrial assurance business, the references above to the company’s long term business shall be construed as references to either or both of those businesses, as the case may require.]

#### Textual Amendments

**F9** SS. 83, 83A substituted for s. 83 (1.5.1995) by 1995 c. 4, s. 51, **Sch. 8 Pt. I para. 16(1)** (with **Sch. 8 paras. 55(2), 57(1)**)

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

**C32** S. 83A modified (*retrospective* to 1.1.1995) by S.I. 1997/473, **regs. 1(2), 36, 37**

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VALID FROM 29/04/1996

**[<sup>F10</sup>83AA] Amounts added to long term business fund of a company in excess of that company's loss.**

- (1) If one or more relevant amounts are brought into account for a period of account of a company and either—
- (a) the aggregate of those amounts exceeds the loss which, after the making of any reduction under subsection (6) below but before any application of section 83(3) above in relation to that period, would have arisen to the company in that period in respect of its life assurance business, or
  - (b) no such loss would have so arisen,
- the surplus for that period shall be applied in accordance with the following provisions of this section and section 83AB below.
- (2) In this section—
- “relevant amount” means so much of any amount which is added to the long term business fund of a company as mentioned in subsection (3) of section 83 above as does not fall within any of the paragraphs of subsection (4) of that section;
- “surplus”, in relation to a period of account of a company, means (subject to section 83AB(2) below)—
- (a) if the aggregate of the relevant amounts brought into account for that period exceeds the amount of any loss which, after the making of any reduction under subsection (6) below but before any application of section 83(3) above in relation to that period, would have arisen to the company in that period in respect of its life assurance business, the amount of the excess; or
  - (b) if no such loss would have so arisen, the aggregate of the relevant amounts brought into account for that period.
- (3) Where, apart from section 83AB(2) below, there is a surplus for a period of account of a company for which there are brought into account one or more relevant amounts which were added to the company's long term business fund as part of, or in connection with, a particular transfer of business, the appropriate portion of the surplus for that period shall be treated as reducing (but not below nil) so much of any loss arising to the transferor company in the relevant accounting period as, on a just and reasonable apportionment of the loss, is referable to the business which is the subject of that particular transfer.
- (4) For the purposes of subsection (3) above, the appropriate portion of the surplus for a period of account of a company is, in the case of any particular transfer of business, the amount which bears to that surplus (apart from any additions by virtue of section 83AB(2) below) the proportion which A bears to B, where—
- A is the aggregate of such of the relevant amounts added to the company's long term business fund as part of, or in connection with, that particular transfer of business as are brought into account for that period, and
- B is the aggregate of the relevant amounts brought into account for that period.
- (5) Any reduction pursuant to subsection (3) above of the loss arising to the transferor company in the relevant accounting period shall be made after—
- (a) the making of any reduction under subsection (6) below, and

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- (b) any application of section 83(3) above, in relation to the period of account of that company in which falls the date of the particular transfer of business in question.
- (6) Any loss arising to a company in respect of its life assurance business in a period of account subsequent to one for which there is a surplus shall be reduced (but not below nil) by so much of that surplus as cannot be applied—
- (a) under subsection (3) above;
  - (b) under this subsection, in the reduction of a loss arising to the company in an earlier period of account; or
  - (c) under section 83AB below, in relation to a transfer of business from the company in that or any earlier period of account.
- (7) Any reduction pursuant to subsection (6) above of a loss arising to a company in a period of account shall be made—
- (a) before any application of section 83(3) above in relation to that period, and
  - (b) if the company is also the transferor company in relation to a particular transfer of business, before the making of any reduction under subsection (3) above in relation to that one of its accounting periods which is the relevant accounting period in relation to that transfer.
- (8) A surplus in respect of an earlier period of account shall be applied under subsection (6) above before a surplus in respect of a later period of account.
- (9) All such adjustments to the liability to tax of any person shall be made, whether by assessment or otherwise, as may be required to give effect to this section.
- (10) In this section—
- “add” has the same meaning as in section 83 above;
  - “the relevant accounting period” means the accounting period of the transferor company which—
    - (a) ends on the date of the transfer of business mentioned in subsection (3) above, or
    - (b) if that transfer of business falls within section 83(6)(c) above and no accounting period of the transferor company ends on that date, ends next after that date;
  - “transfer of business” has the same meaning as in section 83(3) above;
  - “the transferor company” means the company from which the transfer of business mentioned in subsection (3) above is effected.
- (11) A transfer of business falling within section 83(6)(c) above shall be treated for the purposes of this section as a transfer of business from the company which is the reinsured under the contract of reinsurance.]

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#### Textual Amendments

**F10** Ss. 83AA, 83AB inserted (29.4.1996 with effect as mentioned in Sch. 31 paras. 9(1), 10(2) of the amending Act) by 1996 c. 8, s. 163, Sch. 31 para. 5

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

**C33** S. 83AA modified (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(1)**

**C34** S. 83AA restricted (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(3)**

VALID FROM 29/04/1996

**[<sup>F11</sup>83A] Treatment of surplus where there is a subsequent transfer of business from the company etc.**

- (1) If an amount is added to the long term business fund of a company as part of or in connection with a transfer of business to the company, or a demutualisation of the company not involving a transfer of business, and—
  - (a) there is a surplus for the period of account of the company for which that amount is brought into account,
  - (b) at any time after the transfer of business or demutualisation, there is a transfer of business from the company (the “subsequent transfer”), and
  - (c) at the end of the relevant period of account there remains at least some of the surplus mentioned in paragraph (a) above which cannot be applied—
    - (i) under subsection (3) of section 83AA above,
    - (ii) under subsection (6) of that section, in the reduction of a loss arising to the company in an earlier period of account, or
    - (iii) under this section, in relation to an earlier subsequent transfer,
 so much of the surplus falling within paragraph (c) above as, on a just and reasonable apportionment, is referable to business which is the subject of the subsequent transfer shall be applied under this section.
- (2) An amount of surplus which is to be applied under this section shall be so applied by being treated as an amount of surplus (additional to any other amounts of surplus) for the period of account of the transferee company which last precedes the period of account of that company in which the subsequent transfer is effected, whether or not there is in fact any such preceding period of account.
- (3) If, in a case where an amount is treated under subsection (2) above as an amount of surplus for a period of account of a company, the period is not one for which there is brought into account an amount added to the company’s long term business fund in connection with the subsequent transfer, subsection (1) above shall have effect in relation to any transfer of business from the company subsequent to that transfer as if an amount had been so added and had been brought into account for that period.
- (4) Any question as to what is a just and reasonable apportionment in any case for the purposes of subsection (1) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but any person affected by the apportionment shall be entitled to appear and be heard or make representations in writing.
- (5) A surplus in respect of an earlier period of account shall be applied under this section before a surplus in respect of a later period of account.
- (6) All such adjustments to the liability to tax of any person shall be made, whether by assessment or otherwise, as may be required to give effect to this section.

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(7) In this section—

“add” has the same meaning as in section 83 above;

“demutualisation” has the same meaning as in section 83 above;

“the relevant period of account” means the period of account of the company from which the subsequent transfer is effected which consists of or includes the accounting period of that company which—

- (a) ends with the day on which the subsequent transfer is effected; or
- (b) if the subsequent transfer is a transfer of business falling within section 83(6)(c) above and no accounting period of the company ends on that day, ends next after that day;

“surplus” has the same meaning as in section 83AA above;

“transfer of business” has the same meaning as in section 83(3) above;

“transferee company” means the company to which the subsequent transfer of business is effected.

(8) Where it is necessary for any purpose of this section to identify the time at which a demutualisation of a company takes place, that time shall be taken to be the time when the company first issues shares.

(9) A transfer of business falling within section 83(6)(c) above shall be treated for the purposes of this section as a transfer of business from the company which is the reinsured under the contract of reinsurance to the company which is the reinsurer under that contract.]

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#### Textual Amendments

**F11** SS. 83AA, 83AB inserted (29.4.1996 with effect as mentioned in Sch. 31 paras. 9(1), 10(2) of the amending Act) by 1996 c. 8, s. 163, **Sch. 31 para. 5**

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

**C35** S. 83AB modified (29.4.1996) by 1996 c. 8, s. 163, **Sch. 31 para. 9(1)**

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## 84 Interpretation of sections 85 to 89 and further provisions about insurance companies.

[<sup>F12</sup>(1) In sections 85 to 89 below “basic life assurance and general annuity business” has the same meaning as in Chapter I of Part XII of the Taxes Act 1988.]

(2) Any reference in the sections referred to in subsection (1) above or the following provisions of this section to a straddling period is a reference to an accounting period which begins before 1st January 1990 and ends on or after that date.

(3) For the purposes of the sections referred to in subsection (1) above and for the purposes of subsection (5)(b) below it shall be assumed that a straddling period consists of two separate accounting periods—

- (a) the first beginning at the beginning of the straddling period and ending on 31st December 1989; and
- (b) the second beginning on 1st January 1990 and ending at the end of the straddling period;

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and in those sections and subsection (5)(b) below the first of those two notional accounting periods is referred to as “the 1989 component period” and the second is referred to as “the 1990 component period”.

- (4) Chapter I of Part XII of the Taxes Act 1988 (insurance companies) shall have effect subject to the amendments in Schedule 8 to this Act, being—
- (a) amendments relating to franked investment income, loss relief and group relief; and
  - (b) amendments consequential on or supplemental to sections 82 and 83 above and sections 85 to 89 below.
- (5) Subject to subsection (6) below, in Schedule 8 to this Act,—
- (a) paragraphs 2 and 6 shall be deemed to have come into force on 14th March 1989; and
  - (b) the remainder shall have effect with respect to accounting periods beginning on or after 1st January 1990 (including the 1990 component period).
- (6) Nothing in subsection (5) above affects the operation, by virtue of any provision of sections 82 and 83 above and sections 85 to 89 below, of any enactment repealed or amended by Schedule 8 to this Act and, so long as the provisions of that Schedule do not have effect in relation to sections 434 and 435 of the Taxes Act 1988, nothing in subsection (5)(a) above affects the continuing operation of section 433 of that Act for the purpose only of determining the fraction of the profits referred to in subsection (6) of section 434 and subsection (1)(b) of section 435.

#### Textual Amendments

- F12** S. 84(1) substituted (for accounting periods beginning on or after 01.01.1992) by [Finance Act 1991](#) (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 11, **18**

### 85 Charge of certain receipts of basic life assurance business.

- (1) Subject to subsection (2) below, where the profits of an insurance company in respect of its life assurance business are not charged under Case I of Schedule D, there shall be chargeable under Case VI of that Schedule any receipts referable to the company's <sup>[F13]</sup>basic life assurance and general annuity business—
- (a) which, if those profits were charged under Case I of Schedule D, would be taken into account in computing those profits; and
  - (b) which would not be within the charge to tax (except under Case I of Schedule D) apart from this section;
- and for the purposes of paragraph (a) above, the provisions of section 83 above as to the manner in which any item is to be taken into account shall be disregarded.
- (2) The receipts referred to in subsection (1) above do not include—
- (a) any premium; or
  - (b) any sum received by virtue of a claim under an insurance contract (including a re-insurance contract); or
  - (c) any repayment or refund (in whole or in part) of a sum disbursed by the company as acquisition expenses falling within paragraphs (a) to (c) of subsection (1) of section 86 below; or
- <sup>[F14]</sup>(ca) any reinsurance commission; or]

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- (d) any sum which is taken into account under section 76(1)(a) of the Taxes Act 1988 as a deduction from the amount treated as expenses of management of the company; or
  - (e) any sum which is not within the charge to tax (except under Case I of Schedule D) because of an exemption from tax.
- (3) This section has effect with respect to the receipts of accounting periods beginning on or after 1st January 1990 (including the 1990 component period).

#### Textual Amendments

- F13** Words in s. 85(1) substituted (for accounting periods beginning on or after 01.01.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 12, 18.
- F14** Finance Act 1990 (c. 29), s. 44(1)(4)—deemed always to have had effect

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

- C36** S. 85(1) modified (retrospective to 1.1.1995) by S.I. 1997/473, regs. 1(2), 38

## 86 Spreading of relief for acquisition expenses.

- (1) For the purposes of this section, the acquisition expenses for any period of an insurance company carrying on life assurance business are such of the following expenses of management as are for that period attributable to the company's [<sup>F15</sup>basic life assurance and general annuity business],—
- (a) commissions (however described), other than commissions in respect of industrial life assurance business carried on by the company,
  - (b) any other expenses of management which are disbursed solely for the purpose of the acquisition of business, and
  - (c) so much of any other expenses of management which are disbursed partly for the purpose of the acquisition of business and partly for other purposes as are properly attributable to the acquisition of business,
- less any such repayments or refunds falling within section 76(1)(c) of the Taxes Act 1988 as are received in the period [<sup>F16</sup>and less any reinsurance commission falling within section 76(1)(ca) of that Act].
- (2) The exclusion from paragraph (a) of subsection (1) above of commissions in respect of industrial life assurance business shall not prevent such commissions constituting expenses of management for the purposes of paragraph (b) or paragraph (c) of that subsection.
- (3) Nothing in subsections (1) and (2) above applies to commissions (however described) in respect of insurances made before 14th March 1989, but without prejudice to the application of those subsections to any commission attributable to a variation on or after that date in a policy issued in respect of an insurance made before that date; and, for this purpose, the exercise of any rights conferred by a policy shall be regarded as a variation of it.

[<sup>F17</sup>(3A) Nothing in subsection (1), (2) or (3) above applies to commissions (however described) in respect of annuity contracts made in accounting periods beginning before 1st January 1992, but without prejudice to the application of subsections (1) and (2) above to any commission attributable to a variation, in an accounting period beginning

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on or after that date, of an annuity contract so made; and for this purpose the exercise of any rights conferred by an annuity contract shall be regarded as a variation of it.]

- (4) In subsection (1) above “the acquisition of business” includes
- [<sup>F18</sup>(a)] the securing on or after 14th March 1989 of the payment of increased or additional premiums in respect of a policy of insurance issued in respect of an insurance already made (whether before, on or after that date) [<sup>F19</sup>and
  - (b) the securing, in an accounting period beginning on or after 1st January 1992, of the payment of increased or additional consideration in respect of an annuity contract already made (whether in an accounting period beginning before, or on or after, that date)].
- (5) In relation to any period, the expenses of management attributable to a company’s [<sup>F15</sup>basic life assurance and general annuity business] are expenses—
- (a) which are disbursed for that period (disregarding any treated as so disbursed by section 75(3) of the Taxes Act 1988); and
  - (b) which, disregarding subsection (6) below, are deductible as expenses of management in accordance with sections 75 and 76 of the Taxes Act 1988.
- (6) Notwithstanding anything in sections 75 and 76 of the Taxes Act 1988 but subject to subsection (7) below, only one-seventh of the acquisition expenses for any accounting period (in this section referred to as “the base period”) shall be treated as deductible under those sections for the base period, and in subsections (8) and (9) below any reference to the full amount of the acquisition expenses for the base period is a reference to the amount of those expenses which would be deductible for that period apart from this subsection.
- (7) In the case of the acquisition expenses for an accounting period or part of an accounting period falling wholly within 1990, subsection (6) above shall have effect as if for “one-seventh” there were substituted “five-sevenths”; and, in the case of the acquisition expenses for an accounting period or part of an accounting period falling wholly within 1991, 1992 or 1993, the corresponding substitution shall be “four-sevenths”, “three-sevenths” or “two-sevenths” respectively.
- (8) Where, by virtue of subsection (6) (and, where appropriate, subsection (7)) above, only a fraction of the full amount of the acquisition expenses for the base period is deductible under sections 75 and 76 of the Taxes Act 1988 for that period, then, subject to subsection (9) below, a further one-seventh of the full amount shall be so deductible for each succeeding accounting period after the base period until the whole of the full amount has become so deductible, except that, for any accounting period of less than a year, the fraction of one-seventh shall be proportionately reduced.
- (9) For any accounting period for which the fraction of the full amount of the acquisition expenses for the base period which would otherwise be deductible in accordance with subsection (8) above exceeds the balance of those expenses which has not become deductible for earlier accounting periods, only that balance shall be deductible.
- (10) This section has effect for accounting periods beginning on or after 1st January 1990 (including the 1990 component period).

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#### Textual Amendments

**F15** Words in s. 86(1) and (5) substituted (for accounting periods beginning on or after 01.01.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(1), 18.



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- F16** Finance Act 1990 (c. 29), s. 44(2)(4)(5)—deemed always to have had effect but not to apply to commissions in respect of reinsurance liabilities in respect of insurances made before 14 March 1989: the amendment may apply to any reinsurance commission attributable to any variation, or exercise of rights, made on or after 14 March 1989
- F17** S. 86(3A) inserted (for accounting periods beginning on or after 01.01.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(2), **18**.
- F18** S. 86(4)(a) inserted (for accounting periods beginning on or after 01.01.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(3), **18**.
- F19** S. 86(4)(b) and word preceding it inserted (for accounting periods beginning on or after 01.01.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 13(3), **18**.

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

- C37** S. 86 modified (retrospective to 1.1.1995) by S.I. 1997/473, regs. 1(2), 39

**87 Management expenses.**

- (1) Section 76 of the Taxes Act 1988 shall be amended in accordance with subsections (2) and (3) below.
- (2) In subsection (1), after paragraph (b) there shall be inserted “and
- (c) there shall be deducted from the amount treated as the expenses of management for any accounting period any repayment or refund (in whole or in part) of a sum disbursed by the company (for that or any earlier period) as acquisition expenses; and
  - (d) the amount treated as expenses of management shall not include any amount in respect of expenses referable to general annuity business or pension business; and
  - (e) the amount of profits from which expenses of management may be deducted for any accounting period shall not exceed the net income and gains of that accounting period referable to basic life assurance business;

and for this purpose “net income and gains” means income and gains after deducting any reliefs or exemptions which fall to be applied before taking account of this section.”

<sup>F20</sup>(3) .....

- (4) In consequence of the amendment made by subsection (2) above, section 436(3)(b) of the Taxes Act 1988 (no deduction of expenses of management in certain cases) shall cease to have effect.
- (5) This section has effect with respect to accounting periods beginning on or after 1st January 1990; and, in relation to a straddling period, sections 75, 76 and 436 of the Taxes Act 1988—
- (a) shall have effect in relation to the 1989 component period without regard to the amendments made by subsections (2) to (4) above; and
  - (b) shall have effect in relation to the 1990 component period as amended by those subsections.
- (6) If, for the 1989 component period, there is an amount of expenses of management available to be carried forward to the 1990 component period under section 75(3)(a) of the Taxes Act 1988 (as applied by section 76 thereof),—

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- (a) that amount shall form a pool to which the following provisions of this section shall apply and to which section 75(3)(b) of that Act (in this subsection referred to as “the carry-forward provision”) shall apply only to the extent specified in paragraph (c) below;
  - (b) if, for the 1990 component period or any subsequent accounting period, the amount which (disregarding the pool) may be deducted in respect of expenses of management is less than the amount of the profits from which, disregarding section 76(1)(e) of that Act (as set out in subsection (2) above), the expenses of management are deductible, paragraph (c) below shall apply for that period; and in that paragraph the difference between the amount which may be so deducted and that amount of profits is referred to as “the potential deficiency” for the period;
  - (c) where this paragraph applies for an accounting period (including the 1990 component period) the carry-forward provision shall be taken to have had effect to carry forward to the accounting period (as if disbursed as expenses for that period) so much of the pool as does not exceed the potential deficiency for the period and is permitted under section 76(2) of the Taxes Act 1988; and the amount of the pool shall be reduced accordingly.
- (7) In the case of a company which has an accounting period beginning on 1st January 1990, subsection (6) above shall apply as if—
- (a) any reference therein to the 1989 component period were a reference to the accounting period ending on 31st December 1989; and
  - (b) any reference therein to the 1990 component period were a reference to the accounting period beginning on 1st January 1990.

#### Textual Amendments

**F20** S. 87(3) repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, Sch. 19 Pt.V.

### 88 Corporation tax: policy holders’ fraction of profits.

- (1) Subject to subsection (2) below, in the case of a company carrying on life assurance business, the rate of corporation tax chargeable for any financial year on
- [<sup>F21</sup>(a) the policy holders’ share of the relevant profits for any accounting period, or
  - (b) where the business is mutual business, the whole of those profits,
- shall] be deemed to be the rate at which income tax at the basic rate is charged for the year of assessment which begins on 6th April in the financial year concerned.
- (2) Subsection (1) above does not apply in relation to profits charged under Case I of Schedule D.
- (3) For the purposes of subsection (1) above, the relevant profits of a company for an accounting period are the total profits of its life assurance business, less any deduction due under section 76 of the Taxes Act 1988, but before allowing any relief under Chapter II or Chapter IV of Part X of that Act.
- (4) In determining for the purposes of section 13 of the Taxes Act 1988 (small companies’ relief) the profits and basic profits (within the meaning of that section) of an accounting period of a company carrying on life assurance business, the policy holders’ [<sup>F22</sup>share] of the company’s relevant profits for that period [<sup>F23</sup>, or where the business is mutual business the whole of those profits,] shall be left out of account.

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- (5) This section has effect with respect to the profits of a company for accounting periods beginning on or after 1st January 1990 (including the 1990 component period); and, for this purpose, the profits of the 1990 component period shall be taken to be that portion of the profits of the straddling period which the length of the 1990 component period bears to the length of the straddling period.

#### Textual Amendments

- F21** Finance Act 1990 (c. 29), s. 45(1)(10)—*deemed always to have had effect. Previously* “the policy holders’ fraction of its relevant profits for any accounting period shall”
- F22** Finance Act 1990 (c. 29), s. 45(2)(10)—*deemed always to have had effect. Previously* “fraction”
- F23** Finance Act 1990 (c. 29), s. 45(2)(10)—*deemed always to have had effect*

VALID FROM 29/04/1996

#### **[<sup>F24</sup>88A Lower corporation tax rate on certain insurance company profits.**

- (1) Subject to subsection (2) below, in the case of a company carrying on basic life assurance and general annuity business, the rate of corporation tax chargeable for any financial year on so much of the company’s BLAGAB profits for any accounting period as represents the company’s lower rate income for the period shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned.
- (2) Subsection (1) above does not apply in relation to profits charged under Case I of Schedule D.
- (3) In this section, references to a company’s lower rate income for any accounting period are references to so much of the income and gains of its basic life assurance and general annuity business for the period as consists in income of any of the following descriptions—
- (a) income falling within paragraph (a) of Case III of Schedule D, as that Case applies for the purposes of corporation tax;
  - (b) purchased life annuities to which section 656 of the Taxes Act 1988 applies or to which that section would apply but for section 657(2)(a) of that Act;
  - (c) any such dividends or other distributions of a company not resident in the United Kingdom as would be chargeable under Schedule F if the company were resident in the United Kingdom;
  - (d) so much of—
    - (i) any dividend distribution (within the meaning of section 468J of the Taxes Act 1988), or
    - (ii) any foreign income distribution (within the meaning of section 468K of that Act),as is deemed by subsection (2) of section 468Q of that Act (or by that subsection as applied by section 468R(2) of that Act) to be an annual payment.
- (4) Where for any period—

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- (a) an insurance company's basic life assurance and general annuity business is mutual business,
- (b) the policy holders' share of the company's relevant profits is equal to all those profits, or
- (c) the policy holders' share of the company's relevant profits is more than the company's BLAGAB profits,

the amount to be taken for the purposes of this section as the amount of the company's BLAGAB profits for that period representing its lower rate income for that period shall be the amount equal to the applicable proportion of its BLAGAB profits.

- (5) Where subsection (4) above does not apply in the case of an insurance company for any period, the amount to be taken for the purposes of this section as the amount of the company's BLAGAB profits for the period representing its lower rate income for that period shall be the amount produced by multiplying the following, that is to say—
  - (a) the applicable proportion of those profits; and
  - (b) the fraction given by dividing the policy holders' share of the relevant profits of the company for the period by its BLAGAB profits for that period.
- (6) For the purposes of this section the applicable proportion of a company's BLAGAB profits for any period is the amount which bears the same proportion to those profits as the aggregate amount of the company's lower rate income for that period bears to the total income and gains for that period of the company's basic life assurance and general annuity business.
- (7) For the purposes of this section, the BLAGAB profits of a company for an accounting period are the income and gains of the company's basic life assurance and general annuity business reduced by the aggregate amount of—
  - (a) any non-trading deficit on the company's loan relationships,
  - (b) expenses of management falling to be deducted under section 76 of the Taxes Act 1988, and
  - (c) charges on income,
 so far as referable to the company's basic life assurance and general annuity business.
- (8) Section 88(3) above applies for the purposes of this section as it applies for the purposes of section 88(1) above.]

#### Textual Amendments

**F24** S. 88A inserted (29.4.1996 with effect for the financial year 1996 and subsequent financial years) by 1996 c. 8, s. 73, **Sch. 6 paras. 26(2)(4)**

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

**C38** S. 88A modified (*retrospective* to 1.1.1996) by S.I. 1997/473, **regs. 1(2), 40**

### [<sup>F25</sup>89 Policy holders' share of profits.

- (1) The references in section 88 above to the policy holders' share of the relevant profits for an accounting period of a company carrying on life assurance business are references to the amount arrived at by deducting from those profits the Case I profits

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of the company for the period in respect of the business, reduced in accordance with subsection (2) below.

- (2) For the purposes of subsection (1) above, the Case I profits for a period shall be reduced by—
- (a) the amount, so far as unrelieved, of any franked investment income arising in the period as respects which the company has made an election under section 438(6) of the Taxes Act 1988, and
  - (b) the shareholders' share of any other unrelieved franked investment income arising in the period from investments held in connection with the business.
- (3) For the purposes of those section "the shareholders' share" in relation to any income is so much of the income as is represented by the fraction

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

where—

A is an amount equal to the Case I profits of the company for the period in question in respect of its life assurance business, and

B is an amount equal to the excess of the company's relevant non-premium income and relevant gains over its relevant expenses and relevant interest for the period.

- (4) Where there is no such excess as is mentioned in subsection (3) above, or where the Case I profits are greater than any excess, the whole of the income shall be the shareholders' share; and (subject to that) where there are no Case I profits, none of the income shall be the shareholders' share.
- (5) In subsection (3) above the references to the relevant non-premium income, relevant gains, relevant expenses and relevant interest of a company for an accounting period are references respectively to the following items as brought into account for the period, so far as referable to the company's life assurance business,—
- (a) the company's investment income from the assets of its long-term business fund together with its other income, apart from premiums;
  - (b) any increase in the value (whether realised or not) of those assets;
  - (c) expenses payable by the company;
  - (d) interest payable by the company;
- and if for any period there is a reduction in the value referred to in paragraph (b) above (as brought into account for the period), that reduction shall be taken into account as an expense of the period.
- (6) Except in so far as regulations made by the Treasury otherwise provide, in this section "brought into account" means brought into account in the revenue account prepared for the purposes of the Insurance Companies Act 1982; and where the company's period of account does not coincide with the accounting period, any reference to an amount brought into account for the accounting period is a reference to the corresponding amount brought into account for the period of account in which the accounting period is comprised, proportionately reduced to reflect the length of the accounting period as compared with the length of the period of account.

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- (7) In this section “Case I profits” means profits computed in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.
- (8) For the purposes of this section franked investment income is unrelieved if—
- (a) it has not been excluded from charge to tax by virtue of any provision,
  - (b) no tax credit comprised in it has been paid, and
  - (c) no relief has been allowed against it by deduction of set-off].

#### Textual Amendments

**F25** S. 89 substituted retrospectively by Finance Act 1990 (c. 29) {s. 45(3)}

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

**C39** S. 89 amended (27.7.1993 with application as mentioned in s. 78(11) of the amending Act) by 1993 c. 34, s. 78(6)(11)

**C40** S. 89(8) amended (27.7.1993) by 1993 c. 34, s. 78(7)

VALID FROM 27/07/1993

### **[<sup>F26</sup>89A Modification of sections 83 and 89 in relation to overseas life insurance companies.**

Schedule 8A to this Act (which makes modifications of sections 83 and 89 in relation to overseas life insurance companies) shall have effect.]

#### Textual Amendments

**F26** S. 89A inserted (27.7.1993) by 1993 c. 34, s. 101(1)

## **90 Life policies etc. held by companies.**

Schedule 9 to this Act (which imposes tax on certain benefits relating to life policies, life annuities and capital redemption policies held by companies, and makes related provision) shall have effect.

### *Underwriters*

## **91 Premiums trust funds: stock lending.**

- (1) In section 725 of the Taxes Act 1988 (Lloyd’s underwriters) the following subsections shall be inserted after subsection (9)—

“(10) Subsection (11) below applies where the following state of affairs exists at the beginning of 1st January of any year or the end of 31st December of any year—

- (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2),

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- (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
  - (c) securities have not been transferred in return, and
  - (d) section 129(3) applies to the transfer made by the trustees.
- (11) The securities transferred by the trustees shall be treated for the purposes of subsections (1) to (6) above as if they formed part of the premiums trust fund at the beginning of 1st January concerned or the end of 31st December concerned (as the case may be).”
- (2) In section 142A of the <sup>M38</sup>Capital Gains Tax Act 1979 (assets in premiums trust fund) the following subsections shall be inserted after subsection (4)—
  - “(4A) Subsection (4B) below applies where the following state of affairs exists at the beginning of an accounting period or the end of an accounting period—
    - (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2) of the Taxes Act 1988 (stock lending),
    - (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
    - (c) securities have not been transferred in return, and
    - (d) the transfer made by the trustees constitutes a disposal which by virtue of section 149B(9) below is to be disregarded as there mentioned.
  - (4B) The securities transferred by the trustees shall be treated for the purposes of subsection (3) above as if they formed part of the premiums trust fund at the beginning concerned or the end concerned (as the case may be).”
- (3) This section applies where the transfer by the trustees of a premiums trust fund is made after the date specified as mentioned in section 129(6) of the Taxes Act 1988.

**Marginal Citations**

**M38** 1979 c. 14.

## 92 Regulations about underwriters etc.

- (1) In section 451(1A) of the Taxes Act 1988 (regulations about underwriters) for the words from “with respect to” to the end there shall be substituted the words “with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year.”
- (2) The following subsection shall be inserted after section 451(1A) of that Act—
  - “(1B) But the regulations may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made.”
- (3) In section 142A of the <sup>M39</sup>Capital Gains Tax Act 1979 (regulations about premiums trust funds) subsection (5)(c) shall be omitted and the following subsections shall be inserted after subsection (5)—
  - “(6) Regulations under subsection (5) above may make provision with respect to any year or years of assessment; and the year (or any of the years) may be

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the one in which the regulations are made or any year falling before or after that year.

- (7) But the regulations may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made.”
- (4) Subsection (5) below applies in the case of any provision of the Tax Acts, the <sup>M40</sup>Taxes Management Act 1970, the Capital Gains Tax Act 1979, or any other enactment relating to capital gains tax, which imposes a time limit for making a claim or an election or an application.
- (5) The Board may by regulations provide that where the claim or election or application falls to be made by an underwriting member of Lloyd’s or his spouse (or both) the provision shall have effect as if it imposed such long time limit as is specified in the regulations.
- (6) Regulations under subsection (5) above—
- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons;
  - (b) may make different provision for different provisions or different purposes.
- (7) Regulations under subsection (5) above may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year.

#### Marginal Citations

**M39** 1979 c. 14.

**M40** 1970 c. 9.

### *Securities*

#### **93 Deep discount securities: amendments.**

Schedule 10 to this Act (which amends Schedule 4 to the Taxes Act 1988) shall have effect.

#### **94 Deep gain securities.**

Schedule 11 to this Act (which contains provisions about securities capable of yielding a deep gain) shall have effect.

#### **95 Treasury securities issued at a discount.**

- (1) Section 126 of the Taxes Act 1988 (tax not to be charged on certain securities in respect of discount under Case III of Schedule D) shall be amended as mentioned in subsections (2) and (3) below.
- (2) In subsection (2) (the securities affected) for the words “except Treasury bills” there shall be substituted the words “except—
- (a) Treasury bills,



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- (b) relevant deep discount securities, and
  - (c) deep gain securities.”
- (3) The following subsection shall be inserted after subsection (2)—
  - “(3) For the purposes of subsection (2) above—
    - (a) a relevant deep discount security is a security falling within paragraph 1(1)(dd) of Schedule 4 to this Act, and
    - (b) a deep gain security is a security which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989.”
- (4) The preceding provisions of this section shall apply—
  - (a) in the case of a deep discount security, where there is a disposal (within the meaning of Schedule 4 to the Taxes Act 1988) on or after 14th March 1989;
  - (b) in the case of a deep gain security, where there is a transfer within the meaning of Schedule 11 to this Act, or a redemption, on or after 14th March 1989.
- (5) Subsection (7) below applies where—
  - (a) by virtue of paragraph 19(2) of Schedule 4 to the Taxes Act 1988, a security falls to be treated as a deep discount security as there mentioned, and
  - (b) after the time mentioned in paragraph 19(1)(d) of that Schedule there is a disposal (within the meaning of that Schedule) of the security.
- (6) Subsection (7) below also applies where—
  - (a) by virtue of paragraph 20(2) of Schedule 11 to this Act, a security falls to be treated as a deep gain security as there mentioned, and
  - (b) after the time mentioned in paragraph 20(1)(d) of that Schedule there is a transfer (within the meaning of that Schedule) or a redemption of the security.
- (7) In a case where this subsection applies, section 126 of the Taxes Act 1988 shall not apply in the case of the disposal, transfer or redemption (as the case may be).

## 96 Securities: miscellaneous.

- (1) In section 452(8) of the Taxes Act 1988 (special reserve funds) for the words from “In paragraph (a) above” to the end there shall be substituted—
  - “In paragraph (a) above “income” includes—
    - (a) annual profits or gains chargeable to tax by virtue of section 714(2) or 716(3),
    - (b) amounts treated as income chargeable to tax by virtue of paragraph 4 of Schedule 4, and
    - (c) amounts treated as income chargeable to tax by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989.”
- (2) In section 687 of the Taxes Act 1988 (payments under discretionary trusts) the following shall be inserted after subsection (3)(g)—
  - “(h) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 4 of Schedule 4 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 17 of that Schedule;

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- (i) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 11 of that Schedule;”.
- (3) The following subsections shall be inserted at the end of section 132A of the <sup>M41</sup>Capital Gains Tax Act 1979 (deep discount securities)—
  - “(5) Where by virtue of paragraph 18(3) of Schedule 4 to the Taxes Act 1988 trustees are deemed for the purposes of that Schedule to dispose of a security at a particular time—
    - (a) they shall be deemed to dispose of the security at that time for the purposes of this Act, and
    - (b) the disposal deemed by paragraph (a) above shall be deemed to be at the market value of the security.
  - (6) Where by virtue of paragraph 18(4) of Schedule 4 to the Taxes Act 1988 trustees are deemed for the purposes of that Schedule to acquire a security at a particular time—
    - (a) they shall be deemed to acquire the security at that time for the purposes of this Act, and
    - (b) the acquisition deemed by paragraph (a) above shall be deemed to be at the market value of the security.”
- (4) The new paragraphs (b) and (c) inserted by subsection (1) above, and subsection (2) above, shall apply—
  - (a) in the case of a deep discount security, where there is a disposal (within the meaning of Schedule 4 to the Taxes Act 1988) on or after 14th March 1989;
  - (b) in the case of a deep gain security, where there is a transfer within the meaning of Schedule 11 to this Act, or a redemption, on or after 14th March 1989.

**Marginal Citations**

**M41** 1979 c. 14.

*Groups of companies*

**97 Set-off of ACT where companies remain in same group.**

- (1) In section 240 of the Taxes Act 1988 (set-off of company’s ACT against subsidiary’s liability to corporation tax) at the end of subsection (5) (set-off not to be made against subsidiary’s liability to corporation tax for any accounting period in which, or in any part of which, it was not a subsidiary of the surrendering company) there shall be added the words “unless throughout that period or part both companies were subsidiaries of a third company”.
- (2) This section shall have effect in relation to accounting periods ending on or after 14th March 1989.

**98 Restriction on set-off of ACT.**

- (1) After section 245 of the Taxes Act 1988 there shall be inserted—

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**“245A Restriction on application of section 240 in certain circumstances.**

- (1) This section applies if—
- (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) by virtue of section 240 the relevant company is treated as having paid an amount of advance corporation tax in respect of a distribution made by it at any time before the change; and
  - (c) within the period of six years beginning three years before the change, there is a major change in the nature or conduct of a trade or business of the company which is for the purposes of section 240 the surrendering company in relation to that amount.
- (2) No advance corporation tax which the relevant company is treated by virtue of section 240 as having paid in respect of a distribution made by it in an accounting period beginning before the change of ownership shall be treated under section 239(4) as paid by it in respect of distributions made in an accounting period ending after the change of ownership; and this subsection shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.
- (3) Subsections (4) and (5) of section 245 shall apply also for the purposes of this section and as if the reference in subsection (4) of section 245 to the period of three years mentioned in subsection (1)(a) of that section were a reference to the period mentioned in subsection (1)(c) above.
- (4) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.

**245B Restriction on set-off where asset transferred after change in ownership of company.**

- (1) Subsection (4) below applies if—
- (a) there is a change in the ownership of a company (“the relevant company”);
  - (b) any advance corporation tax paid by the relevant company in respect of distributions made by it in an accounting period beginning before the change is treated under section 239(4) as paid by it in respect of distributions made by it in an accounting period ending after the change;
  - (c) after the change the relevant company acquires an asset from another company in such circumstances that section 273(1) of the Taxes Act 1970 applies to the acquisition; and
  - (d) a chargeable gain accrues to the relevant company on the disposal of the asset within the period of three years beginning with the change of ownership.
- (2) Subsection (1)(b) above shall apply to an accounting period in which the change of ownership occurs as if the part ending with the change of ownership, and the part after, were two separate accounting periods.

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- (3) 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.
- (4) In relation to the accounting period in which the chargeable gain accrues to the relevant company (“the relevant period”), section 239 shall have effect as if the limit imposed by subsection (2) of that section on the amount of advance corporation tax to be set against the relevant company’s liability to corporation tax were reduced by whichever is the lesser of—
- (a) the amount of advance corporation tax that would have been payable (apart from section 241) in respect of a distribution made at the end of the relevant period of an amount which, together with the advance corporation tax so payable in respect of it, is equal to the chargeable gain, and
  - (b) the amount of surplus advance corporation tax in relation to the accounting period which by virtue of subsection (2) above is treated for the purposes of subsection (1)(b) above as ending with the change of ownership.
- (5) Sections 768(8) and (9) and 769 shall apply also for the purposes of this section and as if in subsection (3) of section 769 the reference to the benefit of losses were a reference to the benefit of advance corporation tax.”
- (2) This section shall have effect where the change in the ownership of the relevant company occurs on or after 14th March 1989.

## **99 Dividends etc. paid by one member of a group to another.**

- (1) Section 247 of the Taxes Act 1988 (dividends etc. paid by one member of a group to another) shall be amended in accordance with this section.
- (2) In subsection (1) for paragraph (b) there shall be substituted—
- “(b) a trading or holding company which does not fall within subsection (1A) below and which is owned by a consortium the members of which include the receiving company,”.
- (3) After subsection (1) there shall be inserted—
- “(1A) A company falls within this subsection if—
- (a) it is a 75 per cent. subsidiary of any other company, or
  - (b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary.”
- (4) After subsection (8) there shall be inserted—
- “(8A) Notwithstanding that at any time a company (“the subsidiary company”) is a 51 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

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- (a) the parent company would be beneficially entitled to more than 50 percent. of any profits available for distribution to equity holders of the subsidiary company; and
  - (b) the parent company would be beneficially entitled to more than 50 percent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.”
- (5) For subsection (9)(c) there shall be substituted—
- “(c) a company is owned by a consortium if 75 per cent. or more of the ordinary share capital of the company is beneficially owned between them by companies resident in the United Kingdom of which none—
    - (i) beneficially owns less than 5 per cent. of that capital,
    - (ii) would be beneficially entitled to less than 5 per cent. of any profits available for distribution to equity holders of the company, or
    - (iii) would be beneficially entitled to less than 5 per cent. of any assets of the company available for distribution to its equity holders on a winding-up,and those companies are called the members of the consortium.”
- (6) After subsection (9) there shall be inserted—
- “(9A) Schedule 18 shall apply for the purposes of subsections (8A) and (9)(c) above as it applies for the purposes of section 413(7).”
- (7) This section shall have effect in relation to dividends and other sums paid on or after the day on which this Act is passed.

## **100 Change in ownership of company.**

- (1) Section 769 of the Taxes Act 1988 (which contains rules for determining whether for the purposes of sections 245 and 768 of that Act there is a change in the ownership of a company) shall be amended in accordance with this section.
- (2) For subsection (6) there shall be substituted—
- “(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.

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(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 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).”

(3) Subsection (7)(b) and (c) shall cease to have effect.

(4) This section shall have effect where the change of ownership of a company would be treated as occurring on or after 14th March 1989.

## **101 Treatment of convertible shares or securities for purposes relating to group relief etc.**

(1) Paragraph 1 of Schedule 18 to the Taxes Act 1988 (which contains definitions relating to group relief) shall be amended in accordance with this section.

(2) For sub-paragraph (3)(b) there shall be substituted—

“(b) do not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities;”.

(3) For sub-paragraph (5)(a) there shall be substituted—

“(a) which does not carry any right either to conversion into shares or securities of any other description except—

- (i) shares to which sub-paragraph (5A) below applies,
- (ii) securities to which sub-paragraph (5B) below applies, or
- (iii) shares or securities in the company’s quoted parent company,

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or to the acquisition of any additional shares or securities;”.

(4) After sub-paragraph (5) there shall be inserted—

“(5A) This sub-paragraph applies to any shares which—

- (a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and
- (b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the company’s quoted parent company, or to the acquisition of any additional shares or securities.

(5B) This sub-paragraph applies to any securities representing a loan of or including new consideration and—

- (a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and
- (b) which does not carry any such rights as are mentioned in sub-paragraph (5A)(b) above.

(5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company (“the parent company”) is another company’s “quoted parent company” if and only if—

- (a) the other company is a 75 per cent. subsidiary of the parent company,
- (b) the parent company is not a 75 per cent. subsidiary of any company, and
- (c) the parent company’s ordinary shares (or, if its ordinary share capital is divided into two or more classes, its ordinary shares of each class) are quoted on a recognised stock exchange or dealt in on the Unlisted Securities Market;

and in this sub-paragraph “ordinary shares” means shares forming part of ordinary share capital.

(5D) In the application of sub-paragraphs (3) and (5) to (5B) above in determining for the purposes of sub-paragraph (5C)(a) above who are the equity holders of the other company (and, accordingly, whether section 413(7) prevents the other company from being treated as a 75 per cent. subsidiary of the parent company for the purposes of sub-paragraph (5C)(a)), it shall be assumed that the parent company is for the purposes of sub-paragraphs (3) and (5) to (5B) above the other company’s quoted parent company.”

(5) In sub-paragraph (6) for the words “to (5)” there shall be substituted the words “to (5D)”.

(6) This section, so far as relating to Schedule 18 of the Taxes Act 1988 in its application (by virtue of section 138 below) for the purposes of subsections (1D) and (1E) of section 272 of the Taxes Act 1970, shall be deemed to have come into force on 14th March 1989.

## 102 Surrender of company tax refund etc. within group.

(1) Subsection (2) below applies where—

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- (a) there falls to be made to a company (“the surrendering company”) which is a member of a group throughout the appropriate period a tax refund relating to an accounting period of the company (“the relevant accounting period”), and
  - (b) another company (“the recipient company”) which is a member of the same group throughout the appropriate period also has the relevant accounting period as an accounting period.
- (2) Where this subsection applies the two companies may, at any time before the refund is made to the surrendering company, jointly give notice to the inspector in such form as the Board may require that subsection (4) below is to have effect in relation to the refund or to any part of the refund specified in the notice.
- (3) In subsection (1) above—
- “appropriate period” means the period beginning with the relevant accounting period and ending on the day on which the notice under subsection (2) above is given, and
  - “tax refund relating to an accounting period” means, in relation to a company—
    - (a) a repayment of corporation tax paid by the company for the period,
    - (b) a repayment of income tax in respect of a payment received by the company in the period, or
    - (c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in the period.
- (4) Subject to subsection (6) below, where this subsection has effect in relation to any refund or part of a refund—
- (a) the recipient company shall be treated for all purposes of the Tax Acts as having paid on the relevant date an amount of corporation tax for the relevant accounting period equal to the amount of the refund or part, and
  - (b) there shall be treated for all those purposes as having been made to the surrendering company on the relevant date a repayment of corporation tax or income tax or a payment of tax credit (as the case may be) equal to the amount of the refund or part;
- and where the refund is a repayment of corporation tax, any interest relating to it which has been paid by the surrendering company shall be treated as having been paid by the recipient company.
- (5) In subsection (4) above “relevant date”, in relation to a refund, means—
- (a) in so far as it consists of a repayment of corporation tax paid by the surrendering company after the date on which it became due and payable under section 10 of the Taxes Act 1988, the day on which it was paid by that company, and
  - (b) otherwise, the date on which corporation tax for the relevant accounting period became due and payable.
- (6) For the purpose of ascertaining the amount of any penalty to which the recipient company is liable under section 94(6) of the <sup>M42</sup>Taxes Management Act 1970, the corporation tax which the company is treated as having paid by subsection (4)(a) above shall be treated as paid on the day on which the notice under subsection (2) above is given (and not on the relevant date).
- (7) A payment for a transferred tax refund—



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- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
- (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income;

and in this subsection “a payment for a transferred tax refund” means a payment made by the receiving company to the surrendering company in pursuance of an agreement between them as respects the giving of a notice under this section, being a payment not exceeding the amount of the refund in question.

- (8) For the purposes of this section two companies are members of the same group if and only if they would be for the purposes of Chapter IV of Part X of the Taxes Act 1988.
- (9) This section shall not apply unless the relevant accounting period ends after such day, not being earlier than 31st March 1992, as the Treasury may by order made by statutory instrument appoint.

**Marginal Citations**

M42 1970 c.9.

*Close companies*

**103 Repeal of apportionment provisions.**

- (1) Except as provided by subsection (2) below, Chapter III of Part XI of the Taxes Act 1988 (apportionment of undistributed income etc. of close companies) shall not have effect in relation to accounting periods beginning after 31st March 1989.
- (2) Section 427(4) of the Taxes Act 1988 (which gives relief to an individual where income apportioned to him in an earlier accounting period of a close company is included in a distribution received by him in a later accounting period), and section 427(5) of, and Part I of Schedule 19 to, that Act so far as they relate to section 427(4), shall continue to have effect in any case where the subsequent distribution referred to in section 427(4) is made before 1st April 1992.

**104 Meaning of “close company”.**

- (1) In section 414 of the Taxes Act 1988 for subsection (2) (further case in which a company is a close company for the purposes of the Tax Acts) there shall be substituted—
  - “(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—
    - (a) such rights as would, in the event of the winding-up of the company (“the relevant company”) on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or

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- (b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.
- (2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—
- (a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and
  - (b) any part of those assets which he would be entitled to receive if—
    - (i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound upon the basis set out in this subsection, and
    - (ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.
- (2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of that paragraph), references to “the relevant company” shall have effect as references to the company concerned.
- (2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—
- (a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and
  - (b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.
- (2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that section.”
- (2) Subsection (3) of that section shall cease to have effect.
- (3) In subsection (5)(b) of that section for the words from “paragraph (c)” to “that paragraph” there shall be substituted the words “paragraph (a) of subsection (2) above or paragraph (c) of section 416(2) and it would not be a close company if the references in those paragraphs”.
- (4) This section shall be deemed to have come into force on 1st April 1989.

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## 105 Small companies' rate not available to certain close companies.

- (1) In section 13 of the Taxes Act 1988 (small companies' relief) in subsection (1) for the words "a company resident in the United Kingdom" there shall be substituted the words "a company which—
- (a) is resident in the United Kingdom, and
  - (b) is not a close investment-holding company (as defined in section 13A) at the end of that period."

- (2) After that section there shall be inserted the following section—

### "13A Close investment-holding companies.

- (1) A close company is for the purposes of section 13(1) a "close investment-holding company" unless it complies with subsection (2) below.
- (2) A company ("the relevant company") complies with this subsection in any accounting period if throughout that period it exists wholly or mainly for any one or more of the following purposes—
- (a) the purpose of carrying on a trade or trades on a commercial basis,
  - (b) the purpose of making investments in land or estates or interests in land in cases where the land is, or is intended to be, let to persons other than—
    - (i) any person connected with the relevant company, or
    - (ii) any person who is the wife or husband of an individual connected with the relevant company, or is a relative, or the wife or husband of a relative, of such an individual or of the husband or wife of such an individual,
  - (c) the purpose of holding shares in and securities of, or making loans to, one or more companies each of which is a qualifying company or a company which—
    - (i) is under the control of the relevant company or of a company which has control of the relevant company, and
    - (ii) itself exists wholly or mainly for the purpose of holding shares in or securities of, or making loans to, one or more qualifying companies,
  - (d) the purpose of co-ordinating the administration of two or more qualifying companies,
  - (e) the purpose of a trade or trades carried on on a commercial basis by one or more qualifying companies or by a company which has control of the relevant company, and
  - (f) the purpose of the making, by one or more qualifying companies or by a company which has control of the relevant company, of investments as mentioned in paragraph (b) above.
- (3) For the purposes of subsection (2) above, a company is a "qualifying company", in relation to the relevant company, if it—
- (a) is under the control of the relevant company or of a company which has control of the relevant company, and
  - (b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) or (b) above.

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- (4) Where a company is wound up, it shall not be treated as failing to comply with subsection (2) above in the accounting period that (by virtue of subsection (7) of section 12) begins with the time which is for the purposes of that subsection the commencement of the winding up, if it complied with subsection (2) above in the accounting period that ends with that time.
- (5) In this section—
  - “control” shall be construed in accordance with section 416, and
  - “relative” has the meaning given by section 839(8).
- (6) Section 839 shall apply for the purposes of this section.”
- (3) This section shall have effect in relation to accounting periods beginning after 31st March 1989.

## 106 Restriction on payment of tax credits.

- (1) In section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions) in subsection (3) after the words “made and” there shall be inserted the words “subject to subsections (3A) to (3D) below” and after that subsection there shall be inserted—
  - “(3A) Subject to subsection (3B) below, where it appears to the inspector that, in any accounting period of a company at the end of which it is a close investment-holding company—
    - (a) arrangements relating to the distribution of the profits of the company exist or have existed the main purpose of which or one of the main purposes of which is to enable payments, or payments of a greater amount, to be made to any one or more individuals under subsection (3) above in respect of such an excess as is mentioned in that subsection, and
    - (b) by virtue of those arrangements, any eligible person—
      - (i) receives a qualifying distribution consisting of a payment made by the company on the redemption, repayment or purchase of its own shares, or
      - (ii) receives any other qualifying distribution in respect of shares in or securities of the company, where the amount or value of the distribution is greater than might in all the circumstances have been expected but for the arrangements,
 the entitlement of the eligible person to have paid to him under subsection (3) above all or part of a tax credit in respect of any distribution made by the company in the period shall be restricted to such extent as appears to the inspector to be just and reasonable.
  - (3B) Subsection (3A) above does not apply in relation to a tax credit in respect of a dividend paid by a company in any accounting period in respect of its ordinary share capital if—
    - (a) throughout the period, the company’s ordinary share capital consisted of only one class of shares, and
    - (b) no person waived his entitlement to any dividend which would have become payable by the company in the period or failed to receive any

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dividend which had become due and payable to him by the company in the period.

(3C) In subsection (3A) above—

“arrangements” means arrangements of any kind whether in writing or not,

“close investment-holding company” has the meaning given by section 13A, and

“eligible person”, in relation to a qualifying distribution, means an individual resident in the United Kingdom who would (apart from subsection (3A) above) be entitled to have paid to him under subsection (3) above all or part of a tax credit in respect of the distribution.

(3D) In determining under subsection (3) above whether a person is entitled to have any excess of tax credit paid to him in a case where subsection (3A) above applies, tax credits shall be set against income tax in the order that results in the greatest payment in respect of the excess.”

(2) This section shall have effect in relation to distributions made by companies in accounting periods beginning after 31st March 1989.

#### **107 Close companies: consequential amendments.**

Schedule 12 to this Act (in which Part I contains administrative provisions relating to close companies and Part II makes amendments connected with section 103 above) shall have effect.

*Settlements etc.*

#### **108 Outright gifts etc. between husband and wife.**

(1) Section 685 of the Taxes Act 1988 (provisions supplementary to sections charging settlor to tax in excess of basic rate on certain settlement income) shall be amended as follows.

(2) In subsection (3), after the word “above” there shall be inserted the words “and subsection (4B) below”.

(3) At the end of subsection (4) there shall be added the words “, but subject to subsections (4A) and (4C) below”.

(4) After subsection (4) there shall be inserted—

“(4A) References in section 683 to a settlement do not include references to an outright gift by one spouse to the other of property from which income arises unless—

- (a) the gift does not carry a right to the whole of that income, or
- (b) the property given is wholly or substantially a right to income.

(4B) For the purposes of subsection (4A) above a gift is not an outright gift if it is subject to conditions, or if the property given or any derived property is or will or may become, in any circumstances whatsoever, payable to or applicable for the benefit of the donor.

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(4C) References in section 683 to a settlement do not include references to their irrevocable allocation of pension rights by one spouse to the other in accordance with the terms of a relevant statutory scheme (within the meaning of Chapter I of Part XIV).”

(5) This section shall have effect for the year 1990-91 and subsequent years of assessment.

## 109 Settlements where settlor retains interest in settled property.

(1) After section 674 of the Taxes Act 1988 there shall be inserted—

### “674A Other settlements where settlor retains interest in settled property.

(1) Where, during the life of the settlor, income arising under a settlement is, under the settlement and in the events that occur, payable to or applicable for the benefit of any person other than the settlor, then, unless, under the settlement and in those events, the income—

- (a) consists of annual payments made under a partnership agreement to or for the benefit of a former member, or the widow or dependants of a deceased former member, of the partnership, being payments made under a liability incurred for full consideration; or
- (b) is of a kind excluded from subsection (1) of section 683 by subsection (6) or (9) of that section; or
- (c) is income arising under a settlement made by one party to a marriage by way of provision for the other after the dissolution or annulment of the marriage, or while they are separated under an order of a court or under a separation agreement or in such circumstances that the separation is likely to be permanent, being income payable to or applicable for the benefit of that other party; or
- (d) is income from property of which the settlor has divested himself absolutely by the settlement; or
- (e) consists of covenanted payments to charity (as defined by section 660(3)); or
- (f) is income which, by virtue of any provision of the Income Tax Acts other than this section, is to be treated for all the purposes of those Acts as income of the settlor;

the income shall be treated for all the purposes of the Income Tax Acts as the income of the settlor and not as the income of any other person.

(2) Subsections (6) to (10) of section 683 shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of that section.

(3) Subsections (1), (2), (3) and (for the year 1990-91 and subsequent years of assessment) (4A) to (4C) of section 685 shall have effect for the purposes of this section as they have effect for the purposes of section 683, but with the omission from subsections (1) and (2) of the words “in the case of a settlement made after 6th April 1965”.

(4) For the year 1990-91 and subsequent years of assessment subsection (1) (a) above shall have effect with the insertion after the word “widow” of the word “widower”.

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- (5) This section applies in relation to income—
- (a) which arises on or after 14th March 1989 under a settlement made on or after that day, or
  - (b) which arises on or after 6th April 1990 under a settlement made before 14th March 1989, so far as it is payable to or applicable for the benefit of the settlor's husband or wife,  
except income consisting of annual payments made under an obligation which is an existing obligation for the purposes of section 36(3) of the Finance Act 1988.”
- (2) In section 125(3) of the Taxes Act 1988, in paragraph (a), for the words “section 683(1) (a) or (c) or (6)” there shall be substituted the words “subsection (1)(a) or (c) of section 674A or 683 or subsection (6) of section 683 (including that subsection as it applies in relation to section 674A(1))”.
- (3) In sections 675(1), (4) and (5) and 676(1)(a) of that Act, for the words “or 674” there shall be substituted the words “674 or 674A”.
- (4) In section 677(2)(c) of that Act, after “674” there shall be inserted “674A”.

## 110 Residence of trustees.

- (1) Where the trustees of a settlement include at least one who is not resident in the United Kingdom as well as at least one who is, then for all the purposes of the Income Tax Acts—
- (a) if the condition in subsection (2) below is satisfied, the trustee or trustees not resident in the United Kingdom shall be treated as resident there, and
  - (b) otherwise, the trustee or trustees resident in the United Kingdom shall be treated as not resident there (but as resident outside the United Kingdom).
- (2) The condition referred to in subsection (1) above is that the settlor or, where there is more than one, any of them is at any relevant time—
- (a) resident in the United Kingdom,
  - (b) ordinarily resident there, or
  - (c) domiciled there.
- (3) For the purposes of subsection (2) above the following are relevant times in relation to a settlor—
- (a) in the case of a settlement arising under a testamentary disposition of the settlor or on his intestacy, the time of his death, and
  - (b) in the case of any other settlement, the time or, where there is more than one, each of the times when he has provided funds directly or indirectly for the purposes of the settlement.
- (4) For the purposes of this section “settlor”, in relation to a settlement, includes any person who has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement.
- (5) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words “or a United Kingdom trust (as defined in section 231),” there shall be substituted the words “the trustees of a settlement”.

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- (6) Subject to subsections (7) to (9) below, this section shall apply for the year 1989-90 and subsequent years of assessment.
- (7) For the purpose of determining the residence of trustees at any time during the year 1989-90, the condition in subsection (2) above shall be regarded as not having been satisfied if none of the trustees of the settlement is resident in the United Kingdom at any time during the period beginning with 1st October 1989 and ending with 5th April 1990.
- (8) This section shall not apply for any of the purposes of section 739 of the Taxes Act 1988 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—
  - (a) the capital sum there referred to is received, or the right to receive it is acquired, before that date, and
  - (b) that sum is wholly repaid, or the right to it waived, before 1st October 1989.
- (9) This section shall not apply for any of the purposes of section 740 of the Taxes Act 1988 in relation to benefits received before 15th June 1989; and, in relation to benefits received on or after that date, “relevant income” for those purposes shall include income arising to trustees before 6th April 1989 notwithstanding that one or more of them was not resident outside the United Kingdom, unless they have been charged to tax in respect of it.

## 111 Residence of personal representatives.

- (1) Where the personal representatives of a deceased person include at least one who is not resident in the United Kingdom as well as at least one who is, then for all the purposes of the Income Tax Acts—
  - (a) if the condition in subsection (2) below is satisfied, the personal representative or representatives not resident in the United Kingdom shall be treated as resident there, and
  - (b) otherwise, the personal representative or representatives resident in the United Kingdom shall be treated as not resident there (but as resident outside the United Kingdom).
- (2) The condition referred to in subsection (1) above is that the deceased person is at his death—
  - (a) resident in the United Kingdom,
  - (b) ordinarily resident there, or
  - (c) domiciled there.
- (3) In this section “personal representatives” means—
  - (a) in relation to England and Wales, the deceased person’s personal representatives as defined by section 55 of the <sup>M43</sup>Administration of Estates Act 1925;
  - (b) in relation to Scotland, his executor or the judicial factor on his estate;
  - (c) in relation to Northern Ireland, his personal representatives as defined by section 45(1) of the <sup>M44</sup>Administration of Estates Act (Northern Ireland) 1955; and
  - (d) in relation to another country or territory, the persons having in relation to him under its law any functions corresponding to the functions for administration purposes of personal representatives under the law of England and Wales.



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- (4) In section 824(9) of the Taxes Act 1988 (repayment supplements), for the words from “or, in” to “section 701)” there shall be substituted the words “or personal representatives (within the meaning of section 111 of the Finance Act 1989)”.
- (5) Subject to subsections (6) to (8) below, this section shall apply for the year 1989-90 and subsequent years of assessment.
- (6) For the purpose of determining the residence of personal representatives at any time during the year 1989-90, the condition in subsection (2) above shall be regarded as not having been satisfied if none of the personal representatives is resident in the United Kingdom at any time during the period beginning with 1st October 1989 and ending with 5th April 1990.
- (7) This section shall not apply for any of the purposes of section 739 of the Taxes Act 1988 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—
  - (a) the capital sum there referred to is received, or the right to receive it is acquired, before that date, and
  - (b) that sum is wholly repaid, or the right to it waived, before 1st October 1989.
- (8) This section shall not apply for any of the purposes of section 740 of the Taxes Act 1988 in relation to benefits received before 15th June 1989 and, in relation to benefits received on or after that date, “relevant income” for those purposes shall include income arising to personal representatives before 6th April 1989 notwithstanding that one or more of them was not resident outside the United Kingdom, unless they have been charged to tax in respect of it.

**Marginal Citations**

M43 1925 c.23.

M44 1955 c. 24 (N.I.).

*Miscellaneous*

**112 Security: trades etc.**

- (1) This section applies in computing, for the purposes of Case I or Case II of Schedule D, the profits or gains of a trade, profession or vocation carried on by an individual or by a partnership of individuals.
- (2) In a case where this section applies, nothing in section 74(a) or (b) of the Taxes Act 1988 (deductions limited by reference to purposes of trade etc.) shall prevent the deduction of a sum in respect of expenditure incurred in connection with the provision for or use by the individual, or any of the individuals, of a security asset or security service.
- (3) Subsection (2) above shall not apply unless the asset or service is provided or used to meet a threat which—
  - (a) is a special threat to the individual’s personal physical security, and
  - (b) arises wholly or mainly by virtue of the particular trade, profession or vocation concerned.

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- (4) Subsection (2) above shall not apply unless the person incurring the expenditure has as his sole object in doing so the meeting of that threat.
- (5) Subsection (2) above shall not apply in the case of a service unless the benefit resulting to the individual consists wholly or mainly of an improvement of his personal physical security.
- (6) Subsection (2) above shall not apply in the case of an asset unless the person incurring the expenditure intends the asset to be used solely to improve personal physical security.
- (7) But in a case where—
  - (a) apart from subsection (6) above, subsection (2) above would apply in the case of an asset, and
  - (b) the person incurring the expenditure intends the asset to be used partly to improve personal physical security,
 subsection (2) shall nevertheless apply, but only as regards the appropriate proportion of the expenditure there mentioned.
- (8) For the purposes of subsection (7) above the appropriate proportion of the expenditure mentioned in subsection (2) above is such proportion of that expenditure as is attributable to the intention of the person incurring it that the asset be used to improve personal physical security.

### **113 Security: trades etc. (supplementary).**

- (1) For the purposes of section 112 above—
  - (a) a security asset is an asset which improves personal security,
  - (b) a security service is a service which improves personal security,
  - (c) references to an asset do not include references to a car, a ship or an aircraft,
  - (d) references to an asset or service do not include references to a dwelling or grounds appurtenant to a dwelling, and
  - (e) references to an asset include references to equipment and a structure (such as a wall).
- (2) If the person incurring the expenditure intends the asset to be used solely to improve personal physical security, but there is another use for the asset which is incidental to improving personal physical security, that other use shall be ignored in construing section 112(6) above.
- (3) The fact that an asset or service improves the personal physical security of any member of the family or household of the individual concerned, as well as that of the individual, shall not prevent section 112(2) above from applying.
- (4) For the purposes of section 112 above in its application to an asset, it is immaterial whether or not the asset becomes affixed to land (whether constituting a dwelling or otherwise).
- (5) For the purposes of section 112 above in its application to an asset, it is immaterial whether or not the individual concerned is or becomes entitled to the property in the asset or (in the case of a fixture) an estate or interest in the land concerned.
- (6) Section 112 above applies where expenditure is incurred on or after 6th April 1989.

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

- C41** S. 113 applied (31.7.1998 with effect as mentioned in s. 38(2)(3) of 1998 c. 36) by 1988 c. 1, s. 21A(2) (as substituted by 1998 c. 36, s. 38(1), Sch. 5 Pt. I paras. 4, 73)

**114 Relief for pre-trading expenditure.**

- (1) In section 401(1) of the Taxes Act 1988 (which gives relief for expenditure incurred by a person within three years before he begins to carry on a trade, profession or vocation), for the word “three” there shall be substituted the word “five”.
- (2) This section shall have effect where the time when the person begins to carry on the trade, profession or vocation falls after the end of March 1989.

**115 Double taxation: tax credits.**

- (1) Where any arrangements having effect by virtue of section 788 of the Taxes Act 1988 provide —
  - (a) for persons who are resident outside the United Kingdom and who receive distributions from companies resident in the United Kingdom to be entitled to tax credits, and
  - (b) for the amount paid to such a person by way of tax credit to be determined by reference to the amount to which an individual resident in the United Kingdom would have been entitled, subject to a deduction calculated by reference to the aggregate of the amount or value of the distribution and the amount of the tax credit paid,the arrangements shall be construed as providing for that deduction to be calculated by reference to the gross amount or value of the distribution and tax credit, without any allowance for the deduction itself.
- (2) This section shall have effect in relation to payments made before the passing of this Act as well as those made after that time, except that it shall not affect —
  - (a) the judgment of any court given before 25th October 1988, or
  - (b) the law to be applied in proceedings on appeal to the Court of Appeal or the House of Lords where the judgment of the High Court or the Court of Session which is in issue was given before that date.

**116 Interest payments to Netherlands Antilles subsidiaries.**

- (1) A payment to which this section applies shall be treated for the purposes of —
  - (a) section 338 of the Taxes Act 1988 (payment of interest within section 124 of that Act to be a charge on income), and
  - (b) section 349 of that Act (such a payment to be made gross),as if it were a payment of interest within section 124 of that Act (quoted Eurobonds).
- (2) This section applies to a payment of interest if —
  - (a) it is made on or after 1st April 1989 by a relevant United Kingdom company to a relevant Netherlands Antilles subsidiary, and
  - (b) not later than 90 days after the payment is received by the subsidiary, it is applied by the subsidiary in paying interest on quoted Eurobonds issued by it

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before 26th July 1984 or in meeting expenses incurred in connection with the issue of quoted Eurobonds so issued.

- (3) In subsection (2) above—
  - (a) “relevant Netherlands Antilles subsidiary” means a company which—
    - (i) at the time when the quoted Eurobonds were issued was resident in the Netherlands Antilles (including Aruba) and was a 90 per cent. subsidiary of a company resident in the United Kingdom, and
    - (ii) at the time when the payment is made is resident in the Netherlands Antilles (but not Aruba) and is a 90 per cent. subsidiary of the relevant United Kingdom company; and
  - (b) “relevant United Kingdom company” means a company which is resident in the United Kingdom and which is not a 51 per cent. subsidiary of a company not resident in the United Kingdom.
- (4) For the purpose of determining whether a company is a relevant Netherlands Antilles subsidiary, its residence (whether before 1st April 1989 or at any later time) shall be ascertained in accordance with the terms of the arrangements made with the Government of the Kingdom of the Netherlands on behalf of the Government of the Netherlands Antilles which had effect by virtue of section 788 of the Taxes Act 1988 immediately before 1st April 1989.
- (5) In this section “quoted Eurobond” has the same meaning as in section 124 of the Taxes Act 1988.

## CHAPTER II

### CAPITAL ALLOWANCES

117– ..... <sup>F27</sup>  
 120

**Textual Amendments**  
**F27** Ss. 117–120 repealed by Capital Allowance Act 1990 (c. 1, SIF 63:1), s. 164(4)(5), **Sch. 2**

**121 Miscellaneous amendments.**

- (1) Schedule 13 to this Act (which makes miscellaneous amendments of the enactments relating to capital allowances) shall have effect.
- (2) That Schedule shall be construed as one with [<sup>F28</sup>The Capital Allowances Act 1990.]

**Textual Amendments**  
**F28** Capital Allowances Act 1990 (c. 1, SIF 63:1), s. 164, **Sch.1 para. 10**. Previously “Part I of the Capital Allowances Act 1968”

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## CHAPTER III

### CAPITAL GAINS

#### *Exemptions*

#### **122 Annual exempt amount for 1989-90.**

For the year 1989-90 section 5 of the <sup>M45</sup>Capital Gains Tax Act 1979 (annual exempt amount) shall have effect as if the amounts specified in subsection (1A) were £5,000; and accordingly subsection (1B) of that section (indexation) shall not apply for that year.

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#### **Marginal Citations**

**M45** 1979 c. 14.

#### **123 Increase of chattel exemption.**

- (1) In the following enactments, namely—
- (a) section 128 of the <sup>M46</sup>Capital Gains Tax Act 1979 (chattel exemption by reference to consideration of £3,000),
  - (b) section 12(2)(b) of the <sup>M47</sup>Taxes Management Act 1970 (information about assets acquired), and
  - (c) section 25(7) of that Act (information about assets disposed of),
- for “£3,000”, in each place where it occurs, there shall be substituted “£6,000”.
- (2) This section applies to disposals on or after 6th April 1989 and accordingly, in relation to subsection (1)(b) above, to assets acquired on or after that date.

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#### **Marginal Citations**

**M46** 1979 c. 14.

**M47** 1970 c. 9.

#### *Gifts*

#### **124 Relief for gifts.**

- (1) Section 79 of the <sup>M48</sup>Finance Act 1980 (which gives general relief for gifts and other disposals not at arm’s length) shall cease to have effect.
- (2) Schedule 14 to this Act (which extends relief for gifts of business assets, provides relief for gifts on which inheritance tax is chargeable, gifts for political parties, gifts of property of historic interest etc. or works of art and gifts to certain maintenance funds etc., and makes provision for payment of tax by instalments in the case of gifts where relief is not available) shall have effect.
- (3) This section shall have effect in relation to disposals on or after 14th March 1989 (except that it shall not affect the operation of any enactment in relation to such a

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disposal in a case where the enactment operates in consequence of relief having been given under section 79 of the Finance Act 1980 in respect of a disposal made before that date).

**Marginal Citations**

**M48** 1980 c. 48.

**125 Gifts to housing associations.**

(1) The following section shall be inserted in the Capital Gains Tax Act 1979 after section 146—

**“146A Gifts to housing associations.**

(1) Subsection (2) below shall apply where—

- (a) a disposal of an estate or interest in land in the United Kingdom is made to a registered housing association otherwise than under a bargain at arm's length, and
- (b) a claim for relief under this section is made by the transferor and the association.

(2) Section 29A(1) above (consideration deemed to be equal to market value) shall not apply; but if the disposal is by way of gift or for a consideration not exceeding the sums allowable as a deduction under section 32 above, then—

- (a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
- (b) where, after the disposal, the estate or interest is disposed of by the association, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the association.

(3) In this section “registered housing association” means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981.”

(2) This section shall apply to disposals made on or after 14th March 1989.

*Non-residents etc.*

**126 Non-resident carrying on profession or vocation in the United Kingdom.**

(1) For the year 1988-89, section 12 of the <sup>M49</sup>Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency) shall have effect with the insertion of the following subsection after subsection (2)—

“(2A) In the case of a disposal made on or after 14th March 1989, this section shall apply as if references to a trade included references to a profession or vocation, but not so as to make a person chargeable to capital gains tax by virtue of a profession or vocation which he ceased to carry on in the United Kingdom through a branch or agency before 14th March 1989.”

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- (2) For the year 1989-90 and subsequent years of assessment section 12 of the Capital Gains Tax Act 1979 shall have effect with the insertion of the following subsection after subsection (2)—
- “(2A) This section shall apply as if references to a trade included references to a profession or vocation.”
- (3) Where immediately before 14th March 1989 a person is not resident and not ordinarily resident in the United Kingdom but is carrying on a profession or vocation in the United Kingdom through a branch or agency, he shall be deemed for all purposes of capital gains tax—
- to have disposed immediately before 14th March 1989 of every asset to which subsection (4) below applies, and
  - immediately to have reacquired every such asset, at its market value at the time of the deemed disposal.
- (4) This subsection applies to any asset which was held by the person immediately before 14th March 1989 and which at the beginning of 14th March 1989 is a chargeable asset in relation to him by virtue of his carrying on the profession or vocation.
- (5) For the purposes of subsection (4) above an asset is at the beginning of 14th March 1989 a chargeable asset in relation to the person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal would be gains in respect of which he would be chargeable to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979.
- (6) In the case of a person carrying on a profession or vocation in the United Kingdom through a branch or agency, the charge to capital gains tax under section 12(1) of the Capital Gains Tax Act 1979 shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.

**Marginal Citations**

M49 1979 c. 14.

**127 Non-residents: deemed disposals.**

- (1) Where an asset ceases by virtue of becoming situated outside the United Kingdom to be a chargeable asset in relation to a person, he shall be deemed for all purposes of the <sup>M50</sup>Capital Gains Tax Act 1979—
- to have disposed of the asset immediately before the time when it became situated outside the United Kingdom, and
  - immediately to have reacquired it, at its market value at that time.
- (2) Subsection (1) above does not apply—
- where the asset becomes situated outside the United Kingdom contemporaneously with the person there mentioned ceasing to carry on a trade in the United Kingdom through a branch or agency, or
  - where the asset is an exploration or exploitation asset.

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- (3) Where an asset ceases to be a chargeable asset in relation to a person by virtue of his ceasing to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—
- (a) to have disposed of the asset immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency, and
  - (b) immediately to have reacquired it, at its market value at that time.
- [<sup>F29</sup>(3A) Subsection (3) above shall not apply to an asset by reason of a transfer of the whole or part of the long term business of an insurance company to another company if section 267 of the Taxes Act 1970 has effect in relation to the asset by virtue of section 267A of that Act.]
- (4) Subsection (3) above does not apply to an asset which is a chargeable asset in relation to the person there mentioned at any time after he ceases to carry on the trade in the United Kingdom through a branch or agency and before the end of the chargeable period in which he does so.
- (5) In this section—
- “exploration or exploitation asset” means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area, and
- “designated area” and “exploration or exploitation activities” have the same meanings as in section 38 of the <sup>M51</sup>Finance Act 1973.
- (6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—
- (a) would be gains in respect of which he would be chargeable to capital gain tax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency), or
  - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).
- (7) Subsection (1) above shall apply where an asset ceases to be situated in the United Kingdom on or after 14th March 1989.
- (8) Subsection (3) above shall apply where a person ceases to carry on a trade in the United Kingdom through a branch or agency on or after 14th March 1989.
- (9) This section shall apply as if references to a trade included references to a profession or vocation.

#### Textual Amendments

**F29** S. 127(3A) inserted by Finance Act 1990 (c. 29, SIF 63:1), s. 48, Sch. 9 paras. 2, 7

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

**C42** S. 127(3) excluded by Taxes Act 1970 (c. 10, SIF 63:1), s. 273A(2)(b) (as inserted by Finance Act 1990 (c. 29, SIF 63:1), s. 70(1)(9))

s. 127(3) excluded (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), s. 269A(4)(b) as inserted (16.7.92 but deemed always to have had effect) by (Finance (No. 2) Act 1992 (c. 48), s. 47



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**Marginal Citations**

**M50** 1979 c. 14.

**M51** 1973c. 51.

**128 Non-residents: post-cessation disposals.**

- (1) For the year 1988-89, section 12 of the <sup>M52</sup>Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency) shall have effect with the insertion of the following subsection after subsection (1)—

“(1A) In the case of a disposal made on or after 14th March 1989, subsection (1) above only applies—

- (a) if it is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency, or
- (b) if he ceased to carry on the trade in the United Kingdom through a branch or agency before 14th March 1989.”

- (2) For the year 1989-90 and subsequent years of assessment, section 12 of the Capital Gains Tax Act 1979 shall have effect with the insertion of the following subsection after subsection (1)—

“(1A) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency.”

**Marginal Citations**

**M52** 1979 c. 14.

**129 Non-residents: roll-over relief.**

- (1) Section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply in the case of a person if the old assets are chargeable assets in relation to him at the time they are disposed of, unless the new assets are chargeable assets in relation to him immediately after the time they are acquired.

- (2) Subsection (1) above shall not apply where—

- (a) the person acquires the new assets after he has disposed of the old assets, and
- (b) immediately after the time they are acquired the person is resident or ordinarily resident in the United Kingdom.

- (3) Subsection (2) above shall not apply where immediately after the time the new assets are acquired—

- (a) the person is a dual resident, and
- (b) the new assets are prescribed assets.

- (4) This section shall apply where the disposal of the old assets or the acquisition of the new assets (or both) takes place on or after 14th March 1989.

- (5) But where the acquisition of the new assets takes place before 14th March 1989 and the disposal of the old assets takes place on or after that date, this section shall not apply

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if the disposal of the old assets takes place within twelve months of the acquisition of the new assets or such longer period as the Board may by notice in writing allow.

(6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

- (a) would be gains in respect of which he would be chargeable to capital gain tax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency), or
- (b) would form part of his chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

(7) In this section—

“dual resident” means a person who is resident or ordinarily resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom;

“double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the <sup>M53</sup>Capital Gains Tax Act 1979);

“prescribed asset”, in relation to a dual resident, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, he falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to him on a disposal.

(8) In this section—

- (a) “the old assets” and “the new assets” have the same meanings as in section 115 of the Capital Gains Tax Act 1979,
- (b) references to disposal of the old assets include references to disposal of an interest in them, and
- (c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

#### Marginal Citations

M53 1979 c. 14.

### 130 Exploration or exploitation assets: definition.

(1) In section 38 of the <sup>M54</sup>Finance Act 1973 (territorial extension) in subsection (3B) (definition of exploration or exploitation asset for purposes of that section)—

- (a) in paragraph (a) the words “within the period of two years ending at the date of the disposal” shall be omitted, and
- (b) in paragraph (b) for the words “, at some time within the period of two years ending at the date of the disposal, has” there shall be substituted the words “has at some time”.

(2) This section shall apply where assets are disposed of on or after 14th March 1989.

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#### Marginal Citations

M54 1973 c. 51.

### 131 Exploration or exploitation assets: deemed disposals.

- (1) Where an exploration or exploitation asset which is a mobile asset ceases to be chargeable in relation to a person by virtue of ceasing to be dedicated to an oil field in which he, or a person connected with him within the meaning of section 839 of the Taxes Act 1988, is or has been a participator, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—
  - (a) to have disposed of the asset immediately before the time when it ceased to be so dedicated, and
  - (b) immediately to have reacquired it, at its market value at that time.
- (2) Where a person who is not resident and not ordinarily resident in the United Kingdom ceases to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of the <sup>M55</sup>Capital Gains Tax Act 1979—
  - (a) to have disposed immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency of every asset to which subsection (3) below applies, and
  - (b) immediately to have reacquired every such asset, at its market value at that time.
- (3) This subsection applies to any exploration or exploitation asset, other than a mobile asset, used in or for the purposes of the trade at or before the time of the deemed disposal.
- (4) A person shall not be deemed by subsection (2) above to have disposed of an asset if, immediately after the time when he ceases to carry on the trade in the United Kingdom through a branch or agency, the asset is used in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area.
- (5) Where in a case to which subsection (4) above applies the person ceases to use the asset in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area, he shall be deemed for all purposes of the Capital Gains Tax Act 1979—
  - (a) to have disposed of the asset immediately before the time when he ceased to use it in or for the purposes of such activities, and
  - (b) immediately to have reacquired it, at its market value at that time.
- (6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—
  - (a) would be gains in respect of which he would be chargeable to capital gain tax under section 12(1) of the Capital Gains Tax Act 1979 (non-resident with United Kingdom branch or agency), or
  - (b) would form part of his chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988 (non-resident companies).

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(7) In this section—

- (a) “exploration or exploitation asset” means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;
- (b) “designated area” and “exploration or exploitation activities” have the same meanings as in section 38 of the <sup>M56</sup>Finance Act 1973; and
- (c) the expressions “dedicated to an oil field” and “participator” shall be construed as if this section were included in Part I of the <sup>M57</sup>Oil Taxation Act 1975.

(8) Subsection (1) above shall apply where an asset ceases to be dedicated as mentioned in that subsection on or after 14th March 1989.

(9) Subsection (2) above shall apply where a person ceases to carry on a trade in the United Kingdom through a branch or agency on or after 14th March 1989.

(10) Subsection (5) above shall apply where a person ceases to use an asset in or for the purposes of exploration or exploitation activities on or after 14th March 1989.

#### Marginal Citations

**M55** 1979 c. 14.

**M56** 1973 c. 51.

**M57** 1975 c. 22.

### 132 Dual resident companies: deemed disposal.

(1) For the purposes of this section, a company is a dual resident company if it is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Where an asset of a dual resident company becomes a prescribed asset, the company shall be deemed for all purposes of the <sup>M58</sup>Capital Gains Tax Act 1979—

- (a) to have disposed of the asset immediately before the time at which it became a prescribed asset, and
- (b) immediately to have reacquired it, at its market value at that time.

(3) Subsection (2) above does not apply where the asset becomes a prescribed asset on the company becoming a company which falls to be regarded as mentioned in subsection (1) above.

(4) This section applies where an asset becomes a prescribed asset on or after 14th March 1989.

(5) In this section—

“double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the <sup>M59</sup>Capital Gains Tax Act 1979);

“prescribed asset”, in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, the company falls to be regarded for

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the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

**Marginal Citations**

**M58** 1979 c. 14.  
**M59** 1979 c. 14.

**133 Dual resident companies: roll-over relief.**

- (1) Where a company is a dual resident company at the time it disposes of the old assets and at the time it acquires the new assets, and the old assets are not prescribed assets at the time of disposal, section 115 of the Capital Gains Tax Act 1979 (roll-over relief) shall not apply unless the new assets are not prescribed assets immediately after the time of acquisition.
- (2) This section shall apply where the disposal of the old assets or the acquisition of the new assets (or both) takes place on or after 14th March 1989.
- (3) But where the acquisition of the new assets takes place before 14th March 1989 and the disposal of the old assets takes place on or after that date, this section shall not apply if the disposal takes place within twelve months of the acquisition or such longer period as the Board may by notice in writing allow.
- (4) In this section—
  - “dual resident company” means a company which is resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom;
  - “double taxation relief arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (as extended to capital gains tax by section 10 of the <sup>M60</sup>Capital Gains Tax Act 1979);
  - “prescribed asset”, in relation to a dual resident company, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.
- (5) In this section—
  - (a) “the old assets” and “the new assets” have the same meanings as in section 115 of the Capital Gains Tax Act 1979,
  - (b) references to disposal of the old assets include references to disposal of an interest in them, and
  - (c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

**Marginal Citations**

**M60** 1979 c. 14.

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### 134 Non-payment of tax by non-resident companies.

- (1) This section applies where—
  - (a) a chargeable gain has accrued to a company not resident in the United Kingdom (the taxpayer company) on the disposal of an asset on or after 14th March 1989,
  - (b) the gain forms part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b) of the Taxes Act 1988, and
  - (c) any of the corporation tax assessed on the company for the accounting period in which the gain accrued is not paid within six months from the time when it becomes payable.
- (2) The Board may, at any time before the end of the period of three years beginning with the time when the amount of corporation tax for the accounting period in which the chargeable gain accrued is finally determined, serve on any person to whom subsection (4) below applies a notice—
  - (a) stating the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the accounting period in which the gain accrued and the date when the tax became payable, and
  - (b) requiring that person to pay the relevant amount within thirty days of the service of the notice.
- (3) For the purposes of subsection (2) above the relevant amount is the lesser of—
  - (a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the accounting period in which the gain accrued, and
  - (b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.
- (4) This subsection applies to the following persons—
  - (a) any company which is, or within the relevant period was, a member of the same group as the taxpayer company, and
  - (b) any person who is, or within the relevant period was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.
- (5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the taxpayer company.
- (6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (7) In this section—
 

“director”, in relation to a company, has the meaning given by subsection (6) of section 168 of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);

“controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988);

“group” has the meaning which would be given by section 272 of the Taxes Act 1970 if in that section references to residence in the United Kingdom were

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omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.

- (8) In this section “the relevant period” means—
- (a) where the time when the chargeable gain accrues is less than twelve months after 14th March 1989, the period beginning with that date and ending with that time;
  - (b) in any other case, the period of twelve months ending with that time.

### *Value shifting and groups of companies*

#### **135 Value shifting.**

- (1) In section 26 of the <sup>M61</sup>Capital Gains Tax Act 1979 (value shifting: further provisions) in subsection (1)(a) (schemes whereby value of the asset disposed of is materially reduced) after the words “the asset” there shall be inserted the words “or a relevant asset” and at the end of that subsection there shall be inserted—

“(1A) For the purposes of this section, where the asset disposed of by a company (“the disposing company”) consists of shares in, or securities of, another company, another asset is a relevant asset if, at the time of the disposal, it is owned by a company associated with the disposing company; but no account shall be taken of any reduction in the value of a relevant asset except in a case where—

- (a) during the period beginning with the reduction in value and ending immediately before the disposal by the disposing company, there is no disposal of the asset to any person, other than a disposal falling within section 273(1) of the Taxes Act 1970 (transfers within a group: no gain/no loss),
- (b) no disposal of the asset is treated as having occurred during that period by virtue of section 278 of the Taxes Act 1970 (company ceasing to be member of group), and
- (c) if the reduction had not taken place but any consideration given for the relevant asset and any other material circumstances (including any consideration given before the disposal for the asset disposed of) were unchanged, the value of the asset disposed of would, at the time of the disposal, have been materially greater;

and in this subsection “securities” has the same meaning as in section 82 below.”

- (2) For subsection (7) of that section there shall be substituted—

“(7) References in this section, in relation to any disposal, to a reduction in the value of an asset, where the asset consists of shares owned by a company in another company, shall be interpreted in accordance with sections 26A to 26C below and, in those sections, the disposal, the asset and those companies are referred to respectively as “the section 26 disposal”, “the principal asset”, “the first company” and “the second company”.”

- (3) In subsection (8) of that section for the words “reference in subsection (1)(a)” there shall be substituted the words “references in subsections (1)(a) and (1A)”.

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- (4) This section shall have effect in respect of any disposal of an asset on or after 14th March 1989.

**Marginal Citations**

**M61** 1979 c. 14.

**136 Value shifting: reductions attributable to distributions within a group.**

- (1) After section 26 of the <sup>M62</sup>Capital Gains Tax Act 1979 there shall be inserted—

**“26A Value shifting: distributions within a group followed by a disposal of shares.**

- (1) The references in section 26 above to a reduction in the value of an asset, in the case mentioned in subsection (7) of that section, do not include a reduction attributable to the payment of a dividend by the second company at a time when it and the first company are associated, except to the extent (if any) that the dividend is attributable to chargeable profits of the second company and, in such a case, the tax-free benefit shall be ascertained without regard to any part of the dividend that is not attributable to such profits.
- (2) Subsections (3) to (11) below apply for the interpretation of subsection (1) above.
- (3) Chargeable profits shall be ascertained as follows—
- (a) the distributable profits of any company are chargeable profits of that company to the extent that they are profits arising on a transaction caught by this section, and
  - (b) where any company makes a distribution attributable wholly or partly to chargeable profits (including any profits that are chargeable profits by virtue of this paragraph) to another company, the distributable profits of the other company, so far as they represent that distribution or so much of it as was attributable to chargeable profits, are chargeable profits of the other company,
- and for this purpose any loss or other amount to be set against the profits of a company in determining the distributable profits shall be set first against profits other than the profits so arising or, as the case may be, representing so much of the distribution as was attributable to chargeable profits.
- (4) The distributable profits of a company are such profits computed on a commercial basis as, after allowing for any provision properly made for tax, the company is empowered, assuming sufficient funds, to distribute to persons entitled to participate in the profits of the company.
- (5) Profits of a company (“company A”) are profits arising on a transaction caught by this section where each of the following three conditions is satisfied.
- (6) The first condition is that the transaction is—
- (a) a disposal of an asset by company A to another company in circumstances such that company A and the other company are treated



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as mentioned in section 273(1) of the Taxes Act 1970 (transfers within a group: no gain/no loss), or

- (b) an exchange, or a transaction treated for the purposes of section 85(2) and (3) below as an exchange, of shares in or debentures of a company held by company A for shares in or debentures of another company, being a company associated with company A immediately after the transaction, and is treated by virtue of section 85(3) below as a reorganisation of share capital, or
- (c) a revaluation of an asset in the accounting records of company A.

In the following conditions the “asset with enhanced value” means (subject to section 26C below), in the paragraph (a) case, the asset acquired by the person to whom the disposal is made, in the paragraph (b) case, the shares in or debentures of the other company and, in the paragraph (c) case, the revalued asset.

- (7) The second condition is that—
  - (a) during the period beginning with the transaction referred to in subsection (6) above and ending immediately before the section 26 disposal, there is no disposal of the asset with enhanced value to any person, other than a disposal falling within section 273(1) of the Taxes Act 1970, and
  - (b) no disposal of the asset with enhanced value is treated as having occurred during that period by virtue of section 278 of the Taxes Act 1970 (company ceasing to be member of group).
- (8) The third condition is that, immediately after the section 26 disposal, the asset with enhanced value is owned by a person other than the company making that disposal or a company associated with it.
- (9) The conditions in subsections (6) to (8) above are not satisfied if—
  - (a) at the time of the transaction referred to in subsection (6) above, company A carries on a trade and a profit on a disposal of the asset with enhanced value would form part of the trading profits, or
  - (b) by reason of the nature of the asset with enhanced value, a disposal of it could give rise neither to a chargeable gain nor to an allowable loss, or
  - (c) immediately before the section 26 disposal, the company owning the asset with enhanced value carries on a trade and a profit on a disposal of the asset would form part of the trading profits.
- (10) The amount of chargeable profits of a company to be attributed to any distribution made by the company at any time in respect of any class of shares, securities or rights shall be ascertained by—
  - (a) determining the total of distributable profits, and the total of chargeable profits, that remains after allowing for earlier distributions made in respect of that or any other class of shares, securities or rights, and for distributions made at or to be made after that time in respect of other classes of shares, securities or rights, and
  - (b) attributing first to that distribution distributable profits other than chargeable profits.

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- (11) The amount of chargeable profits of a company to be attributed to any part of a distribution made at any time to which a person is entitled by virtue of any part of his holding of any class of shares, securities or rights, shall be such proportion of the chargeable profits as are attributable under subsection (10) above to the distributions made at that time in respect of that class as corresponds to that part of his holding.

### **26B Value shifting: disposals within a group followed by a disposal of shares.**

- (1) The references in section 26 above to a reduction in the value of an asset, in the case mentioned in subsection (7) of that section, do not include a reduction attributable to the disposal of any asset (“the underlying asset”) by the second company at a time when it and the first company are associated, being a disposal falling within section 273(1) of the Taxes Act 1970 (transfers within group: no gain/no loss), except in a case within subsection (2) below.
- (2) A case is within this subsection if the amount or value of the actual consideration for the disposal of the underlying asset—
- (a) is less than the market value of the underlying asset, and
  - (b) is less than the cost of the underlying asset,
- unless the disposal is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.
- (3) For the purposes of subsection (2) above, the cost of an asset owned by a company is the aggregate of—
- (a) any capital expenditure incurred by the company in acquiring or providing the asset, and
  - (b) any other capital expenditure incurred by the company in respect of the asset while owned by that company.
- (4) For the purposes of this section, where the disposal of the underlying asset is a part disposal, the reference in subsection (2)(a) above to the market value of the underlying asset is to the market value of the asset acquired by the person to whom the disposal is made and the amounts to be attributed to the underlying asset under paragraphs (a) and (b) of subsection (3) above shall be reduced to the appropriate proportion of those amounts, that is—
- (a) the proportion of capital expenditure in respect of the underlying asset properly attributed in the accounting records of the company to the asset acquired by the person to whom the disposal is made, or
  - (b) where paragraph (a) above does not apply, such proportion as appears to the inspector, or on appeal the Commissioners concerned, to be just and reasonable.
- (5) Where by virtue of a distribution in the course of dissolving or winding up the second company the first company is treated as disposing of an interest in the principal asset, the exception mentioned in subsection (1) above does not apply.

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### 26C Value shifting: supplementary.

- (1) For the purposes of sections 26(1A) and 26A(7) to (9) above, subsections (2) to (6) below apply for the purpose of determining in the case of any asset (“the original asset”) whether it is subsequently disposed of or treated as disposed of or owned or any other condition is satisfied in respect of it.
- (2) References in sections 26(1A)(a) and (b) and 26A(7) to a disposal are to a disposal other than a part disposal.
- (3) References to an asset are to the original asset or, where at a later time one or more assets are treated by virtue of subsections (5) or (6) below as the same as the original asset—
  - (a) if no disposal falling within paragraph (a) or (b) of section 26(1A) or, as the case may be, of 26A(7) has occurred, those references are to the asset so treated or, as the case may be, all the assets so treated, and
  - (b) in any other case, those references are to an asset or, as the case may be, all the assets representing that part of the value of the original asset that remains after allowing for earlier disposals falling within the paragraphs concerned,references in this subsection to a disposal including a disposal which would fall within the paragraphs concerned but for subsection (2) above.
- (4) Where by virtue of subsection (3) above those references are to two or more assets—
  - (a) those assets shall be treated as if they were a single asset,
  - (b) any disposal of any one of them is to be treated as a part disposal, and
  - (c) the reference in section 26(1A) to the asset owned at the time of the disposal by a company associated with the disposing company and the reference in section 26A(8) to the asset with enhanced value is to all or any of those assets.
- (5) Where there is a part disposal of an asset, that asset and the asset acquired by the person to whom the disposal is made are to be treated as the same.
- (6) Where the value of an asset is derived from any other asset in the ownership of the same or an associated company, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the first asset is to be treated as the same as the second.
- (7) For the purposes of section 26(1A) above, where account is to be taken under that subsection of a reduction in the value of a relevant asset and at the time of the disposal by the disposing company referred to in that subsection—
  - (a) references to the relevant asset are by virtue of this section references to two or more assets treated as a single asset, and
  - (b) one or more but not all of those assets are owned by a company associated with the disposing company,the amount of the reduction in the value of the relevant asset to be taken into account by virtue of that subsection shall be reduced to such amount as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable.

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- (8) For the purposes of section 26A above, where—
- (a) a dividend paid by the second company is attributable to chargeable profits of that company, and
  - (b) the condition in subsection (7), (8) or (9)(c) of that section is satisfied by reference to an asset, or assets treated as a single asset, treated by virtue of subsection (3)(b) above as the same as the asset with enhanced value,
- the amount of the reduction in value of the principal asset shall be reduced to such amount as appears to the inspector, or on appeal to the Commissioners concerned, to be just and reasonable.
- (9) For the purposes of sections 26 to 26B above and this section, companies are associated if they are members of the same group.
- (10) Section 272(1) to (4) of the Taxes Act 1970 (groups of companies: definitions) applies for the purposes of sections 26 to 26B above and this section as it applies for the purposes of that section.”
- (2) This section shall have effect in respect of any disposal of an asset on or after 14th March 1989, but—
- (a) no account shall be taken by virtue of section 26A of the <sup>M63</sup>Capital Gains Tax Act 1979 of any reduction in the value of an asset attributable to the payment of a dividend unless it is paid on or after that date, and
  - (b) no account shall be taken by virtue of section 26B of that Act of a reduction in the value of an asset attributable to the disposal of another asset unless the disposal took place on or after that date.

#### Marginal Citations

**M62** 1979 c. 14.

**M63** 1979 c. 14.

### 137 Value shifting: transactions treated as a reorganisation of share capital.

- (1) After section 26C of the Capital Gains Tax Act 1979 there shall be inserted—

#### “26D Value shifting: transactions treated as a reorganisation of share capital.

- (1) Where—
- (a) but for sections 78 and 85(3) below, section 26 above would have effect as respects the disposal by a company (“the disposing company”) of an asset consisting of shares in or debentures of another company (“the original holding”) in exchange for shares in or debentures of a further company which, immediately after the disposal, is not a member of the same group as the disposing company, and
  - (b) if section 26 above had effect as respects that disposal, any allowable loss or chargeable gain accruing on the disposal would be calculated as if the consideration for the disposal were increased by an amount,

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the disposing company shall be treated for the purposes of section 79(2) below as receiving, on the reorganisation of share capital that is treated as occurring by virtue of section 85(3) below, that amount for the disposal of the original holding.

(2) For the purposes of subsection (1) above it shall be assumed that section 86 below has effect generally for the purposes of this Act, and in that subsection “group” has the same meaning as in sections 26 to 26C above.”

(2) This section shall have effect where the reduction in value, by reason of which the amount referred to in section 26D(1)(b) of the <sup>M64</sup>Capital Gains Tax Act 1979 falls to be calculated, occurred on or after 14th March 1989.

**Marginal Citations**  
M64 1979 c.14.

### 138 Groups of companies.

(1) In section 272 of the Taxes Act 1970 (groups of companies: definitions) in subsection (1), for paragraphs (b) and (c) there shall be substituted—

“(b) subsections (1A) to (1D) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;”.

(2) After that subsection there shall be inserted—

“(1A) Subject to subsections (1B) to (1D) below—

- (a) a company (referred to below in this Chapter as the “principal company of the group”) and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but
- (b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.

(1B) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.

(1C) Where a company (“the subsidiary”) is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (1A)(b) above, the subsidiary may, where the requirements of subsection (1A) above are satisfied, itself be the principal company of another group notwithstanding subsection (1B) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.

(1D) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of two or more groups (the principal company of each group being referred to below as the “head of a group”), it is a member only of that group, if any, of which it would be a

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member under one of the following tests (applying earlier tests in preference to later tests)—

- (a) it is a member of the group it would be a member of if, in applying subsection (1A)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,
- (b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,
- (c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,
- (d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act 1988).

(1E) For the purposes referred to in subsection (1) above, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—

- (a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and
- (b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.

(1F) Schedule 18 to the Taxes Act 1988 (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (1D) and (1E) above as if the references to subsection (7), or subsections (7) to (9), of section 413 of that Act were references to subsections (1D) and (1E) above and as if, in paragraph 1(4), the words from "but" to the end and paragraph 7(1)(b) were omitted."

(3) In subsection (3) of that section for the words from "75 per cent. subsidiary of another company" to "is the principal company" there shall be substituted the words "member of another group, the first group and the other group shall be regarded as the same".

(4) In subsection (4) of that section—

- (a) for the words "a company" there shall be substituted the words "a member of a group of companies", and
- (b) for the words from "that company, or" to the end there shall be substituted the words "that or any other company ceasing to be a member of the group".

(5) In section 278 of that Act (deemed disposal of certain assets held by company leaving group) after subsection (3A) there shall be inserted—

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- “(3B) Where, apart from subsection (3C) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (3C) to (3E) below shall apply.
- (3C) The company in question shall not be treated as selling the asset at that time; but if—
- (a) within six years of that time the company in question ceases at any time (“the relevant time”) to satisfy the following conditions, and
  - (b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,
- the company in question shall be treated for all the purposes of the Capital Gains Tax Act 1979 as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.
- (3D) Those conditions are—
- (a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (3B) above, and
  - (b) that the company is an effective 51 per cent. subsidiary of one or more of those members.
- (3E) Any chargeable gain or allowable loss accruing to the company on that sale shall be treated as accruing at the relevant time.
- (3F) Where—
- (a) by virtue of this section a company is treated as having sold an asset at any time, and
  - (b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 26 of that Act, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,
- subsections (3) and (3C) above shall have effect as if the market value at that time had been that amount greater.”
- (6) In section 97 of the <sup>M65</sup>Inheritance Tax Act 1984 (transfers within group etc.)—
- (a) for the words “principal member” and “principal member’s”, wherever appearing, there shall be substituted “principal company” and “principal company’s” respectively,
  - (b) for subsection (2)(a) there shall be substituted—
    - “(a) section 272 of the Taxes Act 1970 (groups of companies: definitions) applies as for the purposes of sections 273 to 281 of that Act” and
  - (c) the words from “and in this section” in subsection (2) to the end shall be omitted.
- (7) Subject to the following provisions, this section shall be deemed to have come into force on 14th March 1989; but section 278(3E) of the Taxes Act 1970 shall have effect

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where the accounting period in which the company referred to in subsection (3B) of that section ceases to be a member of a group ends after the day appointed for the purposes of paragraph 4 of Schedule 6 to the <sup>M66</sup>Finance (No. 2) Act 1987.

(8) Where—

- (a) at the beginning of the commencement day a company ceases for the purposes of the group provisions to be a member of a group by reason only of the substitution for the old definition of the new definition, and
- (b) in consequence of ceasing to be such a member the company would, apart from this subsection, be treated by virtue of section 278(3) of the Taxes Act 1970 as selling an asset at any time,

the company in question shall not be treated as selling that asset at that time unless the conditions in subsection (9) below become satisfied, assuming for that purpose that the old definition applies.

(9) Those conditions are—

- (a) that for the purposes of section 278 of that Act the company in question ceases at any time (“the relevant time”) to be a member of the group referred to in subsection (8)(a) above,
- (b) that, at the relevant time, the company in question, or an associated company also leaving that group at that time, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets, and
- (c) that the time of acquisition referred to in section 278(1) of that Act fell within the period of six years ending with the relevant time.

(10) Where, under any compromise or arrangement agreed to on any date before 14th March 1989 in pursuance of section 425 of the <sup>M67</sup>Companies Act 1985 and sanctioned by the court, one company acquires at any time, directly or indirectly, an interest in ordinary share capital of another company and immediately after that time—

- (a) under the old definition the two companies are, by virtue of that acquisition, members of a group for the purposes of the group provisions, but
- (b) the second company is not an effective 51 per cent. subsidiary of the first company,

subsection (11) below applies; and in that subsection those companies and any other members of the group are referred to as “relevant companies”.

(11) In respect of the period beginning with the time of acquisition and ending with—

- (a) the expiry of the six months beginning with the date of the agreement, or
- (b) if earlier, the date when, under the old definition, the other company ceases for the purposes of the group provisions to be a member of the group referred to in subsection (10)(a) above,

the old definition shall apply in relation to the relevant companies for the purposes of the group provisions and the commencement day in relation to those companies is the day following the end of that period.

(12) In subsections (8) to (11) above—

“arrangement” has the same meaning as in section 425 of the <sup>M68</sup>Companies Act 1985,

“commencement day”, subject to subsection (11) above, is 14th March 1989,



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“effective 51 per cent. subsidiary” has the meaning given by section 272(1E) of the Taxes Act 1970,

“group provisions” means sections 273 to 281 of that Act, and

“the new definition” means section 272 of that Act as amended by this section and “the old definition” means that section as it had effect on 13th March 1989,

and section 278(4) of that Act shall apply for the purposes of those subsections.

#### Marginal Citations

- M65** 1984 c. 51.
- M66** 1987 c. 51.
- M67** 1985 c.6.
- M68** 1985 c. 6.

### Miscellaneous

#### 139 Corporate bonds.

- (1) In relation to disposals on or after 14th March 1989 Chapter III of Part II of the <sup>M69</sup>Finance Act 1984 shall have effect subject to the following provisions of this section (and, in relation to such disposals, those provisions shall be regarded as always having had effect).
- (2) In subsection (2) of section 64 (which defines “corporate bond” for the purposes of that section and accordingly for the purposes of certain other enactments including, by virtue of section 64(1) of the <sup>M70</sup>Capital Gains Tax Act 1979, that Act) paragraph (a) shall be omitted.
- (3) After subsection (3) of section 64 there shall be inserted—
  - “(3A) For the purposes of this section “corporate bond” also includes a security—
    - (a) which is not included in the definition in subsection (2) above, and
    - (b) which is a deep gain security for the purposes of Schedule 11 to the Finance Act 1989.
  - (3B) For the purposes of this section “corporate bond” also includes a security—
    - (a) which is not included in the definition in subsection (2) above, and
    - (b) which, by virtue of paragraph 21(2) of Schedule 11 to the Finance Act 1989, falls to be treated as a deep gain security as there mentioned.
  - (3C) For the purposes of this section “corporate bond” also includes a security—
    - (a) which is not included in the definition in subsection (2) above, and
    - (b) which, by virtue of paragraph 22(2) of Schedule 11 to the Finance Act 1989, falls to be treated as a deep gain security as there mentioned.”
- (4) After subsection (5) of section 64 there shall be inserted—
  - “(5A) Subject to subsection (6) below, for the purposes of this section and Schedule 13 to this Act a corporate bond which falls within subsection (3A) above is a qualifying corporate bond, whatever the date of its

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issue; and subsections (4) and (5) above shall not apply in the case of such a bond.

(5B) Subject to subsection (6) below, for the purposes of this section and Schedule 13 to this Act a corporate bond which falls within subsection (3B) above is a qualifying corporate bond as regards a disposal made after the time mentioned in paragraph 21(1)(c) of Schedule 11 to the Finance Act 1989, whatever the date of its issue; and subsections (4) and (5) above shall not apply in the case of such a bond.

(5C) Subject to subsection (6) below, for the purposes of this section and Schedule 13 to this Act a corporate bond which falls within subsection (3C) above is a qualifying corporate bond as regards a disposal made after the time the agreement mentioned in paragraph 22(1)(b) of Schedule 11 to the Finance Act 1989 is made, whatever the date of its issue; and subsections (4) and (5) above shall not apply in the case of such a bond.”

(5) In subsection (6) of section 64, after the words “this Act” there shall be inserted the words “except in relation to a disposal by a person who (at the time of the disposal) is not a member of the same group as the company which issued the security”.

(6) In paragraph 10(2) of Schedule 13—

(a) after paragraph (b) there shall be inserted—

“(bb) section 267 of the Taxes Act (company reconstructions and amalgamations); or” and

(b) the word “not” shall be inserted after the words “previous disposal”.

#### Marginal Citations

**M69** 1984 c. 43.

**M70** 1979 c. 14.

## 140 Collective investment schemes.

(1) In this section—

“collective investment scheme” has the same meaning as in the <sup>M71</sup> Financial Services Act 1986, and

“participant” shall be construed with that Act.

(2) Subsection (3) below applies in the case of arrangements which constitute a collective investment scheme and under which—

(a) the contributions of the participants, and the profits or income out of which payments are to be made to them, are pooled in relation to separate parts of the property in question, and

(b) the participants are entitled to exchange rights in one part for rights in another.

(3) If a participant exchanges rights in one such for rights in another section 78 of the <sup>M72</sup> Capital Gains Tax Act 1979 (reorganisations etc.) shall not prevent the exchange constituting a disposal and acquisition for the purposes of that Act.

(4) The reference in subsection (3) above to section 78 of that Act—

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- (a) includes a reference to that section as applied by section 82 of that Act (conversion of securities), but
  - (b) does not include a reference to section 78 as applied by section 85 of that Act (exchange of securities for those in another company).
- (5) Subsection (3) above shall apply where rights are exchanged on or after 14th March 1989.
- (6) Section 78 of the <sup>M73</sup> Finance (No. 2) Act 1987 shall cease to have effect as regards any case where the question it mentions is determined in relation to a disposal made on or after 14th March 1989.

#### Marginal Citations

M71 1986 c. 60.

M72 1979 c. 14.

M73 1987 c. 51.

#### 141 Re-basing to 1982 etc.

Schedule 15 to this Act (which makes further provision about charges etc. postponed from 31st March 1982 or before, assets held on that date and related matters) shall have effect.

### CHAPTER IV

#### MANAGEMENT

##### *Information*

#### 142 Power to call for documents and information.

- (1) Section 20 of the <sup>M74</sup> Taxes Management Act 1970 (power to call for documents of taxpayer and others) shall be amended in accordance with subsections (2) to (8) below.
- (2) In subsection (1), for the words “a person” onwards there shall be substituted the words “a person—
- (a) to deliver to him such documents as are in the person’s possession or power and as (in the inspector’s reasonable opinion) contain, or may contain, information relevant to—
    - (i) any tax liability to which the person is or may be subject, or
    - (ii) the amount of any such liability, or
  - (b) to furnish to him such particulars as the inspector may reasonably require as being relevant to, or to the amount of, any such liability.”
- (3) In subsection (2), for the words “a person” onwards there shall be substituted the words “a person
- (a) to deliver to a named officer of the Board such documents as are in the person’s possession or power and as (in the Board’s reasonable opinion) contain, or may contain, information relevant to—

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- (i) any tax liability to which the person is or may be subject, or
  - (ii) the amount of any such liability, or
  - (b) to furnish to a named officer of the Board such particulars as the Board may reasonably require as being relevant to, or to the amount of, any such liability.”
- (4) In subsection (3)—
- (a) for the words “of the persons who in relation to the taxpayer are subject to this subsection” there shall be substituted the words “other person”, and
  - (b) at the end there shall be added the words “; and the persons who may be required to deliver or make available a document under this subsection include the Director of Savings.”
- (5) Subsections (4) and (5) shall be omitted.
- (6) In subsection (6)—
- (a) for the words “under subsections (3) and (4)” there shall be substituted the words “for the purposes of this section”, and
  - (b) the words “and in relation” onwards shall be omitted.
- (7) For subsection (8) there shall be substituted—
- “(8) Subject to subsection (8A) below, a notice under subsection (3) above shall name the taxpayer with whose liability the inspector (or, where section 20B(3) below applies, the Board is concerned.”
- (8) After subsection (8B) there shall be inserted—
- “(8C) In this section references to documents do not include—
- (a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or
  - (b) journalistic material (as defined in section 13 of that Act),
- and references to particulars do not include particulars contained in such personal records or journalistic material.
- (8D) Subject to subsection (8C) above, references in this section to documents and particulars are to those specified or described in the notice in question; and—
- (a) the notice shall require documents to be delivered (or delivered or made available), or particulars to be furnished, within such time (which, except in the case of a notice under subsection (2) above, shall not be less than thirty days after the date of the notice) as may be specified in the notice; and
  - (b) the person to whom they are delivered, made available or furnished may take copies of them or of extracts from them.”
- (9) In section 12(3) of the <sup>M75</sup> National Savings Bank Act 1971, for the words “20(4)(b)” onwards there shall be substituted the words “20(3) of that Act (requirement to deliver or make available documents relating to liability of a taxpayer).”
- (10) This section shall apply with respect to notices given on or after the day on which this Act is passed.

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**Marginal Citations**

M74 1970 c. 9.

M75 1971 c. 29.

**143 Power to call for papers of tax accountant.**

(1) In section 20A of the <sup>M76</sup> Taxes Management Act 1970 (power to call for papers of tax accountant) for the last sentence of subsection (1) there shall be substituted—

“(1A) The reference to documents in subsection (1) above does not include—

- (a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or
- (b) journalistic material (as defined in section 13 of that Act).

(1B) Subject to subsection (1A) above, the reference to documents in subsection (1) above is to those specified or described in the notice in question; and—

- (a) the notice shall require documents to be delivered within such time (which shall not be less than thirty days after the date of the notice) as may be specified in the notice; and
- (b) the inspector may take copies of them or of extracts from them.”

(2) This section shall apply with respect to notices given on or after the day on which this Act is passed.

**Marginal Citations**

M76 1970 c. 9.

**144 Restrictions on powers under TMA ss.20 and 20A.**

(1) Section 20B of the <sup>M77</sup> Taxes Management Act 1970 (restrictions on powers under sections 20 and 20A) shall be amended as follows.

(2) In subsection (1), after the word “question” there shall be inserted the words “, or to furnish the particulars in question”.

(3) After that subsection there shall be inserted—

“(1A) Subject to subsection (1B) below, where a notice is given to any person under section 20(3) the inspector shall give a copy of the notice to the taxpayer to whom it relates.

(1B) If, on an application by the inspector, a General or Special Commissioner so directs, a copy of a notice under section 20(3) need not be given to the taxpayer to whom it relates; but such a direction shall not be given unless the Commissioner is satisfied that the inspector has reasonable grounds for suspecting the taxpayer of fraud.”

(4) In subsection (2), after the words “deliver documents”, in the first place where they occur, there shall be inserted the words “or furnish particulars”.

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- (5) In subsection (5), for the words from “if” to “or company” there shall be substituted the words “does not oblige a person”.
- (6) In subsection (7), the words from “to a person” to “daughter” shall be omitted.
- (7) For subsection (9) there shall be substituted—
- “(9) Subject to subsections (11) and (12) below, a notice under section 20(3) or (8A)—
- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
- (b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.
- (10) In subsections (9) above “relevant communications” means communications between the tax adviser and —
- (a) a person in relation to whose tax affairs he has been appointed, or
- (b) any other tax adviser of such a person,
- the purpose of which is the giving or obtaining of advice about any of those tax affairs; and in subsection (9) above and this subsection “tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).
- (11) Subject to subsection (13) below, subsection (9) above shall not have effect in relation to any document which contains information explaining any information, return, accounts or other document which the person to whom the notice is given has, as tax accountant, assisted any client of his in preparing for, or delivering to, the inspector or the Board.
- (12) Subject to subsection (13) below, in the case of a notice under section 20(8A) subsection (9) above shall not have effect in relation to any document which contains information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.
- (13) Subsection (9) above is not disapplied by subsection (11) or (12) above in the case of any document if—
- (a) the information within subsection (11) or (12) is contained in some other document, and
- (b) either—
- (i) that other document, or a copy of it, has been delivered to the inspector or the Board, or
- (ii) that other document has been inspected by an officer of the Board.
- (14) Where subsection (9) above is disapplied by subsection (11) or (12) above in the case of a document, the person to whom the notice is given either shall deliver the document to the inspector or make it available for inspection by an officer of the Board or shall—

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- (a) deliver to the inspector (or, where subsection (3) above applies, the Board) a copy (which is photographic or otherwise by way of facsimile) of any parts of the document which contain the information within subsection (11) or (12), and
- (b) if so required by the inspector (or, as the case may be, the Board), make available for inspection by a named officer of the Board such parts of the document as contain that information;

and failure to comply with any requirement under paragraph (b) above shall constitute a failure to comply with the notice.”

- (8) This section shall apply with respect to notices given on or after the day on which this Act is passed.

**Marginal Citations**

M77 1970c. 9.

**145 Falsification etc. of documents.**

- (1) After section 20B of the <sup>M78</sup>Taxes Management Act 1970 there shall be inserted—

**“20BB Falsification etc. of documents.**

- (1) Subject to subsections (2) to (4) below, a person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which—
  - (a) he has been required by a notice under section 20 or 20A above, or
  - (b) he has been given an opportunity in accordance with section 20B(1) above,to deliver, or to deliver or make available for inspection.
- (2) A person does not commit an offence under subsection (1) above if he acts—
  - (a) with the written permission of a General or Special Commissioner, the inspector or an officer of the Board,
  - (b) after the document has been delivered or, in a case within section 20(3) or (8A) above, inspected, or
  - (c) after a copy has been delivered in accordance with section 20B(4) or (14) above and the original has been inspected.
- (3) A person does not commit an offence under subsection (1)(a) above if he acts after the end of the period of two years beginning with the date on which the notice is given, unless before the end of that period the inspector or an officer of the Board has notified the person in writing that the notice has not been complied with to his satisfaction.
- (4) A person does not commit an offence under subsection (1) (b) above if he acts—
  - (a) after the end of the period of six months beginning with the date on which an opportunity to deliver the document was given, or

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- (b) after an application for consent to a notice being given in relation to the document has been refused.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”
- (2) This section shall apply to any falsification, concealment, destruction or disposal of a document occurring on or after the day on which this Act is passed.

#### Marginal Citations

**M78** 1970 c. 9.

#### 146 Entry with warrant to obtain documents.

- (1) Section 20C of the <sup>M79</sup>Taxes Management Act 1970 (entry with warrant to obtain documents) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “any form of fraud” there shall be substituted the words “serious fraud”, and
  - (b) for the words “has been” there shall be substituted the words “is being, has been or is about to be”.
- (3) After that subsection there shall be inserted—
- “(1A) Without prejudice to the generality of the concept of serious fraud—
- (a) any offence which involves fraud is for the purposes of this section an offence involving serious fraud if its commission had led, or is intended or likely to lead, either to substantial financial gain to any person or to serious prejudice to the proper assessment or collection of tax; and
  - (b) an offence which, if considered alone, would not be regarded as involving serious fraud may nevertheless be so regarded if there is reasonable ground for suspecting that it forms part of a course of conduct which is, or but for its detection would be, likely to result in serious prejudice to the proper assessment or collection of tax.
- (1B) The powers conferred by a warrant under this section shall not be exercisable—
- (a) by more than such number of officers of the Board as may be specified in the warrant;
  - (b) outside such times of day as may be so specified;
  - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.”
- (4) For subsections (3) to (5) there shall be substituted—
- “(3) An officer who enters the premises under the authority of a warrant under this section may—



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- (a) take with him such other persons as appear to him to be necessary;
  - (b) seize and remove any things whatsoever found there which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) above; and
  - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such things;
- but no person shall be searched except by a person of the same sex.
- (4) Nothing in subsection (3) above authorises the seizure and removal of documents in the possession of a barrister, advocate or solicitor with respect to which a claim to professional privilege could be maintained.
  - (5) An officer of the Board seeking to exercise the powers conferred by a warrant under this section or, if there is more than one such officer, that one of them who is in charge of the search—
    - (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
    - (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and
    - (c) if neither paragraph (a) nor paragraph (b) above applies, shall leave such a copy in a prominent place on the premises.
  - (6) Where entry to premises has been made with a warrant under this section, and the officer making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.
  - (7) Subsections (10) to (12) of section 16 of the Police and Criminal Evidence Act 1984 (return, retention and inspection of warrants) apply to a warrant under this section (together with any list endorsed on or attached to it under subsection (6) above) as they apply to a warrant issued to a constable under any enactment.
  - (8) Subsection (7) above extends to England and Wales only.”
- (5) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

**Marginal Citations**

M79 1970 c. 9.

**147 Procedure where documents etc. are removed.**

- (1) The following section shall be inserted after section 20C of the <sup>M80</sup>Taxes Management Act 1970—

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**“20CC Procedure where documents etc. are removed.**

- (1) An officer of the Board who removes anything in the exercise of the power conferred by section 20C above shall, if so requested by a person showing himself—
  - (a) to be the occupier of premises from which it was removed, or
  - (b) to have had custody or control of it immediately before the removal, provide that person with a record of what he removed.
- (2) The officer of the Board shall provide the record within a reasonable time from the making of the request for it.
- (3) Where anything which has been removed by an officer of the Board as mentioned in subsection (1) above is of such a nature that a photograph or copy of it would be sufficient—
  - (a) for use as evidence at a trial for an offence, or
  - (b) for forensic examination or for investigation in connection with an offence,
 it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.
- (4) Subject to subsection (8) below, if a request for permission to be granted access to anything which—
  - (a) has been removed by an officer of the Board, and
  - (b) is retained by the Board for the purpose of investigating an offence,
 is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.
- (5) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the officer shall—
  - (a) allow the person who made the request access to it under the supervision of an officer of the Board for the purpose of photographing it or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (6) Where anything is photographed or copied under subsection (5)(b) above the photograph or copy shall be supplied to the person who made the request.
- (7) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
  - (a) that investigation;

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- (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or
  - (c) any criminal proceedings which may be brought as a result of—
    - (i) the investigation of which he is in charge, or
    - (ii) any such investigation as is mentioned in paragraph (b) above.
- (9) Any reference in this section to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.”
- (2) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

**Marginal Citations**

**M80** 1970c. 9.

**148 Interpretation.**

- (1) Section 20D of the <sup>M81</sup>Taxes Management Act 1970 shall be amended as follows.
- (2) In subsection (2), for the words “of returns or accounts to be made or delivered by the other” there shall be substituted the words “or delivery of any information, return, accounts or other document which he knows will be, or is or are likely to be, used”.
- (3) For subsection (3) there shall be substituted—
- “(3) Without prejudice to section 127 of the Finance Act 1988, in sections 20 to 20CC above “document” has, subject to sections 20(8C) and 20A(1A), the same meaning as it has—
- (a) in relation to England and Wales, in Part I of the Civil Evidence Act 1968,
  - (b) in relation to Scotland, in Part III of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, and
  - (c) in relation to Northern Ireland, in Part I of the Civil Evidence Act (Northern Ireland) 1971.”
- (4) Subsection (3) above shall not affect the meaning of “business” in sections 20 and 20C of the <sup>M82</sup>Taxes Management Act 1970 before the coming into force of sections 142 and 146 above.

**Marginal Citations**

**M81** 1970 c. 9.

**M82** 1970 c.9.

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*Assessments, claims etc.*

**149 Assessments founded on fraudulent or negligent conduct.**

- (1) The following section shall be substituted for section 36 of the Taxes Management Act 1970—

**“36 Fraudulent or negligent conduct.**

- (1) An assessment on any person (in this section referred to as “the person in default”) for the purpose of making good to the Crown a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than twenty years after the end of the chargeable period to which the assessment relates.
- (2) Where the person in default is an individual who carried on a trade or profession in partnership with another individual, or with other persons at least one of whom is an individual, at any time in the year for which the assessment is made, an assessment in respect of the profits or gains of the trade or profession for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or, as the case may be, on any of his partners who is an individual.
- (3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by the Taxes Acts.”
- (2) Sections 37 to 39 (special provisions as to “neglect”) and section 41 (leave required for certain assessments) of the Taxes Management Act 1970 shall cease to have effect.
- (3) The words “section 36” shall be substituted—
- (a) for the words “sections 36, 37 and 39” in section 30(6) of the <sup>M83</sup>Taxes Management Act 1970 (tax repaid in error etc.),
  - (b) for the words “sections 37 to 39” in section 118(3) of that Act (effect under law of Scotland of assessment in partnership name),
  - (c) for the words “sections 36 and 39” in paragraph 10(1) of Schedule 13 to the Taxes Act 1988 (assessments to advance corporation tax), and
  - (d) for the words “sections 36 and 37” in paragraph 10(1) of Schedule 16 to that Act (assessments to income tax on company payments which are not distributions).
- (4) The words “fraudulent or negligent conduct” shall be substituted—
- (a) for the words “fraud, wilful default or neglect” in—
    - (i) section 37A of the Taxes Management Act 1970 (married couples),
    - (ii) section 40(2) of that Act (assessment on personal representatives), and
    - (iii) paragraph 9 of Schedule 16A to the <sup>M84</sup>Finance Act 1973 and of Schedule 19A to the Taxes Act 1988 (Lloyd’s), and

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- (b) for the words “fraud and wilful default) and section 37 of that Act(neglect” in section 307(5) of the Taxes Act 1988 (assessments forwithdrawing relief under Chapter III of Part VII of that Act).
- (5) In section 105 of the Taxes Management Act 1970 (admissibility ofevidence), for the words “fraud or default” and the words “fraud orwilful default” there shall be substituted the words “fraudulentconduct”.
- (6) In paragraph 9 of Schedule 16A to the Finance Act 1973 and of Schedule 19Ato the Taxes Act 1988, for “37, 40 and 41” there shall be substituted “and 40”.
- (7) Nothing in this section shall affect the making of assessments—
  - (a) for years of assessment before the year 1983-84, or
  - (b) for accounting periods which ended before 1st April 1983.

**Marginal Citations**

- M83** 1970 c.9.
- M84** 1973 c. 51.

**150 Further assessments: claims etc.**

- (1) The following sections shall be inserted after section 43 of the TaxesManagement Act 1970—

**“43A Further assessments: claims etc.**

- (1) This section applies where—
  - (a) by virtue of section 29(3) of this Act an assessment is made on any personfor a chargeable period, and
  - (b) the assessment is not made for the purpose of making good to the Crown anyloss of tax attributable to his fraudulent or negligent conduct or thefraudulent or negligent conduct of a person acting on his behalf.
- (2) Without prejudice to section 43(2) above but subject to section 43B below,where this section applies—
  - (a) any relevant claim, election, application or notice which could have beenmade or given within the time allowed by the Taxes Acts may be made or givenat any time within one year from the end of the chargeable period in which theassessment is made, and
  - (b) any relevant claim, election, application or notice previously made orgiven may at any such time be revoked or varied—
    - (i) in the same manner as it was made or given, and
    - (ii) by or with the consent of the same person or persons who made, gave orconsented to it (or, in the case of any such person who has died, by or withthe consent of his personal representatives),except where by virtue of any enactment it is irrevocable.

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- (3) For the purposes of this section and section 43B below, a claim, election, application or notice is relevant in relation to an assessment for a chargeable period if—
- (a) it relates to that chargeable period or is made or given by reference to an event occurring in that chargeable period, and
  - (b) it or, as the case may be, its revocation or variation has or could have the effect of reducing any of the liabilities mentioned in subsection (4) below.
- (4) The liabilities referred to in subsection (3) above are—
- (a) the increased liability to tax resulting from the assessment,
  - (b) any other liability to tax of the person concerned for—
    - (i) the chargeable period to which the assessment relates, or
    - (ii) any chargeable period which follows that chargeable period and ends not later than one year after the end of the chargeable period in which the assessment is made.
- (5) Where a claim, election, application or notice is made, given, revoked or varied by virtue of subsection (2) above, all such adjustments shall be made, whether by way of discharge or repayment of tax or the making of assessments or otherwise, as are required to take account of the effect of the taking of that action on any person's liability to tax for any chargeable period.
- (6) The provisions of this Act relating to appeals against decisions on claims shall apply with any necessary modifications to a decision on the revocation or variation of a claim by virtue of subsection (2) above.

#### **43B Limits on application of section 43A.**

- (1) If the effect of the exercise by any person of a power conferred by section 43A(2) above—
- (a) to make or give a claim, election, application or notice, or
  - (b) to revoke or vary a claim, election, application or notice previously made or given,
- would be to alter the liability to tax of another person, that power may not be exercised except with the consent in writing of that other person or, where he has died, his personal representatives.
- (2) Where—
- (a) a power conferred by subsection (2) of section 43A above is exercised in consequence of an assessment made on a person, and
  - (b) the exercise of the power increases the liability to tax of another person,
- that section shall not apply by reason of any assessment made because of that increased liability.
- (3) In any case where—
- (a) one or more relevant claims, elections, applications or notices are made, given, revoked or varied by virtue of the application of section 43A above in the case of an assessment, and

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- (b) the total of the reductions in liability to tax which, apart from this subsection, would result from the action mentioned in paragraph (a) above would exceed the additional liability to tax resulting from the assessment,  
the excess shall not be available to reduce any liability to tax.
- (4) Where subsection (3) above has the effect of limiting either the reduction in a person's liability to tax for more than one period or the reduction in the liability to tax of more than one person, the limited amount shall be apportioned between the periods or persons concerned—
- (a) except where paragraph (b) below applies, in such manner as may be specified by the inspector by notice in writing to the person or persons concerned, or
- (b) where the person concerned gives (or the persons concerned jointly give) notice in writing to the inspector within the relevant period, in such manner as may be specified in the notice given by the person or persons concerned.
- (5) For the purposes of paragraph (b) of subsection (4) above the relevant period is the period of 30 days beginning with the day on which notice under paragraph (a) of that subsection is given to the person concerned or, where more than one person is concerned, the latest date on which such notice is given to any of them.”
- (2) This section shall apply in relation to any assessment notice of which is issued on or after the day on which this Act is passed.

## 151 Assessment of trustees etc.

- (1) Income tax chargeable in respect of income arising to the trustees of a settlement, or to the personal representatives of a deceased person, may be assessed and charged on and in the name of any one or more of the relevant trustees or, as the case may be, the relevant personal representatives.
- (2) In this section “the relevant trustees”, in relation to any income, means the trustees to whom the income arises and any subsequent trustees of the settlement, and “the relevant personal representatives” has a corresponding meaning.
- (3) In this section “personal representatives” has the same meaning as in section 111 of this Act.
- (4) This section shall be deemed always to have had effect.

*Distress and poinding etc.*

VALID FROM 01/02/1994

## 152 Distress for non-payment of tax.

- (1) Section 61 of the <sup>M85</sup>Taxes Management Act 1970 (distress) shall be amended as follows.

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- (2) In subsection (1), for the words “the collector shall” onwards there shall be substituted the words “the collector may distrain upon the goods and chattels of the person charged (in this section referred to as “the person in default”).”
- (3) In subsection (2), for the words from “a collector” to “Commissioners” there shall be substituted the words “a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, may issue a warrant in writing authorising a collector to”.
- (4) In subsection (4), for the words “neglecting or refusing to pay” there shall be substituted the words “in default”.
- (5) In subsection (5)—
- (a) for the word “aforesaid” there shall be substituted the words “in default”,
  - (b) the words “within the said five days” shall be omitted,
  - (c) for the words from “two or more inhabitants of the parish” to “sufficient persons” there shall be substituted the words “one or more independent persons appointed by the collector”, and
  - (d) the words from “The costs” to “the collector, and” shall be omitted.
- (6) The following subsection shall be added after that subsection—
- “(6) The Treasury may by regulations make provision with respect to—
- (a) the fees chargeable on or in connection with the levying of distress, and
  - (b) the costs and charges recoverable where distress has been levied; and any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.”
- (7) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

#### Marginal Citations

**M85** 1970 c. 9.

### 153 Priority in cases of distraint by others.

- (1) Section 62 of the <sup>M86</sup>Taxes Management Act 1970 (priority of claim for tax) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any goods or chattels belonging to any person (in this section referred to as “the person in default”) are”,
  - (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods or chattels may not be so taken unless on demand made by the collector”, and
  - (c) for the words “arrears of tax” onwards there shall be substituted the words “such sums as have fallen due at or before the date of seizure.”



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(3) The following subsection shall be inserted after that subsection—

“(1A) The sums referred to in subsection (1) above are—

- (a) sums due from the person in default on account of deductions of income tax from emoluments paid during the period of twelve months next before the date of seizure, being deductions which the person in default was liable to make under section 203 of the principal Act (pay as you earn) less the amount of the repayments of income tax which he was liable to make during that period; and
- (b) sums due from the person in default in respect of deductions required to be made by him for that period under section 559 of the principal Act (sub-contractors in the construction industry).”

(4) In subsection (2)—

- (a) for the words from the beginning to “the collector shall” there shall be substituted the words “If the sums referred to in subsection (1) above are not paid within ten days of the date of the demand referred to in that subsection, the collector may”,
- (b) for the words “shall proceed” there shall be substituted the words “may proceed”, and
- (c) for the words “the tax charged and claimed” there shall be substituted the words “those sums”.

**Marginal Citations**

M86 1970 c. 9.

**154 Recovery of tax from debtor in Scotland.**

(1) Section 63 of the <sup>M87</sup>Taxes Management Act 1970 (recovery of tax in Scotland) shall be amended as follows.

(2) In subsection (3), for the words “which relates to” onwards there shall be substituted the words “insofar as it relates to sums due in respect of—

- (a) deductions of income tax which any person specified in the application was liable to make under section 203 of the principal Act (pay as you earn); or
- (b) deductions required to be made under section 559 of the principal Act (sub-contractors in the construction industry) by any person specified in the application.”

(3) The following subsection shall be added after that subsection—

“(4) In this section references to amounts of tax due and references to sums due in respect of deductions include references to amounts which are deemed to be—

- (a) amounts of tax which the person is liable to pay by virtue of the Income Tax (Employments) Regulations 1973; or
- (b) amounts which the person is liable to pay by virtue of the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1975.”

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### Marginal Citations

M87 1970 c. 9.

## 155 Priority in cases of poinding etc. by others in Scotland.

(1) Section 64 of the Taxes Management Act 1970 (priority of claim for tax in Scotland) shall be amended as follows.

(2) In subsection (1)—

- (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any moveable goods and effects belonging to any person (in this section referred to as “the person in default”) are”,
- (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods and effects may not be so taken unless on demand made by the collector”, and
- (c) for the words “the tax so in arrear” onwards there shall be substituted the words “such sums as have fallen due at or before the date of poinding or, as the case may be, other diligence or assignation.”

(3) The following subsection shall be inserted after that subsection—

“(1A) The sums referred to in subsection (1) above are—

- (a) sums due from the person in default on account of deductions of income tax from emoluments paid during the period of twelve months next before the date of poinding, being deductions which the person in default was liable to make under section 203 of the principal Act (pay as you earn) less the amount of the repayments of income tax which he was liable to make during that period; and
- (b) sums due from the person in default in respect of deductions required to be made by him for that period under section 559 of the principal Act (sub-contractors in the construction industry).”

(4) In subsection (2)—

- (a) for the words from the beginning to “the tax claimed shall” there shall be substituted the words “If the sums referred to in subsection (1) above are not paid within ten days of the date of the demand referred to in that subsection, the sums shall”, and
- (b) for the words “proceeding at his instance” there shall be substituted the word “proceedings”.

*Interest etc.*

## 156 Interest on overdue tax.

(1) In section 86 of the <sup>M88</sup>Taxes Management Act 1970, for subsection (3) and the words in subsection (4) preceding the Table there shall be substituted—

“(3) For the purposes of this section—

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- (a) the reckonable date in relation to any tax charged by an assessment to income tax under Schedule E, and
  - (b) subject to subsection (3A) below, the reckonable date in relation to tax charged by any other assessment to which this section applies,
- is the date on which the tax becomes due and payable.

(3A) Where an appeal has been made against an assessment and any of the tax charged by the assessment is due and payable on a date later than the date given by the Table in subsection (4) below, the reckonable date in relation to the tax so due and payable is the later of—

- (a) the date given by that Table, and
- (b) the date on which the tax would have been due and payable if there had been no appeal against the assessment (assuming in a case where the tax would not have been charged by the assessment if there had been no appeal that it was so charged).

(4) The Table referred to in subsection (3A) above is as follows—”.

(2) In section 55 of that Act—

- (a) in subsection (2), for the words “it were” onwards there shall be substituted the words “there had been no appeal.”,
- (b) in subsection (6), for paragraphs (a) and (b) there shall be substituted—

“(a) in the case of a determination made on an application under subsection (3) above, other than an application made by virtue of subsection (3A) above, the date on which any tax the payment of which is not so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had been no appeal; and

(b) in the case of a determination made on an application under subsection (4) above—

(i) the date on which any tax the payment of which ceases to be so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had been no appeal; and

(ii) any tax overpaid shall be repaid.” and

(c) for subsection (9) there shall be substituted—

“(9) On the determination of the appeal—

(a) the date on which any tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, be determined as if the tax were charged by an assessment—

(i) notice of which was issued on the date on which the inspector issues to the appellant a notice of the total amount payable in accordance with the determination, and

(ii) against which there had been no appeal; and

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(b) any tax overpaid shall be repaid.”

- (3) In section 56(9) of that Act, for the words “amount of” there shall be substituted the words “amount charged by”.
- (4) This section shall apply to tax charged by any assessment notice of which is issued after 30th July 1982.

#### Marginal Citations

M88 1970 c. 9.

### 157 Effect of certain claims on interest.

- (1) In relation to any tax charged by an assessment made under section 252(1) of the Taxes Act 1988 to recover corporation tax that becomes payable as a result of the making of a claim under section 240 of that Act, the reckonable date for the purposes of section 86 of the <sup>M89</sup>Taxes Management Act 1970 (in this section referred to as “section 86”) is the date which is given by paragraph 5 of the Table in subsection (4) of that section.
- (2) Subsections (3) and (4) below apply in any case where—
  - (a) there is in any accounting period of a company (in this section referred to as “the later period”) an amount of surplus advance corporation tax, as defined in subsection (3) of section 239 of the Taxes Act 1988, and
  - (b) pursuant to a claim under the said subsection (3), the whole or any part of that amount is treated for the purposes of the said section 239 as discharging liability for an amount of corporation tax for an earlier accounting period (in this section referred to as “the earlier period”), and
  - (c) if the claim under the said subsection (3) had not been made—
    - (i) an amount of corporation tax assessed for the earlier period would carry interest in accordance with section 86, or
    - (ii) an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period.
- (3) In determining the amount of interest payable under section 86 on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from section 239(3) of the Taxes Act 1988 except so far as concerns interest for any time after the day following the expiry of nine months from the end of the later period.
- (4) Where, but for the claim under section 239(3) of the Taxes Act 1988, an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period, interest under section 86 shall be chargeable, in relation to any time not later than the day referred to in subsection (3) above, as if the claim had not been made and such an assessment had been made.
- (5) In relation to interest charged under section 86 by virtue of subsection (4) above, section 69 of the <sup>M90</sup>Taxes Management Act 1970 shall have effect with the substitution for the words following paragraph (c) of the words “as if it were tax charged and due and payable under an assessment”.
- (6) In this section—

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- (a) subsection (1) above shall have effect where the claim under 240 of the Taxes Act 1988 is made on or after 14th March 1989, and
  - (b) subsections (2) to (5) above shall have effect where the claim under section 239(3) of that Act is made on or after that date,
- but this section shall not have effect in relation to corporation tax for any accounting period ending after the day which is the appointed day for the purposes of section 85 of the <sup>M91</sup>Finance (No.2) Act 1987.

#### Marginal Citations

**M89** 1970 c. 9.

**M90** 1970 c. 9.

**M91** 1987 c. 51.

### 158 Small amounts of interest.

- (1) In the Taxes Management Act 1970—
  - (a) section 86(6) (remission of interest payable on overdue income tax, capital gains tax or corporation tax where interest would not exceed £30), and
  - (b) section 87(4) (no interest payable on overdue advance corporation tax or income tax on company payments where interest would not exceed £30),shall cease to have effect.
- (2) The words “of not less than £25” in—
  - (a) section 47(1) of the <sup>M92</sup>Finance (No.2) Act 1975 (no repayment supplement where overdue repayment of capital gains tax less than £25), and
  - (b) section 824(1)(a) and (b) and (5) of the Taxes Act 1988 (no repayment supplement where overdue repayment of income tax etc. less than £25),and the words “of not less than £100” in section 825(2) of the Taxes Act 1988 (no repayment supplement where overdue repayment of company tax less than £100) shall cease to have effect.
- (3) Paragraph (a) of subsection (1) above shall have effect—
  - (a) in relation to income tax under Schedule E, where the demand for the tax is made on or after the appointed day, and
  - (b) in any other case, where the tax is charged by an assessment notice of which is issued on or after the appointed day.
- (4) Paragraph (b) of that subsection shall have effect where the tax is charged by an assessment relating to an accounting period beginning on or after the appointed day.
- (5) Subsection (2) above shall have effect in relation to repayments of tax made on or after the appointed day.
- (6) In this section “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint; and different days may be appointed for different enactments or for different purposes of the same enactment.

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**Marginal Citations**

**M92** 1975 c. 45.

**159 Interest on tax in case of failure or error.**

- (1) Section 88 of the <sup>M93</sup>Taxes Management Act 1970 (interest on tax recovered to make good loss due to taxpayer's fault) shall be amended as follows.
- (2) In subsection (1), for the words “the fraud, wilful default or neglect of any person” there shall be substituted the words—
  - “(a) a failure to give a notice, make a return or produce or furnish a document or other information required by or under the Taxes Acts, or
  - (b) an error in any information, return, accounts or other document delivered to an inspector or other officer of the Board,”.
- (3) The following subsection shall be added at the end—
  - “(7) In paragraph (a) of subsection (1) above the reference to a failure to do something includes, in relation to anything required to be done at a particular time or within a particular period, a reference to a failure to do it at that time or within that period; and, accordingly, section 118(2) of this Act shall not apply for the purposes of that paragraph.”
- (4) This section shall have effect in relation to failures occurring, and errors in any information or documents delivered, on or after the day on which this Act is passed.

**Marginal Citations**

**M93** 1970 c. 9.

**160 Determinations under TMA s. 88.**

- (1) In subsection (1) of section 88 of the Taxes Management Act 1970, for the words “shall carry” there shall be substituted the words “shall, if an inspector or the Board so determine, carry”.
- (2) The following section shall be inserted after that section—

**“88A Determinations under section 88.**

- (1) Notice of a determination under section 88 above shall be served on the person liable to pay the interest to which it relates and shall specify—
  - (a) the date on which it is issued,
  - (b) the amount of the tax which carries interest and the assessment by which that tax was charged,
  - (c) the date when for the purposes of section 88 above that tax ought to have been paid, and
  - (d) the time within which an appeal against the determination may be made.

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- (2) After the notice of a determination under section 88 above has been served the determination shall not be altered except in accordance with this section.
- (3) A determination under section 88 above may be made at any time—
- (a) within six years after the end of the chargeable period for which the tax carrying the interest is charged (or, in the case of development land tax, of the financial year in which the liability for that tax arose), or
  - (b) within three years after the date of the final determination of the amount of that tax.
- (4) An appeal may be brought against a determination under section 88 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (5) On an appeal against a determination under section 88 above section 50(6) to (8) of this Act shall not apply but the Commissioners may—
- (a) if it appears to them that the tax carries no interest under that section, set the determination aside,
  - (b) if the determination appears to them to be correct, confirm the determination, or
  - (c) if the determination appears to them to be incorrect as to the amount of tax or the date on which the tax ought to have been paid, revise the determination accordingly.”
- (3) In section 70 (certificates) of the <sup>M94</sup>Taxes Management Act 1970, for subsection (3) there shall be substituted—
- “(3) A certificate of the inspector or any other officer of the Board that it has been determined that tax carries interest under section 88 of this Act, together with a certificate of the collector that payment of the interest has not been made to him, or, to the best of his knowledge and belief, to any other collector, or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence—
- (a) that interest is chargeable on the tax from the date when for the purposes of section 88 of this Act the tax ought to have been paid, and
  - (b) that the sum mentioned in the certificate is unpaid and is due to the Crown;
- and any document purporting to be such a certificate as is mentioned in this subsection shall be deemed to be such a certificate unless the contrary is proved.”
- (4) In section 113 of that Act (form of documents), the following subsection shall be inserted after subsection (1B)—
- “(1C) Where an officer of the Board has decided that an amount of tax carries interest under section 88 of this Act and has taken the decisions needed for arriving at the date when for the purposes of that section that tax ought to have been paid, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination on the person liable to the interest.”

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- (5) In section 114 of that Act (want of form not to invalidate), after the word “assessment”, in each place where it occurs, there shall be inserted the words “or determination”.
- (6) In paragraph 5 of Schedule 3 to that Act (rules for assigning proceedings to Commissioners), the following entry shall be inserted in the first column after the entry relating to an appeal against an assessment to capital gain tax— “ An appeal against a determination under section 88 of this Act. ”

**Marginal Citations**

**M94** 1970 c. 9.

**161 Tax carrying interest under TMA ss. 86 and 88.**

The following subsection shall be substituted for section 88(3) of the <sup>M95</sup>Taxes Management Act 1970—

- “(3) Where it is finally determined that any tax carries interest under this section, the tax shall carry no interest under section 86 or 86A above (and, accordingly, any interest under either of those sections which has been paid before the final determination shall be set off against the amount of the interest under this section); and for the purposes of this subsection a determination that tax carries interest is not final until it can no longer be varied, whether by any Commissioners on appeal or by the order of any court.”

**Marginal Citations**

**M95** 1970 c. 9.

*Penalties*

**162 Failure to make return.**

- (1) Section 93 of the Taxes Management Act 1970 (failure to comply with notice to make return for income tax or capital gains tax) shall be amended as follows.
- (2) In subsection (1) (initial and daily penalties), for paragraphs (a) and (b) there shall be substituted—
- “(a) to a penalty not exceeding £300, and
- (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (a) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) The following subsection shall be substituted for subsection (2)—
- “(2) If a failure by a person to comply with a notice such as is referred to in subsection (1) above continues after the end of the year of assessment following that during which it was served then, without prejudice



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to any penalty under subsection (1) above, he shall be liable to a penalty of an amount not exceeding so much of the tax with which he is charged (whether for one or for more than one year of assessment) in assessments—

- (a) based wholly or partly on any income or chargeable gains that ought to have been included in the return required by the notice, and
- (b) made after the end of the year next following the year of assessment in which the notice was served,

as is attributable to the income or chargeable gains that ought to have been so included.”

(4) The following subsection shall be substituted for subsection (5)—

“(5) No penalty shall be imposed under subsection (1) above in respect of a failure at any time after the failure has been remedied.”

(5) The following subsection shall be substituted for subsection (7)—

“(7) If the person on whom a notice is served proves that there was no income or chargeable gain to be included in the return, the penalty under this subsection shall not exceed £100.”

(6) This section shall apply in relation to any failure to comply with a notice served on or after 6th April 1989.

### 163 Incorrect return, accounts etc.

(1) In—

- (a) section 95(1) of the <sup>M96</sup>Taxes Management Act 1970 (incorrect return etc. for income tax or capital gains tax), and
- (b) section 96(1) of that Act (incorrect return etc. for corporation tax),

for the words “the aggregate” onwards there shall be substituted the words “the amount of the difference specified in subsection (2) below.”

(2) This section shall apply in relation to returns, statements, declarations or accounts delivered, made or submitted on or after the day on which this Act is passed.

#### Marginal Citations

M96 1970 c. 9.

### 164 Special returns, information etc.

(1) Section 98 of the Taxes Management Act 1970 (special returns, information etc.) shall be amended as follows.

(2) In subsection (1) (initial and daily penalties)—

- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
- (b) for the words “subsection (3)” onwards there shall be substituted the words “subsections (3) and (4) below—

(i) to a penalty not exceeding £300, and

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- (ii) if the failure continues after a penalty is imposed under paragraph (i) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (i) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) In subsection (2) (maximum penalty for information given fraudulently or negligently)
- 
- (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
- (b) for the words “ £250, or, in the case of fraud, £500” there shall be substituted “ £3,000”.
- (4) The following subsections shall be substituted for subsection (3)—
- “(3) No penalty shall be imposed under subsection (1) above in respect of a failure within paragraph (a) of that subsection at any time after the failure has been remedied.
- (4) No penalty shall be imposed under paragraph (ii) of subsection (1) above in respect of a failure within paragraph (b) of that subsection at any time after the failure has been remedied.”
- (5) In the Table—
- (a) in the first column, in the entry relating to Part III of the <sup>M97</sup>Taxes Management Act 1970, the words “, except sections 16 and 24(2)” shall be omitted;
- (b) the entries relating to sections 38(5) and 42 of the Taxes Act 1988 shall be moved from the second column to the appropriate place in the first column; and
- (c) the entry relating to section 481(5)(k) of that Act shall be omitted from the first column and an entry relating to section 482(2) of that Act shall be inserted at the appropriate place in the second column.
- (6) In consequence of the amendment made by subsection (5)(a) above section 16(6) of the Taxes Management Act 1970 shall cease to have effect.
- (7) This section shall apply in relation to—
- (a) any failure to comply with a notice or to furnish information, give a certificate or produce a document or record beginning on or after the day on which this Act is passed, and
- (b) the furnishing, giving, producing or making of any incorrect information, certificate, document, record or declaration on or after that day.

**Marginal Citations**

M97 1970 c.9.

**165 Special penalties in the case of certain returns.**

- (1) The following section shall be inserted after section 98 of the Taxes Management Act 1970—

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### “98A Special penalties in the case of certain returns.

- (1) Regulations under section 203(2) (PAYE) or 566(1) (sub-contractors) of the principal Act may provide that this section shall apply in relation to any specified provision of the regulations.
- (2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—
  - (a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, and
  - (b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of 19th April after the end of that year.
- (3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—
  - (a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, and
  - (b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty.
- (4) Where this section applies in relation to a provision of regulations, any person who fraudulently or negligently makes an incorrect return of a kind mentioned in the provision shall be liable to a penalty not exceeding the difference between—
  - (a) the amount payable by him in accordance with the regulations for the year of assessment to which the return relates, and
  - (b) the amount which would have been so payable if the return had been correct.”

[<sup>F30</sup>(2) In relation to a failure to make a return beginning before such day as the Treasury may by order made by statutory instrument appoint, section 98A(2) shall have effect with the substitution of the following paragraph for paragraph (a)—

- “(a) to—
- (i) a penalty not exceeding twelve times the relevant monthly amount, and
  - (ii) if the failure continues after a penalty is imposed under sub-paragraph (i) above, a further penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this sub-paragraph has already been imposed.”]

#### Textual Amendments

**F30** S. 165(2) repealed (*prosp.*) by Finance Act 1989 (c. 26, SIF 63:1), s. 187(1), Sch. 17 Pt. VIII

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## 166 Assisting in preparation of incorrect return etc.

- (1) The following section shall be substituted for section 99 of the <sup>M98</sup>Taxes Management Act 1970—

### “99 Assisting in preparation of incorrect return etc.

Any person who assists in or induces the preparation or delivery of any information, return, accounts or other document which—

- (a) he knows will be, or is or are likely to be, used for any purpose of tax, and
- (b) he knows to be incorrect,

shall be liable to a penalty not exceeding £3,000.”

- (2) This section shall apply in relation to assistance and inducements occurring on or after the day on which this Act is passed.

#### Marginal Citations

**M98** 1970c. 9.

## 167 Determination of penalties.

The following sections shall be substituted for section 100 of the <sup>M99</sup>Taxes Management Act 1970—

### “100 Determination of penalties by officer of Board.

- (1) Subject to subsection (2) below and except where proceedings for a penalty have been instituted under section 100D below or a penalty has been imposed by the Commissioners under section 53 of this Act, an officer of the Board authorised by the Board for the purposes of this section may make a determination imposing a penalty under any provision of the Taxes Acts and setting it at such amount as, in his opinion, is correct or appropriate.
- (2) Subsection (1) above does not apply where the penalty is a penalty under—
- (a) section 93(1) above as it has effect before the amendments made by section 162 of the Finance Act 1989 or section 93(1)(a) above as it has effect after those amendments,
  - (b) section 94(1) above as it has effect before the substitution made by section 83 of the Finance (No.2) Act 1987,
  - (c) section 98(1) above as it has effect before the amendments made by section 164 of the Finance Act 1989 or section 98(1)(i) above as it has effect after those amendments, or
  - (d) paragraph (a)(i) of section 98A(2) above as it has effect by virtue of section 165(2) of the Finance Act 1989.
- (3) Notice of a determination of a penalty under this section shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.

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- (4) After the notice of a determination under this section has been served the determination shall not be altered except in accordance with this section or on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount of a penalty determined under this section is or has become insufficient the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.
- (6) In any case where—
  - (a) a determination under this section is of a penalty under section 94(6) above, and
  - (b) after the determination has been made it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount which was taken into account as the relevant amount of tax is or has become excessive,the determination shall be revised so that the penalty is set at the amount which is correct; and, where more than the correct amount has already been paid, the appropriate amount shall be repaid.

#### **100A Provisions supplementary to section 100.**

- (1) Where a person who has incurred a penalty has died, a determination under section 100 above which could have been made in relation to him may be made in relation to his personal representatives, and any penalty imposed on personal representatives by virtue of this subsection shall be a debt due from and payable out of his estate.
- (2) A penalty determined under section 100 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (3) A penalty determined under section 100 above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

#### **100B Appeals against penalty determinations.**

- (1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but—
  - (a) in the case of a penalty which is required to be of a particular amount, the Commissioners may—
    - (i) if it appears to them that no penalty has been incurred, set the determination aside,
    - (ii) if the amount determined appears to them to be correct, confirm the determination, or

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- (iii) if the amount determined appears to them to be incorrect, increase or reduce it to the correct amount,
- (b) in the case of any other penalty, the Commissioners may—
  - (i) if it appears to them that no penalty has been incurred, set the determination aside,
  - (ii) if the amount determined appears to them to be appropriate, confirm the determination,
  - (iii) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or
  - (iv) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (3) Without prejudice to section 56 of this Act, an appeal from a decision of the Commissioners against the amount of a penalty which has been determined under section 100 above or this section shall lie, at the instance of the person liable to the penalty, to the High Court or, in Scotland, to the Court of Session as the Court of Exchequer in Scotland; and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this section.

#### **100C Penalty proceedings before Commissioners.**

- (1) An officer of the Board authorised by the Board for the purposes of this section may commence proceedings before the General or Special Commissioners for any penalty to which subsection (1) of section 100 above does not apply by virtue of subsection (2) of that section.
- (2) Proceedings under this section shall be by way of information in writing, made to the Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they shall hear and decide each case in a summary way.
- (3) Any penalty determined by the Commissioners in proceedings under this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this section shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
  - (a) by any party on a question of law, and
  - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (5) On any such appeal the court may—
  - (a) if it appears that no penalty has been incurred, set the determination aside,
  - (b) if the amount determined appears to be appropriate, confirm the determination,
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate, or

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- (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

#### **100D Penalty proceedings before court.**

- (1) Where in the opinion of the Board the liability of any person for a penalty arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.
- (2) Proceedings under this section which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of that Act shall be instituted—
  - (a) in England and Wales, in the name of the Attorney General,
  - (b) in Scotland, in the name of the Lord Advocate, and
  - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Any proceedings under this section instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.
- (4) If in proceedings under this section the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.”

#### **Marginal Citations**

**M99** 1970 c. 9.

#### **168 Amendments consequential on section 167.**

- (1) In consequence of the amendment made by section 167 above the <sup>M100</sup>Taxes Management Act 1970 shall be amended in accordance with subsections (2) to (8) below.
- (2) In section 20A (power to call for papers of tax accountant)—
  - (a) in subsection (1), for the words “awarded against him a penalty incurred by” there shall be substituted the words “a penalty imposed on”,
  - (b) in subsection (2), for the word “award” in the first place where it occurs there shall be substituted the word “penalty” and for that word in the second place where it occurs there shall be substituted the word “imposition”, and
  - (c) in subsection (4), for the words “award against” there shall be substituted the words “imposition on” and for the word “award” there shall be substituted the word “penalty”.
- (3) In section 53 (summary award of penalties by Commissioners)—

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- (a) in subsection (1), for the word “awarded” there shall be substituted the word “determined” and for the words “for its recovery” there shall be substituted the words “under section 100C of this Act”,
  - (b) in subsection (2), for the words “award” and “decision” there shall be substituted the word “determination” and for the word “awarded” there shall be substituted the word “determined”, and
  - (c) in subsection (3), for the word “awarded” there shall be substituted the word “determined”.
- (4) In section 102 (mitigation of penalties), for the words “recovery thereof” there shall be substituted the words “a penalty”.
- (5) In section 105 (evidence)—
- (a) the following paragraph shall be substituted for paragraph (a) of subsection (1)
    - “(a) pecuniary settlements may be accepted instead of a penalty being determined, or proceedings being instituted, in relation to any tax,”,
  - (b) in paragraph (b) of subsection (2), for the words “sum” onwards there shall be substituted the words “tax due from him”, and
  - (c) after that paragraph there shall be inserted the words “and
    - (c) any proceedings for a penalty or on appeal against the determination of a penalty.”
- (6) In section 112 (loss of documents etc.), the following subsection shall be added at the end—
- “(3) The references in subsection (1) above to assessments to tax include references to determinations of penalties; and in its application to such determinations the proviso to that subsection shall have effect with the appropriate modifications.”
- (7) In section 113 (form of documents)—
- (a) the following subsection shall be inserted after subsection (1C)—
    - “(1D) Where an officer of the Board has decided to impose a penalty under section 100 of this Act and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination on the person liable to the penalty.” and
  - (b) in subsection (3)—
    - (i) after the words “Every assessment,” there shall be inserted the words “determination of a penalty,”,
    - (ii) after the words “notice of assessment” there shall be inserted the words “, of determination”, and
    - (iii) after the words “levying tax” there shall be inserted the words “or determining a penalty”.
- (8) In paragraph 5 of Schedule 3 (rules for assigning proceedings to Commissioners), for the words “section 100(4)” there shall be substituted the words “section 100C or an appeal under section 100B against the determination of a penalty”.



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(9) In section 41 of the <sup>M101</sup>Development Land Tax Act 1976 (administration of development land tax) the following subsection shall be inserted after subsection (1)—

“(1A) Nothing in sections 167 to 169 of the Finance Act 1989 shall apply to penalties relating to development land tax.”

**Marginal Citations**

**M100** 1970 c.9.

**M101** 1976 c. 24.

**169 Time limits.**

(1) The following section shall be substituted for section 103 of the <sup>M102</sup>Taxes Management Act 1970—

**“103 Time limits for penalties.**

(1) Subject to subsection (2) below, where the amount of a penalty is to be ascertained by reference to tax payable by a person for any period, the penalty may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the Commissioners or a court—

- (a) at any time within six years after the date on which the penalty was incurred, or
- (b) at any later time within three years after the final determination of the amount of tax by reference to which the amount of the penalty is to be ascertained.

(2) Where the tax was payable by a person who has died, and the determination would be made in relation to his personal representatives, subsection (1)(b) above does not apply if the tax was charged in an assessment made later than six years after the end of the chargeable period for which it was charged.

(3) A penalty under section 99 of this Act may be determined by an officer of the Board, or proceedings for such a penalty may be commenced before a court, at any time within twenty years after the date on which the penalty was incurred.

(4) A penalty to which neither subsection (1) nor subsection (3) above applies may be so determined, or proceedings for such a penalty may be commenced before the Commissioners or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred.”

(2) The amendment made by subsection (1) above shall not affect the application of section 103(4) of the <sup>M103</sup>Taxes Management Act 1970 to proceedings under section 100 of that Act as it has effect before the amendment made by section 167 above.

**Marginal Citations**

**M102** 1970 c. 9.

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**M103** 1970 c. 9.

## **170 Up-rating of certain penalties.**

- (1) In section 23(8) of the Taxes Act 1988 (maximum penalty for agents failing to make certain payments on behalf of principals), for “£50” there shall be substituted “£300”.
- (2) In section 234(4) of that Act (penalty for failure to comply with provisions as to explanation of deduction from dividends etc.), for “£10” and “£100” there shall be substituted respectively “£60” and “£600”.
- (3) In section 306(6) of that Act (maximum penalty for false certificates or statements relating to investment in corporate trades), for the words “£250 or, in the case of fraud, £500” there shall be substituted “£3,000”.
- (4) In—
  - (a) section 619(7) of that Act (maximum penalty for false statements or representations relating to relief for qualifying premiums),
  - (b) section 653 of that Act (maximum penalty for statements or representations about personal pension schemes), and
  - (c) section 658(5) of that Act (maximum penalty for false statements or representations relating to purchased life annuities),
 for “£500” there shall be substituted “£3,000”.
- (5) In paragraph 2(4) of Schedule 19A to that Act and Schedule 16A to the <sup>M104</sup>Finance Act 1973 (maximum penalty for incorrect return by Lloyd’s agent), for the words “£500 in the case of fraud and £250 in the case of negligence” there shall be substituted “£3,000”.
- (6) This section shall apply in relation to things done or omitted on or after the day on which this Act is passed.

### **Marginal Citations**

**M104** 1973 c. 51.

## **PART III**

### MISCELLANEOUS AND GENERAL

#### *Inheritance tax*

## **171 Gifts to housing associations.**

- (1) The following section shall be inserted in the <sup>M105</sup>Inheritance Tax Act 1984 after section 24—

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**“24A Gifts to housing associations.**

- (1) A transfer of value is exempt to the extent that the value transferred by it is attributable to land in the United Kingdom given to a registered housing association.
- (2) In subsection (1) above “registered housing association” means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981.
- (3) Subsections (2) to (5) of section 23 and subsection (4) of section 24 above shall apply in relation to subsection (1) above as they apply in relation to section 24(1).”
- (2) In section 23(5) of the Inheritance Tax Act 1984 the words “or, where it is land, of a body mentioned in section 24A below” shall be added at the end.
- (3) In section 29(5) of that Act—
  - (a) the words “or, where it is land, of a body mentioned in section 24A” shall be inserted at the end of paragraph (b), and
  - (b) after “24(3) and (4),” there shall be inserted “24A(3),”.
- (4) In section 161(2)(b)(ii) of that Act after “24,” there shall be inserted “24A,”.
- (5) In section 102(5) of the <sup>M106</sup>Finance Act 1986 after paragraph (e) there shall be inserted—

“(ee) section 24A (gifts to housing associations);”.
- (6) This section shall apply to transfers of value made on or after 14th March 1989.

**Marginal Citations**

M105 1984 c.51.

M106 1986 c. 41.

**172 Abatement of exemption where claim settled out of beneficiary’s own resources.**

- (1) The following section shall be inserted after section 29 of the <sup>M107</sup>Inheritance Tax Act 1984—

**“29A Abatement of exemption where claim settled out of beneficiary’s own resources.**

- (1) This section applies where—
  - (a) apart from this section the transfer of value made on the death of any person is an exempt transfer to the extent that the value transferred by it is attributable to an exempt gift, and
  - (b) the exempt beneficiary, in settlement of the whole or part of any claim against the deceased’s estate, effects a disposition of property not derived from the transfer.
- (2) The provisions of this Act shall have effect in relation to the transfer as if—

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- (a) so much of the relevant value as is equal to the following amount, namely the amount by which the value of the exempt beneficiary's estate immediately after the disposition is less than it would be but for the disposition, or
- (b) where that amount exceeds the relevant value, the whole of the relevant value,

were attributable to such a gift to the exempt beneficiary as is mentioned in subsection (3) below (instead of being attributable to a gift with respect to which the transfer is exempt).

- (3) The gift referred to in subsection (2) above is a specific gift with respect to which the transfer is chargeable, being a gift which satisfies the conditions set out in paragraphs (a) and (b) of section 38(1) below.
- (4) In determining the value of the exempt beneficiary's estate for the purposes of subsection (2) above—
  - (a) no deduction shall be made in respect of the claim referred to in subsection (1)(b) above, and
  - (b) where the disposition referred to in that provision constitutes a transfer of value—
    - (i) no account shall be taken of any liability of the beneficiary for any tax on the value transferred, and
    - (ii) sections 104 and 116 below shall be disregarded.
- (5) Subsection (1)(b) above does not apply in relation to any claim against the deceased's estate in respect of so much of any liability as is, in accordance with this Act, to be taken into account in determining the value of the estate.
- (6) In this section—
  - “exempt gift”, in relation to a transfer of value falling within subsection (1)(a) above, means—
    - (a) a gift with respect to which the transfer is (apart from this section) exempt by virtue of the provisions of any of sections 18 and 23 to 28 above, or
    - (b) where (apart from this section) the transfer is so exempt with respect to a gift up to a limit, so much of the gift as is within that limit;
      - “the exempt beneficiary”, in relation to an exempt gift, means any of the following, namely—
        - (a) where the gift is exempt by virtue of section 18 above, the deceased's spouse,
        - (b) where the gift is exempt by virtue of section 23 above, any person or body—
          - (i) whose property the property falling within subsection (1) of that section becomes, or
          - (ii) by whom that property is held on trust for charitable purposes,
        - (c) where the gift is exempt by virtue of section 24, 25 or 26 above, any body whose property the property falling within subsection (1) of that section becomes,

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(d) where the gift is exempt by virtue of section 24A above, any body to whom the land falling within subsection (1) of that section is given, and

(e) where the gift is exempt by virtue of section 27 or 28 above, the trustees of any settlement in which the property falling within subsection (1) of that section becomes comprised;

“gift” and “specific gift” have the same meaning as in Chapter III of this Part; and

“the relevant value”, in relation to a transfer of value falling within subsection (1)(a) above, means so much of the value transferred by the transfer as is attributable to the gift referred to in that provision.”

(2) This section shall have effect in relation to deaths occurring on or after the day on which this Act is passed.

#### Marginal Citations

M107 1984c. 51.

*Stamp duty etc.*

### 173 Insurance: abolition of certain duties.

(1) Stamp duty shall not be chargeable under—

- (a) the heading “Policy of Life Insurance” in Schedule 1 to the <sup>M108</sup>Stamp Act 1891, or
- (b) paragraph (3) of the heading “Bond, Covenant, or Instrument of any kind whatsoever” in that Schedule (superannuation annuities).

(2) Subject to section 4 of the Stamp Act 1891 (separate charges on instruments containing or relating to several distinct matters) an instrument which, but for subsection (1) above, would be chargeable with stamp duty under paragraph (3) of the heading mentioned in paragraph (b) of that subsection shall not be chargeable with stamp duty under any other provision of the Stamp Act 1891.

(3) Section 100 of the Stamp Act 1891 (penalty for not making out policy or making policy not duly stamped) shall cease to have effect.

(4) Section 118 of the Stamp Act 1891 (assignment of life insurance policy to be stamped before payment of money assured) shall cease to have effect.

(5) Section 47(3) of the <sup>M109</sup>Finance Act 1966 (enhanced duty where policy not exceeding 2 years is varied so as to exceed 2 years) and section 5(3) of the <sup>M110</sup>Finance Act (Northern Ireland) 1966 (equivalent provision for Northern Ireland) shall cease to have effect.

(6) Subsections (1) and (2) above apply to instruments made after 31st December 1989.

(7) So far as it relates to section 100(1) of the 1891 Act, subsection (3) above applies where a person receives, or takes credit for, a premium or consideration for insurance after 30th November 1989.

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- (8) So far as it relates to section 100(2) of the 1891 Act, subsection (3) above applies where the policy is made after 31st December 1989.
- (9) Subsection (4) above applies to instruments of assignment made after 31st December 1989.
- (10) Subsection (5) above applies where the policy is varied after 31st December 1989 (whenever it was made).

#### Marginal Citations

M108 1891 c. 39.

M109 1966 c. 18.

M110 1966 c. 21 (N.I.).

### 174 Unit trusts.

(1) The following section shall be substituted for section 101 of the Finance Act 1980—

( “101) Unit trusts

- (1) No stamp duty shall be chargeable on any transfer of any unit in an authorised unit trust scheme to which subsection (2) below applies.
- (2) This subsection applies to any authorised unit trust scheme under the terms of which the funds of the trust —
  - (a) cannot be invested in such a way that income can arise to the trustees which will be chargeable to tax in the hands of the trustees otherwise than under Schedule C as profits arising from United Kingdom public revenue dividends or under Case III of Schedule D, and
  - (b) cannot be invested in any investment on the transfer of which ad valorem stamp duty would be chargeable.

(3) In this section —

“authorised unit trust scheme” has the same meaning as in the Financial Services Act 1986, and

“United Kingdom public revenue dividends” means public revenue dividends payable in the United Kingdom (whether they are also payable outside the United Kingdom or not) out of the public revenue of the United Kingdom.”

(2) This section shall have effect in relation to the transfer of units on or after the day on which this Act is passed.

### 175 Stamp duty: stock exchange nominees

- (1) The Treasury may by regulations provide that where —
  - (a) circumstances would (apart from the regulations) give rise to a charge to stamp duty under the heading “Conveyance or Transfer on Sale” in Schedule 1 to the Stamp Act 1891 and to a charge to stamp duty reserve tax,
  - (b) the circumstances involve a stock exchange nominee, and

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- (c) the circumstances are such as are prescribed,  
the charge to stamp duty shall be treated as not arising.
- (2) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (3) In this section —
  - (a) “prescribed” means prescribed by the regulations, and
  - (b) “stock exchange nominee” means a person designated for the purposes of section 127 of the Finance Act 1976 as a nominee of The Stock Exchange by an order made by the Secretary of State under subsection (5) of that section.

#### **176 Stamp duty reserve tax: stock exchange nominees**

- (1) The Treasury may by regulations provide that where —
  - (a) circumstances would (apart from the regulations) give rise to two charges to stamp duty reserve tax,
  - (b) the circumstances involve a stock exchange nominee, and
  - (c) the circumstances are such as are prescribed,such one of the charges as may be prescribed shall be treated as not arising.
- (2) The Treasury may by regulations provide that where —
  - (a) circumstances would (apart from the regulations) give rise to a charge to stamp duty reserve tax and a charge to stamp duty,
  - (b) the circumstances involve a stock exchange nominee, and
  - (c) the circumstances are such as are prescribed,the charge to stamp duty reserve tax shall be treated as not arising.
- (3) The Treasury may by regulations provide that a provision of an Act by virtue of which there is no charge to stamp duty reserve tax shall also apply in circumstances which involve a stock exchange nominee and are such as are prescribed.
- (4) The Treasury may by regulations provide that a provision of an Act by virtue of which the rate at which stamp duty reserve tax is charged is less than it would be apart from the provision shall also apply in circumstances which involve a stock exchange nominee and are such as are prescribed.
- (5) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (6) In this section —
  - (a) “prescribed” means prescribed by the regulations, and
  - (b) “stock exchange nominee” means a person designated for the purposes of section 127 of the Finance Act 1976 as a nominee of The Stock Exchange by an order made by the Secretary of State under subsection (5) of that section.

#### **177 Stamp duty reserve tax: information.**

— Regulations under section 98(1) of the Finance Act 1986 (administration etc. of stamp duty reserve tax) may include —

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- (a) provision that notice which the regulations require to be given to the Commissioners of Inland Revenue shall be given in a manner or form specified by the Commissioners;
- (b) provision that information which the regulations require to be supplied to the Commissioners shall be supplied in a manner or form specified by the Commissioners.

*Interest etc.*

## 178 Setting of rates of interest. E+W+S

- (1) The rate of interest applicable for the purposes of an enactment to which this section applies shall be the rate which for the purposes of that enactment is provided for by regulations made by the Treasury under this section.
- (2) This section applies to—
  - (a) section 8(9) of the <sup>M111</sup>Finance Act 1894,
  - (b) section 18 of the <sup>M112</sup>Finance Act 1896,
  - (c) section 61(5) of the <sup>M113</sup>Finance (1909-10) Act 1910,
  - (d) section 17(3) of the <sup>M114</sup>Law of Property Act 1925,
  - (e) section 73(6) of the <sup>M115</sup>Land Registration Act 1925,
  - (f) sections 86, 86A, 87, 87A and 88 of the <sup>M116</sup>Taxes Management Act 1970,
  - (g) paragraph 3 of Schedule 16A to the <sup>M117</sup>Finance Act 1973,
  - <sup>F31</sup>(gg) paragraph 5 of Schedule 1 to the Social Security Act 1975,]
  - (h) paragraphs 15 and 16 of Schedule 2, and paragraph 8 of Schedule 5, to the <sup>M118</sup>Oil Taxation Act 1975,
  - (i) section 47 of the <sup>M119</sup>Finance (No.2) Act 1975,
  - (j) paragraph 59 of Schedule 8 to the <sup>M120</sup>Development Land Tax Act 1976,
  - (k) sections 233 and 236(3) and (4) of the <sup>M121</sup>Inheritance Tax Act 1984,
  - (l) section 92 of the Finance Act 1986, and
  - (m) sections 160, 824, 825 and 826 of, and paragraph 3 of Schedule 19A to, the <sup>M122</sup>Taxes Act 1988. [<sup>F32</sup>and]
  - <sup>F33</sup>(n) section 118(7) of the Finance Act 1990.][<sup>F34</sup>and
  - (o) section 14(4) of the Ports Act 1991.]
- (3) Regulations under this section may—
  - (a) make different provision for different enactments or for different purposes of the same enactment,
  - (b) either themselves specify a rate of interest for the purposes of an enactment or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the regulations,
  - (c) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
  - (d) provide for rates arrived at by reference to averages to be rounded up or down,
  - (e) provide for circumstances in which alteration of a rate of interest is or is not to take place, and
  - (f) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.



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- (4) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Where—
- (a) the rate provided for by regulations under this section as the rate applicable for the purposes of any enactment is changed, and
  - (b) the new rate is not specified in the regulations,
- the Board shall by order specify the new rate and the day from which it has effect.
- (6) In section 828(2) of the Taxes Act 1988 (powers to make orders which are not exercisable by statutory instrument) the words “or section 178(5) of the Finance Act 1989” shall be added at the end.
- (7) Subsection (1) shall have effect for periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint and shall have effect in relation to interest running from before that day as well as from or from after that day; and different days may be appointed for different enactments.

#### Extent Information

- E1** This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only

#### Textual Amendments

- F31** S. 178(2)(gg) inserted (*prosp.*) (E.W.S.) by [Social Security Act 1990 \(c. 27, SIF 113:1\)](#) ss. 17(10), 23(2)
- F32** “and” inserted by [Finance Act 1990 \(c. 29, SIF 58\)](#), [s.118\(8\)](#)
- F33** S. 178(2)(n) inserted by [Finance Act 1990 \(c. 29, SIF 58\)](#), s. 118(8)
- F34** S. 178(2)(o) and word immediately preceding it inserted (G.B.) by [Ports Act 1991 \(c. 52, SIF 58\)](#), [s. 14\(5\)](#).

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

- C43** S. 178 applied by [Ports Act 1991 \(c. 52, SIF 58\)](#), [s. 14\(4\)](#).
- C44** For regulations see [S.I. 1989/1297 \(in Part III Vol. 5\)](#). And see [Tables I and O Vol. 1](#)
- C45** Power of appointment conferred by s. 178(7) partly exercised: 18.8.1989 appointed by [S.I. 1989/1298](#) for all the enactments specified in s. 178(2) other than s. 87A of the 1970 Act and s. 826 of the 1988 Act

#### Marginal Citations

- M111** 1894 c. 30.  
**M112** 1896 c. 28.  
**M113** 1910 c. 8.  
**M114** 1925 c. 20.  
**M115** 1925 c. 21.  
**M116** 1970 c. 9.  
**M117** 1973 c. 51.  
**M118** 1975 c. 22.  
**M119** 1975 c. 45.  
**M120** 1976 c. 24.  
**M121** 1984 c. 51.  
**M122** 1986 c. 41.

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## 178 Setting of rates of interest. **N.I.**

- (1) The rate of interest applicable for the purposes of an enactment to which this section applies shall be the rate which for the purposes of that enactment is provided for by regulations made by the Treasury under this section.
- (2) This section applies to—
  - (a) section 8(9) of the <sup>M196</sup>Finance Act 1894,
  - (b) section 18 of the <sup>M197</sup>Finance Act 1896,
  - (c) section 61(5) of the <sup>M198</sup>Finance (1909-10) Act 1910,
  - (d) section 17(3) of the <sup>M199</sup>Law of Property Act 1925,
  - (e) section 73(6) of the <sup>M200</sup>Land Registration Act 1925,
  - (f) sections 86, 86A, 87, 87A and 88 of the <sup>M201</sup>Taxes Management Act 1970,
  - (g) paragraph 3 of Schedule 16A to the <sup>M202</sup>Finance Act 1973,
  - [<sup>F75</sup>(gg) paragraph 5 of Schedule 1 to the Social Security Act 1975,]
  - (h) paragraphs 15 and 16 of Schedule 2, and paragraph 8 of Schedule 5, to the <sup>M203</sup>Oil Taxation Act 1975,
  - (i) section 47 of the <sup>M204</sup>Finance (No.2) Act 1975,
  - (j) paragraph 59 of Schedule 8 to the <sup>M205</sup>Development Land Tax Act 1976,
  - (k) sections 233 and 236(3) and (4) of the <sup>M206</sup>Inheritance Tax Act 1984,
  - (l) section 92 of the Finance Act 1986, and
  - (m) sections 160, 824, 825 and 826 of, and paragraph 3 of Schedule 19A to, the <sup>M207</sup>Taxes Act 1988. [<sup>F76</sup>and]
  - [<sup>F77</sup>(n) section 118(7) of the Finance Act 1990.]
- (3) Regulations under this section may—
  - (a) make different provision for different enactments or for different purposes of the same enactment,
  - (b) either themselves specify a rate of interest for the purposes of an enactment or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the regulations,
  - (c) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
  - (d) provide for rates arrived at by reference to averages to be rounded up or down,
  - (e) provide for circumstances in which alteration of a rate of interest is or is not to take place, and
  - (f) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Where—
  - (a) the rate provided for by regulations under this section as the rate applicable for the purposes of any enactment is changed, and
  - (b) the new rate is not specified in the regulations,
 the Board shall by order specify the new rate and the day from which it has effect.

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- (6) In section 828(2) of the Taxes Act 1988 (powers to make orders which are not exercisable by statutory instrument) the words “or section 178(5) of the Finance Act 1989” shall be added at the end.
- (7) Subsection (1) shall have effect for periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint and shall have effect in relation to interest running from before that day as well as from or from after that day; and different days may be appointed for different enactments.

#### Extent Information

- E2** This version of this provision extends to Northern Ireland only; a separate version has been created for England and Wales and Scotland only.

#### Textual Amendments

- F75** S. 178(2)(gg) inserted (*prosp.*) (E.W.S.) by Social Security Act 1990 (c. 27, SIF 113:1) ss. 17(10), 23(2)
- F76** “and” inserted by Finance Act 1990 (c. 29, SIF 58), s.118(8)
- F77** S. 178(2)(n) inserted by Finance Act 1990 (c. 29, SIF 58), s. 118(8)

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

- C78** For regulations see S.I. 1989/1297 (in Part III Vol. 5). And see Tables I and O Vol. 1
- C79** Power of appointment conferred by s. 178(7) partly exercised: 18.8.1989 appointed by S.I. 1989/1298 for all the enactments specified in s. 178(2) other than s. 87A of the 1970 Act and s. 826 of the 1988 Act

#### Marginal Citations

- M196** 1894 c. 30.  
**M197** 1896 c. 28.  
**M198** 1910 c. 8.  
**M199** 1925 c. 20.  
**M200** 1925 c. 21.  
**M201** 1970 c. 9.  
**M202** 1973 c. 51.  
**M203** 1975 c. 22.  
**M204** 1975 c. 45.  
**M205** 1976 c. 24.  
**M206** 1984 c. 51.  
**M207** 1986 c. 41.

### 179 Provisions consequential on section 178.

- (1) The words “rate applicable under section 178 of the Finance Act 1989” shall be substituted—
- (a) for the words from “rate” to “annum” in—
- (i) section 18(1) of the <sup>M123</sup> Finance Act 1896,
  - (ii) section 61(5) of the <sup>M124</sup> Finance (1909-10) Act 1910,
  - (iii) section 17(3) of the <sup>M125</sup> Law of Property Act 1925,
  - (iv) section 73(6) of the <sup>M126</sup> Land Registration Act 1925,

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- (v) paragraphs 15(1) and 16 of Schedule 2, and paragraph 8(4) of Schedule 5, to the <sup>M127</sup> Oil Taxation Act 1975,
  - (vi) section 47(1) of the <sup>M128</sup> Finance (No. 2) Act 1975, and
  - (vii) sections 824(1) and 825(2) of the Taxes Act 1988,
  - (b) for the words “prescribed rate” in—
    - (i) sections 86(1), 86A(1), 87(1), 87A(1) and (5) and 88(1) of the <sup>M129</sup> Taxes Management Act 1970,
    - (ii) paragraph 3(4) of Schedule 16A to the <sup>M130</sup> Finance Act 1973, and
    - (iii) paragraph 3(4) of Schedule 19A to the Taxes Act 1988,
  - (c) for the words “rate which” onwards in—
    - (i) paragraph 59(1) of Schedule 8 to the <sup>M131</sup> Development Land Tax Act 1976, and
    - (ii) section 826(1) of the Taxes Act 1988,
  - (d) for the words “rate applicable under subsection (2) below” in section 233(1) of the <sup>M132</sup> Inheritance Tax Act 1984,
  - (e) for the words “rate for the time being applicable under section 233(2)(b) above” in subsection (3), and the words “rate for the time being applicable under section 233(2)(a) above” in subsection (4), of section 236 of that Act,
  - (f) for the words “appropriate rate” in section 92(2) of the <sup>M133</sup> Finance Act 1986, and
  - (g) for the words “rate prescribed from time to time by the Treasury by order” in section 160(5)(d) of the Taxes Act 1988.
- (2) In section 8(9) of the <sup>M134</sup> Finance Act 1894, for the words from “such interest” to “per cent.” there shall be substituted the words “interest at such rate not exceeding that applicable under section 178 of the Finance Act 1989”.
- (3) In section 236(4) of the Inheritance Tax Act 1984, for the words “as if section 233(1)(b) above had applied” there shall be substituted the words “from the end of the period mentioned in section 233(1)(b) above”.
- (4) Any amendment made by subsection (1), (2) or (3) above shall have effect in relation to any period for which section 178(1) above has effect for the purposes of the enactment concerned.
- (5) Section 146(11) of the Taxes Act 1988 shall have effect in relation to any year of assessment beginning after the day on which section 178(1) above has effect for the purposes of section 160 of that Act with the substitution of the words “applicable for the purposes of section 160” for the words “prescribed by the Treasury under section 160(5)”.

#### Marginal Citations

**M123** 1896 c. 28.  
**M124** 1910 c. 8.  
**M125** 1925 c. 20.  
**M126** 1925 c. 21.  
**M127** 1975 c. 22.  
**M128** 1975 c. 45.  
**M129** 1970 c. 9.  
**M130** 1973 c. 51.  
**M131** 1976 c. 24.

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**M132** 1984 c. 51.  
**M133** 1986 c.41.  
**M134** 1894 c. 30.

## **180 Repayment interest: period of accrual.**

- (1) In section 48(1) of the <sup>M135</sup> Finance Act 1975, after the words “carry interest” there shall be inserted the words “from the date on which the sums were paid until the order for repayment is issued”.
- (2) In—
  - (a) paragraph 16 of Schedule 2 to the <sup>M136</sup> Oil Taxation Act 1975,
  - (b) section 105(7) of the <sup>M137</sup> Finance Act 1980,
  - (c) paragraph 13(4) and (5) of Schedule 16 to the <sup>M138</sup> Finance Act 1981, and
  - (d) paragraph 10(4) of Schedule 19 to the <sup>M139</sup> Finance Act 1982,for the word “repayment” there shall be substituted the words “the order for repayment is issued”.
- (3) In paragraph 59(1) of Schedule 8 to the <sup>M140</sup> Development Land Tax Act 1976, after the word “later,” there shall be inserted the words “until the order for repayment is issued”.
- (4) In section 235(1) of the <sup>M141</sup> Inheritance Tax Act 1984 (and paragraph 19(3) of Schedule 4 to the <sup>M142</sup> Finance Act 1975), after the word “made” there shall be inserted the words “until the order for repayment is issued”.
- (5) In section 92(2) of the <sup>M143</sup> Finance Act 1986, for the words “the time it was paid” there shall be substituted the words “the date on which the payment was made until the order for repayment is issued”.
- (6) In section 826(1) of the Taxes Act 1988, for the words “that repayment or payment is made” there shall be substituted the words “the order for repayment or payment is issued”.
- (7) The amendments made by this section shall be deemed always to have had effect.

### **Marginal Citations**

**M135** 1975 c. 7.  
**M136** 1975 c. 22.  
**M137** 1980 c. 48.  
**M138** 1981 c. 35.  
**M139** 1982 c. 39.  
**M140** 1976 c. 24.  
**M141** 1984 c. 51.  
**M142** 1975 c. 7.  
**M143** 1986 c. 41.

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### Miscellaneous

#### [<sup>F35</sup>181 **Broadcasting: additional payments by programme contractors.**

- (1) <sup>M144</sup>The Broadcasting Act 1981 shall have effect with respect to additional payments payable by programme contractors under that Act subject to the amendments made by Part I, and with the substitution, for Schedule 4 to that Act, of the provisions contained in Part II, of Schedule 16 to this Act.
- (2) The transitional provisions made by Part III of that Schedule shall have effect.
- (3) This section shall come into force on 1st January 1990.]

#### Textual Amendments

**F35** S. 181, Sch. 16 repealed (prosp. as mentioned in S.I. 1990/2347, **art. 3(3)**) by Broadcasting Act 1990 (c. 42, SIF 96), ss. 127-129, 134, 203(3), 204(2), Schs. 9-12, **Sch. 21**

#### Marginal Citations

**M144** 1981 c. 68.

#### 182 **Disclosure of information.**

- (1) A person who discloses any information which he holds or has held in the exercise of tax functions is guilty of an offence if it is information about any matter relevant, for the purposes of those functions, to tax or duty in the case of any identifiable person.
- (2) In this section “tax functions” means functions relating to tax or duty—
  - (a) of the Commissioners, the Board and their officers,
  - (b) of any person carrying out the administrative work of any tribunal mentioned in subsection (3) below, and
  - (c) of any other person providing, or employed in the provision of, services to any person mentioned in paragraph (a) or (b) above.
- (3) The tribunals referred to in subsection (2)(b) above are—
  - (a) the General Commissioners and the Special Commissioners,
  - (b) any value added tax tribunal,
  - (c) any referee or board of referees appointed for the purposes of section 80(3) of the <sup>M145</sup>Taxes Management Act 1970 or under section 26(7) of the <sup>M146</sup>Capital Allowances Act 1968, and
  - (d) any tribunal established under section 463 of the Taxes Act 1970 or section 706 of the Taxes Act 1988.
- (4) A person who discloses any information which—
  - (a) he holds or has held in the exercise of functions—
    - (i) of the Comptroller Auditor General and any member of the staff of the National Audit Office, or
    - (ii) of the Parliamentary Commissioner for Administration and his officers,
  - (b) is, or is derived from, information which was held by any person in the exercise of tax functions, and

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- (c) is information about any matter relevant, for the purposes of tax functions, to tax or duty in the case of any identifiable person, is guilty of an offence.
- (5) Subsections (1) and (4) above do not apply to any disclosure of information—
- (a) with lawful authority,
  - (b) with the consent of any person in whose case the information is about a matter relevant to tax or duty, or
  - (c) which has been lawfully made available to the public before the disclosure is made.
- (6) For the purposes of this section a disclosure of any information is made with lawful authority if, and only if, it is made—
- (a) by a Crown servant in accordance with his official duty,
  - (b) by any other person for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the person responsible,
  - (c) to, or in accordance with an authorisation duly given by, the person responsible,
  - (d) in pursuance of any enactment or of any order of a court, or
  - (e) in connection with the institution of or otherwise for the purposes of any proceedings relating to any matter within the general responsibility of the Commissioners or, as the case requires, the Board,
- and in this subsection “the person responsible” means the Commissioners, the Board, the Comptroller or the Parliamentary Commissioner, as the case requires.
- (7) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence—
- (a) he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise, or
  - (b) he believed that the information in question had been lawfully made available to the public before the disclosure was made and had no reasonable cause to believe otherwise.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (9) No prosecution for an offence under this section shall be instituted in England and Wales or in Northern Ireland except—
- (a) by the Commissioners or the Board, as the case requires, or
  - (b) by or with the consent of the Director of Public Prosecutions or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (10) In this section—
- “the Board” means the Commissioners of Inland Revenue,
- “the Commissioners” means the Commissioners of Customs and Excise,
- “Crown servant” has the same meaning as in the <sup>M147</sup> Official Secrets Act 1989, and

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“tax or duty” means any tax or duty within the general responsibility of the Commissioners or the Board.

(11) In this section—

- (a) references to the Comptroller and Auditor General include the Comptroller and Auditor General for Northern Ireland,
- (b) references to the National Audit Office include the Northern Ireland Audit Office, and
- (c) references to the Parliamentary Commissioner for Administration include the Health Service Commissioner for England, the Health Service Commissioner for Wales, the Health Service Commissioner for Scotland, the Northern Ireland Parliamentary Commissioner for Administration and the Northern Ireland Commissioner for Complaints.

(12) This section shall come into force on the repeal of section 2 of the <sup>M148</sup> Official Secrets Act 1911.

#### Marginal Citations

M145 1970 c. 9.

M146 1968 c. 3.

M147 1989 c. 6.

M148 1911 c. 28.

VALID FROM 16/07/1992

#### [182A <sup>F36</sup> Double taxation: disclosure of information.

- (1) A person who discloses any information acquired by him in the exercise of his functions as a member of an advisory commission set up under the Arbitration Convention is guilty of an offence.
- (2) Subsection (1) above does not apply to any disclosure of information—
  - (a) with the consent of the person who supplied the information to the commission, or
  - (b) which has been lawfully made available to the public before the disclosure is made.
- (3) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he believed that the information in question had been lawfully made available to the public before the disclosure was made and had no reasonable cause to believe otherwise.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (5) No prosecution for an offence under this section shall be instituted in England and Wales or in Northern Ireland except—



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- (a) by the Board, or
  - (b) by or with the consent of the Director of Public Prosecutions or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (6) In this section—
- “the Arbitration Convention” has the meaning given by section 815B(4) of the Taxes Act 1988;
  - “the Board” means the Commissioners of Inland Revenue.]

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#### Textual Amendments

**F36** S. 182A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 51(3)

### 183 Government securities: redemption and transfer.

- (1) In section 47 of the <sup>M149</sup> Finance Act 1942 (power to make regulations about transfer and registration of Government stock)—
- (a) the following paragraph shall be inserted after paragraph (b) of subsection (1)  
—  
“**(bb)** for the redemption of such stock and bonds;” and
  - (b) the following subsection shall be inserted after that subsection—  
“**(1A)** Regulations under subsection (1) of this section may make provision authorising the Bank of England, in such circumstances and subject to such conditions as may be prescribed in the regulations, to transfer stock and bonds standing in their books in the name of a deceased person into the name of another person without requiring the production of probate, confirmation or letters of administration.”
- (2) In section 3(1) of the <sup>M150</sup> National Debt Act 1972 (power to make regulations about stock on the National Savings Stock Register) the following paragraph shall be inserted after paragraph (b)—
- “**(bb)** the redemption of stock registered in the register,”.
- (3) After section 14 of the <sup>M151</sup> National Loans Act 1968 there shall be inserted—

#### “**14A Redemption of securities held in Issue Department of Bank of England.**”

- (1) Any securities of Her Majesty’s Government in the United Kingdom which are for the time being held in the Issue Department of the Bank of England may be redeemed by the Treasury before maturity at market prices determined in such manner as may be agreed between the Treasury and the Bank.
- (2) Any expenses incurred by the Treasury in connection with the redemption of securities under subsection (1) above shall be paid out of the National Loans Fund.”

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#### Marginal Citations

**M149** 1942 c. 21.

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**M150** 1972 c. 65.

**M151** 1968 c. 13.

#### **184 National savings accounts.**

- (1) In section 2 of the <sup>M152</sup>National Savings Bank Act 1971 (general power to make regulations) after subsection (1) there shall be inserted—

“(1A) Regulations under this section may restrict the classes of persons who may open accounts with the National Savings Bank, but any such restriction shall not apply to any account opened before the coming into force of the regulations imposing the restriction.”

- (2) In section 5 of that Act (interest on ordinary deposits) in subsection (1) for the words from the beginning to “in any ordinary deposit account” there shall be substituted “The Director of Savings may, with the consent of the Treasury, from time to time determine the rate or rates at which interest is to be payable on amounts deposited in ordinary accounts or that no interest is to be payable on such amounts, and any such determination in relation to amounts deposited in any ordinary deposit account may be made”.

- (3) After subsection (1) of section 5 of that Act there shall be inserted—

“(1A) The Director of Savings shall give notice in the London, Edinburgh and Belfast Gazettes of any determination under subsection (1) above; and any such determination may affect deposits received at or before, as well as after, the time the determination is made.”

- (4) Subsection (5) of section 5 of that Act (rate of interest on ordinary deposits to be not less than 2.5 per cent per annum) shall cease to have effect.

- (5) Subsections (2) and (3) above shall come into force on 1st October 1989.

#### **Marginal Citations**

**M152** 1971 c. 29.

#### **185 Winding up of Redemption Annuities Account.**

As soon as may be after the passing of this Act, the Treasury shall cause to be wound up the Redemption Annuities Account (which was established under section 25 of the Tithe <sup>M153</sup>Act 1936 and which became redundant on the redemption on 1st October 1988 of all remaining stock issued under that Act), and the surplus standing to the credit of that account immediately before it is wound up shall be paid into the Consolidated Fund.

#### **Marginal Citations**

**M153** 1936 c. 43.

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## General

### 186 Interpretation etc.

- (1) In this Act “the Taxes Act 1970” means the <sup>M154</sup>Income and Corporation Taxes Act 1970 and “the Taxes Act 1988” means the <sup>M155</sup>Income and Corporation Taxes Act 1988.
- (2) Chapter II of Part I of this Act shall be construed as one with the <sup>M156</sup>Value Added Tax Act 1983.
- (3) Part II of this Act, so far as it relates to capital gains tax, shall be construed as one with the <sup>M157</sup>Capital Gains Tax Act 1979.

#### Marginal Citations

**M154** 1970 c. 10.

**M155** 1988 c. 1.

**M156** 1983 c. 55.

**M157** 1979 c. 14.

### 187 Repeals.

- (1) The enactments specified in Schedule 17 to this Act (which include unnecessary enactments) are hereby repealed to the extent specified in the third column of that Schedule, but subject to any provision at the end of any Part of that Schedule.
- (2) The repeal of the enactments specified in Part XIV of Schedule 17 shall come into force on such day as the Treasury may appoint by order made by statutory instrument; and different days may be appointed for different enactments.

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

**C46** Power of appointment conferred by s. 187(2) partly exercised: 30.9.1989 appointed by [S.I. 1989/1788, art. 2](#) for the repeal of the enactments specified in Part XIV of Schedule 17 other than section 27 in Part II of the [Tithe Act 1936 \(c. 43\)](#)

### 188 Short title.

This Act may be cited as the Finance Act 1989.

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## SCHEDULES

### SCHEDULE 1

Section 6.

#### VEHICLES EXCISE DUTY: RATES

#### PART I

TABLE SUBSTITUTED IN PART II OF SCHEDULE 2 TO THE 1971 AND 1972 ACTS

Seating capacity	Rate of duty
	£
Under 9	100
9 to 16	130
17 to 35	200
36 to 60	300
Over 60	450

#### PART II <sup>F37</sup>

##### Textual Amendments

**F37** S. 6(3)(4), Sch. 1 Pt. II, Sch. 2 para. 3 repealed by Finance Act 1990 (c. 29, SIF 58), s. 132, Sch. 19 Pt. II Note 3

### SCHEDULE 2

Section 8.

#### VEHICLES EXCISE DUTY: SPECIAL MACHINES

1 The <sup>M158</sup>Vehicles (Excise) Act 1971 and the <sup>M159</sup>Vehicles (Excise) Act (Northern Ireland) 1972 shall be amended as follows.

##### Marginal Citations

**M158** 1971 c. 10.

**M159** 1972 c. 10(N.I.).

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2 In Part I of Schedule 3 to each Act (annual rates of duty on tractorsetc.)—

- (a) after paragraph 1 there shall be inserted—

“1A In this Schedule “special machine” means—

- (a) a tractor;
- (b) an agricultural engine;
- (c) a digging machine;
- (d) a mobile crane;
- (e) a works truck; or
- (f) a mowing machine.”;

- (b) for paragraph 2 there shall be substituted—

“2 In this Schedule “tractor” means a vehicle which is either—

- (a) an agricultural tractor, or
- (b) a tractor (other than an agricultural tractor) that is—

(i) designed and constructed primarily for use otherwise than on roads, and

(ii) incapable by reason of its construction of exceeding a speed of twenty-five miles per hour on the level under its own power.”;

- (c) in paragraph 3(b), for the words “neither carries nor hauls any load than” there shall be substituted the words “does not carry any load except”;
- (d) in paragraph 4(b), for the words “neither carries nor hauls any load than” there shall be substituted the words “does not carry any load except”;
- (e) paragraph 5A shall be omitted; and
- (f) in paragraph 6, for the words from “(other than” to “8 below)” there shall be substituted the words “(other than a special machine, a recovery vehicle or a vehicle to which Schedule 4A to this Act applies)”.

3<sup>F38</sup>

**Textual Amendments**

**F38** S. 6(3)(4), Sch. 1 Pt. II, Sch. 2 para. 3 repealed by Finance Act 1990 (c. 29, SIF 58), s. 132, Sch. 19 Pt. II Note 3

4 In Part I of Schedule 4 to each Act (annual rates of duty on goods vehicles)—

- (a) in paragraph 11, for sub-paragraphs (b) and (c) there shall be substituted—

“(b) a special machine within the meaning of Schedule 3 to this Act;

(c) a recovery vehicle within the meaning of that Schedule; or”;

- (b) paragraphs 12 and 13 shall be omitted; and

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- (c) in paragraph 15(1), the definitions of “agricultural machine”, “fisherman’s tractor”, “mobile crane”, “recovery vehicle” and “works truck” shall be omitted.

## SCHEDULE 3

Section 18.

## VALUE ADDED TAX: BUILDINGS AND LAND

*Zero-rating*

- 1 For Group 8 (construction of buildings etc.) of Schedule 5 (zero-rating) to the <sup>M160</sup>Value Added Tax Act 1983 there shall be substituted—

“Group 8—Construction of Dwellings, Etc.

Item No.

- 1 The grant by a person constructing a building—
- (a) designed as a dwelling or number of dwellings; or
  - (b) intended for use solely for a relevant residential purpose or a relevant charitable purpose,
- of a major interest in, or in any part of, the building or its site.
- 2 The supply in the course of the construction of—
- (a) a building designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose; or
  - (b) any civil engineering work necessary for the development of a permanent park for residential caravans,
- of any services other than the services of an architect, surveyor or any person acting as consultant or in a supervisory capacity.
- 3 The supply to a person of—
- (a) materials; or
  - (b) builders’ hardware, sanitary ware or other articles of a kind ordinarily installed by builders as fixtures,
- by a supplier who also makes to the same person supplies within item 2 of this Group or Group 8A below of services which include the use of the materials or the installation of the articles.

*Notes:*

- (1) “Grant” includes assignment.

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- (2) “Dwelling” includes a garage constructed at the same time as a dwelling for occupation together with it.
- (3) Use for a relevant residential purpose means use as—
- (a) a home or other institution providing residential accommodation for children;
  - (b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;
  - (c) a hospice;
  - (d) residential accommodation for students or school pupils;
  - (e) residential accommodation for members of any of the armed forces;
  - (f) a monastery, nunnery or similar establishment; or
  - (g) an institution which is the sole or main residence of at least 90 percent of its residents,
- except use as a hospital, a prison or similar institution or an hotel, inn or similar establishment.
- (4) Use for a relevant charitable purpose means use by a charity in either or both of the following ways, namely—
- (a) otherwise than in the course or furtherance of a business;
  - (b) as a village hall or similarly in providing social or recreational facilities for a local community.
- (5) Where part of a building is designed as a dwelling or number of dwellings or intended for use solely for a relevant residential purpose or a relevant charitable purpose (and part is not)—
- (a) a grant or other supply relating only to the part so designed or intended for such use (or its site) shall be treated as relating to a building so designed or intended for such use;
  - (b) a grant or other supply relating only to the part neither so designed nor intended for such use (or its site) shall not be so treated; and
  - (c) in the case of any other grant or other supply relating to, or to any part of, the building (or its site), an apportionment shall be made to determine the extent to which it is to be so treated.
- (6) Where all or part of a building is intended for use solely for a relevant residential purpose or a relevant charitable purpose—
- (a) a supply relating to the building (or any part of it) shall not be taken for the purposes of item 2 or 3 as relating to a building intended for such use unless it is made to a person who intends to use the building (or part) for such a purpose; and
  - (b) a grant or other supply relating to the building (or any part of it) shall not be taken as relating to a building intended for such use unless before it is made the person to whom it is made has given to the person making it a certificate in such form as may be specified in a notice published by the Commissioners stating that the grant or other supply (or a specified part of it) so relates.

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- (7) The grant of an interest in, or in part of, a building designed as adwelling or number of dwellings is not within item 1 if—
- (a) the interest granted is such that the grantee will not be entitled to reside in the building, or part, throughout the year; or
  - (b) residence there throughout the year will be prevented by the terms of a covenant, statutory planning consent or similar permission.
- (8) Where the major interest referred to in item 1 is a tenancy or lease—
- (a) if a premium is payable, the grant falls within that item only to the extent that it is made for consideration in the form of the premium; and
  - (b) if a premium is not payable, the grant falls within that item only to the extent that it is made for consideration in the form of the first payment of rent due under the tenancy or lease.
- (9) The reference in item 2 to the construction of a building or work does not include a reference to—
- (a) the conversion, reconstruction, alteration or enlargement of an existing building or work; or
  - (b) any extension or annexation to an existing building which provides for internal access to the existing building or of which the separate use, letting or disposal is prevented by the terms of any covenant, statutory planning consent or similar permission;
- and the reference in item 1 to a person constructing a building shall be construed accordingly.
- (10) A caravan is not a residential caravan if residence in it throughout the year is prevented by the terms of a covenant, statutory planning consent or similar permission.
- (11) Item 2 does not include the supply of services described in paragraph 1(1) or 5(3) of Schedule 2 to this Act.
- (12) The goods referred to in item 3 do not include—
- (a) finished or prefabricated furniture, other than furniture designed to be fitted in kitchens;
  - (b) materials for the construction of fitted furniture, other than kitchen furniture;
  - (c) domestic electrical or gas appliances, other than those designed to provide space heating or water heating or both; or
  - (d) carpets or carpeting material.
- (13) Section 16(3) of this Act does not apply to goods forming part of a description of supply in this Group.”

**Marginal Citations**  
M160 1983 c. 55.

- 2 (1) Group 8A (protected buildings) of that Schedule shall be amended as follows.



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- (2) In item 1, for the word “granting” there shall be substituted the word “grant”.
  - (3) In Note (1), for the words “a building which” there shall be substituted the words “a building which is designed to remain as or become a dwelling or number of dwellings or is intended for use solely for a relevant residential purpose or a relevant charitable purpose after the reconstruction or alteration and which, in either case,”.
  - (4) After that Note there shall be inserted—
    - “(1A) Notes (1) to (8) to Group 8 above apply in relation to this Group as they apply in relation to that Group.”
  - (5) Note (5) shall be omitted.
  - (6) After Note (6) there shall be inserted—
    - “(6A) For the purposes of item 2 the construction of a building separate from, but in the curtilage of, a protected building does not constitute an alteration of the protected building.”
  - (7) The following Note shall be substituted for Note (7)—
    - “(7) Item 2 does not include the supply of services described in paragraph 1(1) or 5(3) of Schedule 2 to this Act.”
- 3 In Group 11 (caravans and houseboats) of that Schedule, for paragraph (b) of the Note there shall be substituted—
  - “(b) the supply of accommodation in a caravan or houseboat.”

### *Exemptions*

- 4 (1) For Group 1 (land) of Schedule 6 (exemptions) to the <sup>M161</sup>Value Added Tax Act 1983 there shall be substituted—
- “Group 1 – Land
- Item No.
- 1 The grant of any interest in or right over land or of any licence to occupy land, other than—
    - (a) the grant of the fee simple in—
      - (i) a building which has not been completed and which is neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose;
      - (ii) a new building which is neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose after the grant;
      - (iii) a civil engineering work which has not been completed;
      - (iv) a new civil engineering work;

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- (b) the grant of any interest, right or licence consisting of a right to take game or fish;
- (c) the provision in an hotel, inn, boarding house or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering;
- (d) the provision of holiday accommodation in a house, flat, caravan, houseboat or tent;
- (e) the provision of seasonal pitches for caravans, and the grant of facilities at caravan parks to persons for whom such pitches are provided;
- (f) the provision of pitches for tents or of camping facilities;
- (g) the grant of facilities for parking a vehicle;
- (h) the grant of any right to fell and remove standing timber;
- (i) the grant of facilities for housing, or storage of, an aircraft or formooring, or storage of, a ship, boat or other vessel;
- (j) the grant of any right to occupy a box, seat or other accommodation at a sports ground, theatre, concert hall or other place of entertainment; and
- (k) the grant of facilities for playing any sport or participating in any physical recreation.

*Notes:*

- (1) “Grant” includes an assignment, other than an assignment of an interest made to the person to whom a surrender of the interest could be made.
- (2) A building shall be taken to be completed when an architect issues a certificate of practical completion in relation to it or it is first fully occupied, whichever happens first; and a civil engineering work shall be taken to be completed when an engineer issues a certificate of completion in relation to it or it is first fully used, whichever happens first.
- (3) Notes (2) to (6) to Group 8 of Schedule 5 to this Act apply in relation to this Group as they apply in relation to that Group.
- (4) A building or civil engineering work is new if it was completed less than three years before the grant.
- (5) Subject to Note (6), the grant of the fee simple in a building or work completed before 1st April 1989 is not excluded from this Group by paragraph (a)(ii) or (iv).
- (6) Note (5) does not apply where the grant is the first grant of the fee simple made on or after 1st April 1989 and the building was not fully occupied, or the work not fully used, before that date.
- (7) Where a grant of an interest in, right over or licence to occupy land includes a valuable right to take game or fish, an apportionment shall be made to determine the supply falling outside this Group by virtue of paragraph (b).

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- (8) “Similar establishment” includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board or facilities for the preparation of food, which are used by or held out as being suitable for use by visitors or travellers.
- (9) “Houseboat” includes a houseboat within the meaning of Group 11 of Schedule 5 to this Act.
- (10) “Holiday accommodation” includes any accommodation advertised or held out as such.
- (11) A seasonal pitch is a pitch—
- (a) which is provided for a period of less than a year; or
  - (b) which is provided for a year or a period longer than a year but which the person to whom it is provided is prevented by the terms of any covenant, statutory planning consent or similar permission from occupying by living in a caravan at all times throughout the period for which the pitch is provided.
- (12) “Mooring” includes anchoring or berthing.
- (13) Paragraph (k) shall not apply where the grant of the facilities is for—
- (a) a continuous period of use exceeding twenty-four hours; or
  - (b) a series of ten or more periods, whether or not exceeding twenty-four hours in total, where the following conditions are satisfied—
    - (i) each period is in respect of the same activity carried on at the same place;
    - (ii) the interval between each period is not less than one day and not more than fourteen days;
    - (iii) consideration is payable by reference to the whole series and is evidenced by written agreement;
    - (iv) the grantee has exclusive use of the facilities; and
    - (v) the grantee is a school, a club, an association or an organisation representing affiliated clubs or constituent associations.”
- (2) In consequence of the amendment made by sub-paragraph (1) above, in paragraph 9(1) of Schedule 4 to the <sup>M162</sup>Value Added Tax Act 1983 for “(a)” there shall be substituted “(c)”.

**Marginal Citations**

**M161** 1983 c.55.

**M162** 1983 c. 55.

*Other provisions*

- 5 The following section shall be substituted for section 21 (refund of tax to person constructing dwelling) of the Value Added Tax Act 1983—

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**“21 Refund of tax to persons constructing certain buildings.**

(1) Subject to subsection (2) below, where tax is chargeable on the supply of goods to, or the importation of goods by, a person constructing a building lawfully and otherwise than in the course or furtherance of any business, and—

- (a) the goods are incorporated in the building or its site; and
- (b) the supply of the goods would have been zero-rated by virtue of item 3 of Group 8 of Schedule 5 to this Act if they had been supplied by a supplier making to the same person supplies within item 2 of that Group of services including their use or installation, and any required certificate had been given,

the Commissioners shall, on a claim made in that behalf, refund to the person the amount of the tax so chargeable.

(2) The Commissioners shall not be required to entertain a claim for a refund of tax under this section unless the claim—

- (a) is made within such time and in such form and manner;
- (b) contains such information; and
- (c) is accompanied by such documents, whether by way of evidence or otherwise,

as the Commissioners may by regulations prescribe.”

6 (1) The following section shall be inserted in the <sup>M163</sup>Value Added Tax Act 1983 after section 35—

**“35A Buildings and land.**

(1) Schedule 6A to this Act shall have effect with respect to buildings and land.

(2) The Treasury may by order amend Schedule 6A to this Act.”

(2) The following Schedule shall be inserted in the Value Added Tax Act 1983 after Schedule 6—

“SCHEDULE 6A

Section 35A.

BUILDINGS AND LAND

*Residential and charitable buildings: change of use etc.*

1 (1) In this paragraph “relevant zero-rated supply” means a grant or other supply taking place on or after 1st April 1989 which—

- (a) relates to a building intended for use solely for a relevant residential purpose or a relevant charitable purpose or part of such a building; and
- (b) is zero-rated, in whole or in part, by virtue of Group 8 of Schedule 5 to this Act.

(2) Sub-paragraph (3) below applies where—

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- (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to any person;
  - (b) within the period of ten years beginning with the day on which the building is completed, the person grants an interest in, right over or licence to occupy the building or any part of it (or the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related); and
  - (c) after the grant the whole or any part of the building, or of the part to which the grant relates, (or the whole of the building or of the part to which the grant relates, or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related) is not intended for use solely for a relevant residential purpose or a relevant charitable purpose.
- (3) Where this sub-paragraph applies, to the extent that the grant relates to so much of the building as—
  - (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies; and
  - (b) is not intended for use solely for a relevant residential purpose or a relevant charitable purpose after the grant,it shall be taken to be a taxable supply in the course or furtherance of a business which is not zero-rated by virtue of Group 8 of Schedule 5 to this Act (if it would not otherwise be such a supply).
- (4) Sub-paragraph (5) below applies where—
  - (a) one or more relevant zero-rated supplies relating to a building (or part of a building) have been made to any person; and
  - (b) within the period of ten years beginning with the day on which the building is completed, the person uses the building or any part of it (or the building or any part of it including, consisting of or forming part of the part to which the relevant zero-rated supply or supplies related) for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.
- (5) Where this sub-paragraph applies, his interest in, right over or licence to occupy so much of the building as—
  - (a) by reason of its intended use gave rise to the relevant zero-rated supply or supplies; and
  - (b) is used otherwise than for a relevant residential purpose or a relevant charitable purpose,shall be treated for the purposes of this Act as supplied to him for the purpose of a business carried on by him and supplied by him in the course or furtherance of the business when he first uses it for a purpose which is neither a relevant residential purpose nor a relevant charitable purpose.
- (6) Where sub-paragraph (5) above applies—
  - (a) the supply shall be taken to be a taxable supply which is not zero-rated by virtue of Group 8 of Schedule 5 to this Act (if it would not otherwise be such a supply); and
  - (b) the value of the supply shall be such that the amount of tax chargeable on it is equal to the amount of the tax which would have been chargeable on the relevant zero-rated supply (or, where

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there was more than one such supply, the aggregate amount which would have been chargeable on them) had so much of the building as is mentioned in sub-paragraph (5) above not been intended for use solely for a relevant residential purpose or a relevant charitable purpose.

*Election to waive exemption*

- 2 (1) Subject to sub-paragraphs (2) and (3) and paragraph 3 below, where an election under this paragraph has effect in relation to any land, if and to the extent that any grant made in relation to it at a time when the election has effect by the person who made the election, or where that person is a body corporate by that person or a relevant associate, would (apart from this sub-paragraph) fall within Group 1 of Schedule 6 to this Act, the grant shall not fall within that Group.
- (2) Sub-paragraph (1) above shall not apply in relation to a grant if the grant is made in relation to—
- (a) a building or part of a building intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
  - (b) a building or part of a building intended for use solely for a relevant charitable purpose, other than as an office.
- (3) Sub-paragraph (1) above shall not apply in relation to a grant if—
- (a) the grant is made to a registered housing association and the association has given to the grantor a certificate stating that the land is to be used (after any necessary demolition work) for the construction of a building or buildings intended for use as a dwelling or number of dwellings or solely for a relevant residential purpose; or
  - (b) the grant is made to an individual and the land is to be used for the construction, otherwise than in the course or furtherance of a business carried on by him, of a building intended for use by him as a dwelling.
- (4) Subject to the following provisions of this paragraph, no input tax on any supply or importation which, apart from this sub-paragraph, would be allowable by virtue of the operation of this paragraph shall be allowed if the supply or importation took place before the first day for which the election in question has effect.
- (5) Subject to sub-paragraph (6) below, sub-paragraph (4) above shall not apply where the person by whom the election was made—
- (a) has not, before the first day for which the election has effect, made in relation to the land in relation to which the election has effect any grant falling within Group 1 of Schedule 6 to this Act; or
  - (b) has before that day made in relation to that land a grant or grants so falling but the grant, or all the grants,—
    - (i) were made in the period beginning with 1st April 1989 and ending with 31st July 1989; and
    - (ii) would have been taxable supplies but for the amendments made by Schedule 3 to the Finance Act 1989.

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- (6) Sub-paragraph (5) above does not make allowable any input tax on supplier importations taking place before 1st August 1989 unless—
  - (a) it is attributable by or under regulations to grants made by the person or after 1st April 1989 which would have been taxable supplies but for the amendments made by Schedule 3 to the Finance Act 1989; and
  - (b) the election has effect from 1st August 1989.
- (7) Sub-paragraph (4) above shall not apply in relation to input tax on grants or other supplies which are made in the period beginning with 1st April 1989 and ending with 31st July 1989 if—
  - (a) they would have been zero-rated by virtue of item 1 or 2 of Group 8 of Schedule 5 to this Act or exempt by virtue of item 1 of Group 1 of Schedule 6 to this Act but for the amendments made by Schedule 3 to the Finance Act 1989; and
  - (b) the election has effect from 1st August 1989.
- 3 (1) An election under paragraph 2 above shall have effect—
  - (a) from the beginning of the day on which the election is made or of any later day specified in the election; or
  - (b) where the election is made before 1st November 1989, from the beginning of 1st August 1989 or of any later day so specified.
- (2) An election under paragraph 2 above shall have effect in relation to any land specified, or of a description specified, in the election.
- (3) Where such an election is made in relation to, or to part of, a building (or planned building), it shall have effect in relation to the whole of the building and all the land within its curtilage; and for the purposes of this sub-paragraph buildings linked internally or by a covered walkway, and parades, precincts and complexes divided into separate units, shall be taken to be a single building (if they otherwise would not be).
- (4) Where such an election is made in relation to agricultural land (including a building on agricultural land), it shall have effect in relation to any other agricultural land if that other land is not separated from it by—
  - (a) land which is not agricultural land; or
  - (b) agricultural land in separate ownership.
- (5) For the purposes of sub-paragraph (4) above—
  - (a) land shall be taken not to be separated from other land if it is separated from it only by a road, railway, river or something similar; and
  - (b) land is in separate ownership from land in relation to which an election is made if the person by whom the election is made has no interest in, right over or licence to occupy it and, where that person is a body corporate, no relevant associate has any such interest, right or licence.
- (6) An election under paragraph 2 above shall be irrevocable and, except where it is an election of a description specified in a notice published by the Commissioners, shall not have effect unless written notification of

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it is given to the Commissioners together with such information as the Commissioners may require.

- (7) Except where the Commissioners otherwise allow, a notification required under sub-paragraph (6) above shall be given not later than the end of the period of thirty days beginning with the day on which the election is made.
- (8) In paragraph 2 above and this paragraph “relevant associate”, in relation to a body corporate by which an election under paragraph 2 above has been made in relation to any building or land, means a body corporate which under section 29 of this Act—
- (a) was treated as a member of the same group as the body corporate by which the election was made at the time when the election first had effect;
  - (b) has been so treated at any later time when the body corporate by which the election was made had an interest in, right over or licence to occupy the building or land (or any part of it); or
  - (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body corporate had an interest in, right over or licence to occupy the building or land (or any part of it).
- (9) In paragraph 2 above “registered housing association” means a registered housing association within the meaning of the Housing Associations Act 1985 or Part VII of the Housing (Northern Ireland) Order 1981.
- 4 (1) This paragraph has effect where rent is payable in consideration of the grant of an interest in, right over, or licence to occupy any building or land to which an election under paragraph 2 above relates (or any part of any such building or land).
- (2) If—
- (a) the rent relates to a period beginning before and ending on or after the first day for which the election has effect; and
  - (b) the grant for which the rent is consideration would, apart from this sub-paragraph, take place before that day,
- the grant shall be treated as taking place on that day to the extent that it is made for rent relating to the part of the period falling on or after that day.
- (3) If—
- (a) the rent relates to a period beginning on or after the first day for which the election has effect; and
  - (b) the grant for which the rent is consideration would, apart from this sub-paragraph, take place before that day,
- the grant shall be treated as taking place on the first day of the period to which the rent relates.
- (4) If—
- (a) the rent relates to a period beginning before the first day for which the election has effect; and
  - (b) the grant for which the rent is consideration takes place on or after that day,



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tax shall not be chargeable on the grant by virtue of paragraph 2 above to the extent that it is made for rent relating to any time before that day.

- (5) Where the rent is payable by a person in relation to a period when he is in occupation of a building completed before 1st August 1989 (or part of such a building) or land of which he was in occupation immediately before that date, any tax which would be chargeable by virtue of paragraph 2 above on the grant for which the rent is consideration—
- (a) except in the case of a charity, shall be chargeable as if the consideration were reduced by 50 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1989 and ending on 31st July 1990; and
  - (b) in the case of a charity—
    - (i) shall be chargeable as if the consideration were reduced by 80 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1989 and ending on 31st July 1990;
    - (ii) shall be chargeable as if the consideration were reduced by 60 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1990 and ending on 31st July 1991;
    - (iii) shall be chargeable as if the consideration were reduced by 40 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1991 and ending on 31st July 1992; and
    - (iv) shall be chargeable as if the consideration were reduced by 20 per cent. if and to the extent that the rent relates to or to any part of the year beginning on 1st August 1992 and ending on 31st July 1993.

*Developers of certain non-residential buildings etc.*

- 5 (1) Paragraph 6 below shall apply on the first occasion during the period beginning with the day when the construction of a building or work within sub-paragraph (2) below is first planned and ending ten years after the completion of the building or work on which a person who is a developer in relation to the building or work—
- (a) grants an interest in, right over or licence to occupy the building or work (or any part of it) which is an exempt supply; or
  - (b) is in occupation of the building, or uses the work, (or any part of it) when not a fully taxable person (or, if a person treated under section 29 of this Act as a member of a group, when the representative member is not a fully taxable person).
- (2) Subject to sub-paragraph (3) below, the buildings and works within this sub-paragraph are—
- (a) any building neither designed as a dwelling or number of dwellings nor intended for use solely for a relevant residential purpose or a relevant charitable purpose; and
  - (b) any civil engineering work, other than a work necessary for the development of a permanent park for residential caravans.

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- (3) A building or work is not within sub-paragraph (2) above if—
- (a) construction of it was commenced before 1st August 1989; or
  - (b) a grant of the fee simple in it which falls within paragraph (a) (ii) or (iv) of item 1 of Group 1 of Schedule 6 to this Act has been made before the occasion concerned.
- (4) For the purposes of this paragraph a taxable person is, in relation to any building or work, a fully taxable person throughout a prescribed accounting period if—
- (a) at the end of that period he is entitled to credit for input tax on all supplies to, and importations by, him in the period (apart from any on which input tax is excluded from credit by virtue of section 14(10) of this Act); or
  - (b) the building or work is not used by him at any time during the period in, or in connection with, making any exempt supplies of goods or services.
- (5) Subject to sub-paragraph (6) below, in this paragraph and paragraph 6 below “developer”, in relation to a building or work, means any person who—
- (a) constructs it;
  - (b) orders it to be constructed; or
  - (c) finances its construction,
- with a view to granting an interest in, right over or licence to occupy it (or any part of it) or to occupying or using it (or any part of it) for his own purposes.
- (6) Where—
- (a) a body corporate treated under section 29 of this Act as a member of a group is a developer in relation to a building or work; and
  - (b) it grants an interest in, right over or licence to occupy the building or work (or any part of it) to another body corporate which is treated under that section as a member of the group,
- then, for the purposes of this paragraph and paragraph 6 below, as from the time of the grant any body corporate such as is mentioned in sub-paragraph (7) below shall be treated as also being a developer in relation to the building or work.
- (7) The bodies corporate referred to in sub-paragraph (6) above are any which under section 29 of this Act—
- (a) was treated as a member of the same group as the body corporate making the grant at the time of the grant;
  - (b) has been so treated at any later time when the body corporate by which the grant was made had an interest in, right over or licence to occupy the building or work (or any part of it); or
  - (c) has been treated as a member of the same group as a body corporate within paragraph (a) or (b) above or this paragraph at a time when that body corporate had an interest in, right over or licence to occupy the building or work (or any part of it).
- 6 (1) Where this paragraph applies the interest in, right over or licence to occupy the building or work (or any part of it) held by the developer shall be treated for the purposes of this Act as supplied to the developer for the purpose of a

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business carried on by him and supplied by him in the course or furtherance of the business on the last day of the prescribed accounting period during which it applies or, if later, of the prescribed accounting period during which the building or work becomes substantially ready for occupation or use.

- (2) The supply treated as made by sub-paragraph (1) above shall be taken to be a taxable supply and the value of the supply shall be the aggregate of—
- (a) the value of grants relating to the land on which the building or work is constructed made or to be made to the developer, other than any grants to be made for consideration in the form of rent the value of which cannot be ascertained by the developer when the supply is treated as made; and
  - (b) the value of all the taxable supplies of goods and services, other than any that are zero-rated, made or to be made for or in connection with the construction of the building or work.
- (3) Where the value of a supply which, apart from this sub-paragraph, would be treated as made by sub-paragraph (1) above would be less than £100,000, no supply shall be treated as made by that sub-paragraph.

#### *General*

- 7 Where the benefit of the consideration for the grant of an interest in, right over or licence to occupy land accrues to a person but that person is not the person making the grant—
- (a) the person to whom the benefit accrues shall for the purposes of this Act be treated as the person making the grant; and
  - (b) to the extent that any input tax of the person actually making the grant is attributable to the grant it shall be treated as input tax of the person to whom the benefit accrues.
- 8 The Notes to Group 8 of Schedule 5 to this Act and Group 1 of Schedule 6 to this Act apply in relation to this Schedule as they apply in relation to their respective Groups but subject to any appropriate modifications.”

#### **Marginal Citations**

M163 1983 c. 55.

- 7 In section 42 (adjustment of consideration on changes in tax) of the <sup>M164</sup>Value Added Tax Act 1983—

- (a) the following subsection shall be inserted after subsection (1)—

“(1A) Subsection (1) above shall apply in relation to a tenancy or lease as it applies in relation to a contract except that a term of a tenancy or lease shall not be taken to provide that the rule contained in that subsection is not to apply in the case of the tenancy or lease if the term does not refer specifically to value added tax or this section.”, and

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- (b) in subsection (2), the words “(including a change attributable to the making of an election under paragraph 2 of Schedule 6A to this Act)” shall be added at the end.

**Marginal Citations**

M164 1983 c. 55.

- 8 In section 45(4) (orders etc.) of the <sup>M165</sup>Value Added Tax Act 1983, there shall be added after paragraph (c)—
- “(d) an order under section 35A above, except one making only such amendments as are necessary or expedient in consequence of provisions of an order under this Act which—
- (i) vary Schedule 5 or Schedule 6 to this Act; but
- (ii) are not within paragraph (c) above.”

**Marginal Citations**

M165 1983 c. 55.

- 9 In section 48 (interpretation) of the Value Added Tax Act 1983, after the definition of “Commissioners” there shall be inserted—
- ““fee simple”—
- (a) in relation to Scotland, means the estate or interest of the proprietor of the dominium utile or, in the case of land not held on feudal tenure, the estate or interest of the owner;
- (b) in relation to Northern Ireland, includes the estate of a person who holds land under a fee farm grant;”.

- 10 In Schedule 1 (registration) to the Value Added Tax Act 1983—
- (a) in paragraph 1 there shall be added at the end—
- “(6) Where, apart from this sub-paragraph, an interest in, right over or licence to occupy any land would under sub-paragraph (5) above be disregarded for the purposes of sub-paragraph (1) above, it shall not be if it is supplied on a taxable supply which is not zero-rated.”,
- and
- (b) in paragraph 2 there shall be added at the end—
- “(4) Where, apart from this sub-paragraph, an interest in, right over or licence to occupy any land would under sub-paragraph (3) above be disregarded for the purposes of sub-paragraph (1) above, it shall not be if it is supplied on a taxable supply which is not zero-rated.”

- 11 In Schedule 2 (supplies of goods and services) to the Value Added Tax Act 1983—

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- (a) in paragraph 4, for the word “granting” there shall be substituted the word “grant”,
- (b) in paragraph 5(1), for the words “the goods” there shall be substituted the word “goods”, and
- (c) there shall be added at the end—

“8 (1) Subject to sub-paragraphs (2) and (3) below, paragraphs 5 to 7 above have effect in relation to land forming part of the assets of, or held or used for the purposes of, a business as if it were goods forming part of the assets of, or held or used for the purposes of, a business.

(2) In the application of those paragraphs by virtue of sub-paragraph (1) above, references to transfer, disposition or sale shall have effect as references to the grant or assignment of any interest in, right over or licence to occupy the land concerned.

(3) Except in relation to—

- (a) the grant or assignment of a major interest; or
  - (b) a grant or assignment otherwise than for a consideration,
- in the application of paragraph 5(1) above by virtue of sub-paragraph (1) above the reference to a supply of goods shall have effect as a reference to a supply of services.”

#### *Commencement*

- 12 (1) Subject to sub-paragraphs (2) and (3) and paragraph 13 below, the amendments made by paragraphs 1 to 4 of this Schedule shall have effect in relation to grants, assignments and other supplies made on or after 1st April 1989.
- (2) Note 4(b) to Group 8 of Schedule 5 to the <sup>M166</sup>Value Added Tax Act 1983 shall have effect in relation to grants, assignments and other supplies made on or after 1st August 1989.
- (3) In relation to grants and assignments made on or after 1st April 1989 but before 1st August 1989—
- (a) that Group shall have effect as if the Notes to it included a Note in the same terms as Note (1) to that Group as it had effect before the substitution made by paragraph 1 above, and
  - (b) Group 8A of that Schedule shall have effect as if the Notes to it included a Note in the same terms as Note (5) to that Group as it had effect before the amendments made by paragraph 2 above.
- (4) Paragraphs 5, 7, 8, 11 and 13(6) and (7) of this Schedule and paragraph 6, so far as relating to section 35A(2) of, and paragraphs 2 to 7 of Schedule 6A to, the Value Added Tax Act 1983, shall come into force on 1st August 1989.
- (5) Subject to the preceding provisions of this paragraph, this Schedule shall come into force on 1st April 1989.

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#### Marginal Citations

M166 1983 c. 55.

- 13 (1) Subject to sub-paragraph (3) below, the amendments made by paragraphs 1 and 2 of this Schedule shall not have effect in relation to a grant, assignment or other supply where—
- (a) it is made in pursuance of a legally binding obligation to make it which was incurred before 21st June 1988, and
  - (b) if the Commissioners so require (whether before or after it is made), it is proved to their satisfaction by the production of documents made before that date that it is so made.
- (2) Subject to sub-paragraph (3) below, the amendments made by paragraphs 1 and 2 of this Schedule shall not have effect in relation to a grant or assignment of an interest in, or in any part of, a building or its site where—
- (a) the grant or assignment takes place before 21st June 1993,
  - (b) the person making the grant or assignment was under a legally binding obligation incurred before 21st June 1988 to construct (or reconstruct) the building or to construct any development of which it forms part (other than an obligation to receive services or goods in the course of the construction or reconstruction),
  - (c) if the Commissioners so require (whether before or after the grant or assignment is made), it is proved to their satisfaction by the production of documents made before that date that he was under that obligation, and
  - (d) planning permission for the construction (or reconstruction) of the building was granted before 21st June 1988.
- (3) Where the grant or assignment is of a tenancy or lease—
- (a) if a premium is payable, sub-paragraph (1) or (2) above shall apply only to the extent that it is made for consideration in the form of the premium; and
  - (b) if a premium is not payable, sub-paragraph (1) or (2) above shall apply only to the extent that it is made for consideration in the form of the first payment of rent due under the tenancy or lease.
- (4) The amendments made by paragraphs 1 and 2 of this Schedule shall not have effect in relation to a supply relating to a building or civil engineering work where—
- (a) the supply takes place before 21st June 1993,
  - (b) the supply is made to the person constructing the building or work (or reconstructing the building),
  - (c) that person was under a legally binding obligation incurred before 21st June 1988 to construct the building or work (or to reconstruct the building) or to construct any development of which it forms part (other than an obligation to receive services or goods in the course of the construction or reconstruction),
  - (d) if the Commissioners so require (whether before or after the supply is made), it is proved to their satisfaction by the production of documents made before that date that he was under that obligation,
  - (e) planning permission for the construction of the building or work (or the reconstruction of the building) was granted before 21st June 1988, and

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- (f) before the supply takes place the person constructing the building or work (or reconstructing the building) has given to the person making the supply a certificate in such form as may be specified in a notice published by the Commissioners stating that the supply is zero-rated (in whole or to the extent specified in the certificate) by virtue of this sub-paragraph.
- (5) Where a grant, assignment or other supply is zero-rated by virtue of this paragraph, it is not a relevant zero-rated supply for the purposes of paragraph 1 of Schedule 6A to the <sup>M167</sup>Value Added Tax Act 1983.
- (6) Nothing in paragraphs 5 and 6 of that Schedule shall apply—
- (a) in relation to a person who has constructed a building if he incurred before 21st June 1988 a legally binding obligation to make a grant or assignment of a major interest in, or in any part of, the building or its site;
- (b) in relation to a building or work if there was incurred before that date a legally binding obligation to make in relation to the building or work a supply within item 2 of Group 8 of Schedule 5 to the Value Added Tax Act 1983;
- (c) in relation to a person who has constructed a building if—
- (i) he incurred before that date a legally binding obligation to construct the building or any development of which it forms part, and
- (ii) planning permission for the construction of the building was granted before that date,
- except where that person does not make a grant or assignment of a major interest in, or in any part of, the building or its site before 21st June 1993.
- (7) If the Commissioners so require, proof of any of the matters specified in sub-paragraph (6)(a), (b) or (c)(i) above shall be given to their satisfaction by the production of documents made before 21st June 1988.

**Marginal Citations**

M167 1983 c. 55.

SCHEDULE 4

Section 61.

PROFIT-RELATED PAY

- 1 The Taxes Act 1988 shall be amended in accordance with the following provisions of this Schedule.
- 2 (1) In section 171(4) (limit on pay of which half may be exempt from tax) for “£3,000” there shall be substituted “£4,000”.
- (2) This paragraph shall have effect in relation to profit-related pay paid by reference to profit periods beginning on or after 1st April 1989.

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3 After section 177 there shall be inserted—

**“177A Death of scheme employer.**

- (1) Where a scheme employer has died, his personal representatives may make a written application to the Board under this section for the amendment of the registration of the scheme.
- (2) If on receiving an application under this section the Board are satisfied that, apart from the death of the scheme employer, there would be no grounds for cancelling the registration of the scheme, the Board shall amend the registration of the scheme by substituting the personal representatives for the deceased scheme employer.
- (3) An application under this section shall be made before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors.
- (4) Where the Board amend the registration of a scheme under this section, this Chapter shall (subject to any necessary modifications) have effect as if the personal representatives had been the scheme employer throughout.
- (5) The Board shall give notice to the personal representatives if they refuse an application under this section.

**177B Alteration of scheme’s terms.**

- (1) The alteration of the terms of a registered scheme shall not of itself invalidate the registration of the scheme.
- (2) Subsection (1) above is without prejudice to the power of cancellation conferred on the Board by section 178(3A); but the power conferred by section 178(3A) shall not be exercisable by virtue of an alteration registered in accordance with this section.
- (3) Where the terms of a registered scheme have been altered, the scheme employer may apply to the Board for the registration of the alteration.
- (4) An application under subsection (3) above—
  - (a) shall be in such form as the Board may prescribe;
  - (b) shall be made within the period of one month beginning with the day on which the alteration is made;
  - (c) shall contain a declaration by the applicant that the alteration is within subsection (8) below and that the scheme as altered complies with the requirements of Schedule 8 (either as that Schedule had effect when the scheme was registered, or as it then had effect but subject to one or more subsequent amendments specified in the declaration);
  - (d) shall be accompanied by a report by an independent accountant, in a form prescribed by the Board, to the effect that in his opinion the alteration is within subsection (8) below and the scheme as altered complies with the requirements of Schedule 8 (either as that Schedule had effect when the scheme was registered, or as it then had



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effect but subject to one or more subsequent amendments specified in the report).

- (5) The Board shall not more than three months after the day on which they receive an application under subsection (3) above either register the alteration or refuse the application; and in either case they shall give notice of their decision to the applicant.
- (6) Subject to subsection (7) below, the Board shall register an alteration on an application under subsection (3) above.
- (7) The Board may refuse an application under subsection (3) above if they are not satisfied—
  - (a) that the application complies with the requirements of subsection (4) above, or
  - (b) that the declaration referred to in subsection (4)(c) above is true.
- (8) An alteration is within this subsection if—
  - (a) it relates to a term which is not relevant to the question whether the scheme complies with the requirements of Schedule 8; or
  - (b) it relates to a term identifying any person (other than the scheme employer) who pays the emoluments of employees to whom the scheme relates; or
  - (c) it consists of the addition of a term making provision for an abbreviated profit period of the kind referred to in paragraph 10(3) of Schedule 8; or
  - (d) it amends the provisions by reference to which the employees to whom the scheme relates may be identified, and does so only for the purposes of profit periods which begin after the date on which the alteration is made; or
  - (e) it relates to a provision of a kind referred to in paragraph 13(4) or (5) or 14(3), (4) or (5) of Schedule 8 (as those provisions have effect at the time of the application for registration of the alteration), and has effect only for the purposes of profit periods beginning after the date on which the alteration is made; or
  - (f) it amends the provisions as to when payments will be made to employees, and does so only for the purposes of profit periods beginning after the date on which the alteration is made; or
  - (g) the scheme did not comply with the requirements of Schedule 8 when it was registered, and the alteration—
    - (i) is made in order to bring the scheme into compliance with the requirements of that Schedule (either as it had effect when the scheme was registered or as it has effect at the time of the application for registration of the alteration), and
    - (ii) is made for the purposes of the first and any subsequent profit period to which the scheme relates, and
    - (iii) is made within two years of the beginning of the first profit period, and
    - (iv) does not invalidate (in whole or in part) any payment of profit-related pay already made under the scheme.”

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- 4 (1) Section 178 (cancellation of registration) shall be amended as follows.
- (2) In subsection (1) for the words “subsection (5)” there shall be substituted the words “subsections (5) and (5A)”.
- (3) After subsection (3) there shall be inserted—
- “(3A) Where the terms of a registered scheme have been altered, then, subject to section 177B(2), the Board may cancel the registration of the scheme with effect from the beginning of the profit period during which the alteration took effect or with effect from the beginning of any later profit period.
- (3B) If after an alteration of the terms of a scheme has been registered under section 177B it appears to the Board—
- (a) that the application for registration of the alteration did not comply with the requirements of subsection (4) of that section, or
- (b) that the declaration referred to in subsection (4)(c) of that section was false,
- the Board may cancel the registration of the scheme with effect from the beginning of the profit period during which the alteration took effect or with effect from the beginning of any later profit period.”
- (4) After subsection (5) there shall be inserted—
- “(5A) Where—
- (a) the scheme employer has died, and
- (b) his personal representatives by notice request the Board to cancel the registration of the scheme with effect from the date of death,
- then, if the notice is given before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors, the Board shall comply with the request.”
- 5 At the end of section 179 (recovery of tax) there shall be added—
- “(3) Where—
- (a) the scheme employer has died, but
- (b) his personal representatives have not been substituted for him as the scheme employer by virtue of section 177A,
- the reference in subsection (2) above to the scheme employer shall be construed as a reference to the personal representatives.
- (4) Where—
- (a) a payment to which this section applies was made by a person other than the scheme employer, and
- (b) the scheme employer is not resident in the United Kingdom,
- then in relation to that payment the reference in subsection (2) above to the scheme employer shall include a reference to the person by whom the payment was made.”

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- 6 At the end of section 180 (annual returns) there shall be added—
- “(5) Where—
- (a) the scheme employer has died, but
- (b) his personal representatives have not been substituted for him as the scheme employer by virtue of section 177A,
- the reference in subsection (1) above to the scheme employer shall be construed as a reference to the personal representatives.”
- 7 At the end of section 181 (information) there shall be added—
- “(4) Where the scheme employer has died, his personal representatives shall inform the Board of his death by notice given before the end of the period of one month beginning with the date of the grant of probate or letters of administration or, in Scotland, confirmation of executors.”
- 8 (1) Section 182 (appeals) shall be amended as follows.
- (2) In subsection (1) after paragraph (b) there shall be inserted—
- “(bb) against a refusal by the Board of an application under section 177B(3);”.
- (3) After subsection (1) there shall be inserted—
- “(1A) An appeal to the Special Commissioners may be made by the personal representatives of a scheme employer against a refusal by the Board of an application under section 177A.”
- (4) In subsection (2) for the words “scheme employer” there shall be substituted the word “appellant”.
- 9 (1) Paragraph 7 of Schedule 8 (no payments for employees with material interest in company) shall be amended as follows.
- (2) In sub-paragraph (1), the words “, or is an associate of a person who has,” shall be omitted.
- (3) In sub-paragraph (3), after the words “section 417(3) and (4)” there shall be inserted the words “, but subject to sub-paragraph (4) below”.
- (4) The following sub-paragraphs shall be added at the end—
- “(4) For the purposes of this paragraph, where an employee of a company has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (8) below applies in relation to him.
- (5) A trust is an employee benefit trust for the purposes of this paragraph if—
- (a) all or most of the employees of the company are eligible to benefit under it, and

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- (b) none of the property subject to it has been disposed of on or after 14th March 1989 (whether by sale, loan or otherwise) except in the ordinary course of management of the trust or in accordance with sub-paragraph (6) below.
- (6) Property is disposed of in accordance with this sub-paragraph if—
- (a) it is applied for the benefit of—
    - (i) individual employees or former employees of the company,
    - (ii) spouses, former spouses, widows or widowers of employees or former employees of the company,
    - (iii) relatives, or spouses of relatives, of persons within sub-paragraph (i) or (ii) above, or
    - (iv) dependants of persons within sub-paragraph (i) above,
  - (b) it is applied for charitable purposes, or
  - (c) it is transferred to the trustees of an approved profit sharing scheme (within the meaning of section 187), of another employee benefit trust, or of a qualifying employee share ownership trust (within the meaning of Schedule 5 to the Finance Act 1989), and the property applied or transferred consists of any of the ordinary share capital of the company or of money paid outright.
- (7) In sub-paragraph (6)(a)(iii) above “relative” means parent or remoter forebear, child or remoter issue, brother, sister, uncle, aunt, nephew or niece.
- (8) This sub-paragraph applies in relation to an employee if at any time on or after 14th March 1989—
- (a) the employee, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,
- has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent. of the ordinary share capital of the company.
- (9) Where—
- (a) on or after 14th March 1989 an employee of a company, or an associate of his, receives a payment (“the relevant payment”) from the trustees of an employee benefit trust, and
  - (b) at any time during the period of three years ending with the day on which the relevant payment is received, the property subject to the trust consists of or includes any part of the ordinary share capital of the company,
- the employee or associate shall be treated for the purposes of sub-paragraph (8) above as if he were the beneficial owner of the appropriate percentage of the ordinary share capital of the company on the day on which the relevant payment is received (in addition to any percentage of that share capital of which he is actually the beneficial owner on that day).
- (10) For the purposes of sub-paragraph (9) above, the appropriate percentage is—

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$$\frac{A \times 100}{B}$$

where—

A is the smaller of—

- (a) the aggregate of the relevant payment and any other payments received by the employee or associates of his from the trustees of the trust during the period of 12 months ending with the day on which the relevant payment is received, and
- (b) the aggregate of the distributions made to the trustees of the trust by the company in respect of its ordinary share capital during the period of three years ending with the day on which the relevant payment is received; and

B is the aggregate of—

- (a) any distributions made by the company in respect of its ordinary share capital during the period of 12 months ending with the day on which the relevant payment is received,
- (b) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (a) above, and
- (c) any distributions so made during the period of 12 months immediately preceding that mentioned in paragraph (b) above,

divided by the number of the periods mentioned in paragraphs (a) to (c) above in which distributions were so made.

(11) Where—

- (a) an employee or associate is treated by sub-paragraph (9) above as if he were the beneficial owner of a percentage of the ordinary share capital of a company by reason of receiving the relevant payment from the trustees of a trust, and
- (b) that employee, or an associate of his, has, during the period of 12 months ending with the day on which the relevant payment is received, received one or more payments from trustees of another employee benefit trust or trusts satisfying the requirement in paragraph (b) of sub-paragraph (9) above,

that sub-paragraph shall have effect in relation to the employee or associate mentioned in paragraph (a) above as if he had received the payment from the trustees of the trust or of each of the trusts mentioned in paragraph (b) above (or where more than one payment has been received from the trustees of a trust, the last of the payments) on the day on which the relevant payment is received.

(12) In sub-paragraphs (8) to (11) above “associate”, in relation to an employee, does not include the trustees of an employee benefit trust by reason only that the employee has an interest in shares or obligations of the trust.”

- 10 (1) Paragraphs 13(2) and 14(2) of Schedule 8 (which provide for a scheme’s distributable pool to be at least 5 per cent. of the pay of all the employees to whom the scheme relates if profits remain unchanged) shall be omitted.

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- (2) In consequence of sub-paragraph (1) above—
- (a) the following provisions shall be omitted—
- section 175(3);
  - in section 176(1), the words “(but not more than six months)”;
  - section 178(2)(b);
  - in paragraph 13(1) of Schedule 8, the word “fixed”;
  - paragraph 13(3) of that Schedule;
  - paragraph 14(7) of that Schedule.
- (b) in paragraph 13 of Schedule 8—
- (i) after sub-paragraph (1) there shall be inserted—
    - “(1A) That percentage must be a fixed percentage specified in the scheme and, if the scheme relates to more than one period, must be the same for each period.”;
  - (ii) in sub-paragraph (4)(a), for the words “the base year referred to in sub-paragraph (3) above” there shall be substituted the words “a base year specified in the scheme”;
  - (iii) in sub-paragraph (5), for the words “must be” onwards there shall be substituted the words “must not exceed the profits for a base year specified in the scheme”;
  - (iv) for sub-paragraph (6), there shall be substituted—
    - “(6) The base year referred to in sub-paragraph (4)(a) and sub-paragraph (5) above must be a period of 12 months ending at a time within the period of two years immediately preceding the profit period, or the first of the profit periods, to which the scheme relates”;
- (c) in paragraph 14(5) of that Schedule, for the words “must be” onwards there shall be substituted the words “must not exceed the profits in the period of 12 months immediately preceding the first or only profit period to which the scheme relates”.
- 11 At the end of paragraph 13 of Schedule 8 (calculation of distributable pool by method A) there shall be added—
- “(7) Any provision included in a scheme by virtue of sub-paragraph (4) or (5) above may take effect either from the scheme’s first profit period or from any later profit period determined in accordance with the scheme.”
- 12 In paragraph 14 of Schedule 8 (calculation of distributable pool by method B), in sub-paragraph (5) the words “specified in, or” shall be omitted.
- 13 At the end of paragraph 14 of Schedule 8 there shall be added—
- “(8) Any provision included in a scheme by virtue of sub-paragraph (3)(b), (4) or (5) above may take effect either from the scheme’s first profit period or from any later profit period determined in accordance with the scheme.”

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- 14 (1) Paragraph 19 of Schedule 8 (profit and loss account for purposes of profit-related pay scheme) shall be amended as follows.
- (2) After sub-paragraph (4) (account to make no allowance for remuneration of persons excluded from scheme) there shall be inserted—
- “(4A) In sub-paragraph (4) above “remuneration”, in relation to a person, includes fees and percentages, any sums paid by way of expenses allowance (in so far as those sums are charged to income tax), any contributions paid in respect of him under any pension scheme and the estimated value of any other benefits received by him otherwise than in cash.”
- (3) In sub-paragraph (6) (items which may be left out of account in arriving at profits or losses) for paragraph (f) there shall be substituted—
- “(f) profit-related pay payable under the scheme, and profit-related pay payable under any other registered scheme if it is one to which paragraph 21 below applies;
- (ff) secondary Class 1 contributions under Part I of the Social Security Act 1975 or Part I of the Social Security (Northern Ireland) Act 1975 in respect of profit-related pay payable under the scheme;”.
- 15 After paragraph 20 of Schedule 8 there shall be inserted—

### Parts of undertakings

- “21 (1) This paragraph shall apply to a scheme if the employment unit is a part of an undertaking, and the scheme states that the profits or losses of the unit are for the purposes of the scheme to be taken to be equivalent to those of the whole undertaking (which must be identified by the scheme).
- (2) Where this paragraph applies to a scheme, this Schedule shall have effect as if any reference to the profits or losses of the employment unit were a reference to the profits or losses of the undertaking of which it forms part.
- “22 (1) Where paragraph 21 above applies to a scheme, the scheme must contain provisions ensuring that no payments are made under it by reference to a profit period unless, at the beginning of that profit period,
- 
- (a) there is at least one other registered scheme which relates to employees employed in the same undertaking as that of which the employment unit forms part, and
- (b) the number of the employees to whom the scheme relates does not exceed 33 per cent. of the number of the employees to whom that other scheme relates (or if there is more than one other scheme, the aggregate number of the employees to whom they relate).
- (2) Another registered scheme shall be disregarded for the purposes of sub-paragraph (1) above—
- (a) if paragraph 21 above applies to it, or

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- (b) if, by virtue of provisions of the kind described in paragraph 6 above, no payments could be made under it by reference to the profit period concerned.
- (3) Where paragraph 21 above applies to two or more schemes relating to employment units which are parts of the same undertaking, an employee to whom another scheme relates shall not be counted for the purposes of sub-paragraph(1)(b) above in connection with more than one of those schemes.”

## SCHEDULE 5

Section 74.

### EMPLOYEE SHARE OWNERSHIP TRUSTS

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

**C47** Sch. 5 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the applying Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 228(7), 235(8), 289 (with ss. 60, 101(1), 171, 201(3))

#### *Qualifying trusts*

- 1 A trust is a qualifying employee share ownership trust at the time it is established if the conditions set out in paragraphs 2 to 11 below are satisfied in relation to the trust at that time.

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

**C48** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

#### *General*

- 2 (1) The trust must be established under a deed (the trust deed).
- (2) The trust must be established by a company (the founding company) which, at the time the trust is established, is resident in the United Kingdom and not controlled by another company.

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

**C49** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

#### *Trustees*

- 3 (1) The trust deed must provide for the establishment of a body of trustees.
- (2) The trust deed must—



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- (a) appoint the initial trustees;
  - (b) contain rules for the retirement and removal of trustees;
  - (c) contain rules for the appointment of replacement and additional trustees.
- (3) The trust deed must provide that at any time while the trust subsists (therelevant time)—
- (a) the number of trustees must not be less than three;
  - (b) all the trustees must be resident in the United Kingdom;
  - (c) the trustees must include one person who is a trust corporation, asolicitor, or a member of such other professional body as the Board may fromtime to time allow for the purposes of this paragraph;
  - (d) most of the trustees must be persons who are not and have never beendirectors of any company which falls within the founding company’s group atthe relevant time;
  - (e) most of the trustees must be persons who are employees of companies whichfall within the founding company’s group at the relevant time, and who do nothave and have never had a material interest in any such company;
  - (f) the trustees falling within paragraph (e) above must, before beingappointed as trustees, have been selected by a majority of the employees ofthe companies falling within the founding company’s group at the time of theselection or by persons elected to represent those employees.
- (4) For the purposes of sub-paragraph (3) above a company falls within thefounding company’s group at a particular time if—
- (a) it is the founding company, or
  - (b) it is at that time resident in the United Kingdom and controlled by thefounding company.

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

**C50** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employees share ownership trusts

**C51** Schedule 5 para. 3(3)(c) amended (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, Sch. 1

VALID FROM 03/05/1994

- [<sup>F39</sup>3A Where a trust is established after the day on which the Finance Act 1994 was passed, the trust deed must make provision as mentioned in one of paragraphs (a) to (c) below—
- (a) provision for the establishment of a body of trustees and complying with paragraph 3(2) to (4) above;
  - (b) provision for the establishment of a body of trustees and complying with paragraph 3B(2) to (9) below;
  - (c) provision that at any time while the trust subsists there must be a single trustee.]

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### Textual Amendments

**F39** Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

VALID FROM 03/05/1994

- <sup>F40</sup>3B (1) The following are the provisions that must be complied with under paragraph 3A(b) above.
- (2) The trust deed must—
    - (a) appoint the initial trustees;
    - (b) contain rules for the retirement and removal of trustees;
    - (c) contain rules for the appointment of replacement and additional trustees.
  - (3) The trust deed must be so framed that at any time while the trust subsists the conditions set out in sub-paragraph (4) below are fulfilled as regards the persons who are then trustees; and in that sub-paragraph “the relevant time” means that time.
  - (4) The conditions are that—
    - (a) the number of trustees is not less than three;
    - (b) all the trustees are resident in the United Kingdom;
    - (c) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;
    - (d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with sub-paragraph (7) or (8) below;
    - (e) all the trustees so selected are persons who are employees of companies which fall within the founding company’s group at the relevant time, and who do not have and have never had a material interest in any such company.
  - (5) For the purposes of this paragraph a trustee is a professional trustee at a particular time if—
    - (a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
    - (b) the trustee is not then an employee or director of any company then falling within the founding company’s group, and
    - (c) the trustee meets the requirements of sub-paragraph (6) below;
 and for the purposes of this paragraph a trustee is a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.
  - (6) A trustee meets the requirements of this sub-paragraph if—
    - (a) he was appointed as an initial trustee and, before being appointed as trustee, was selected by (and only by) the persons who later became the non-professional initial trustees, or
    - (b) he was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected by (and only by) the persons who were the non-professional trustees at the time of the selection.
  - (7) Trustees are selected in accordance with this sub-paragraph if the process of selection is one under which—

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- (a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
  - (b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
  - (c) persons gaining more votes are preferred to those gaining less.
- (8) Trustees are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.
- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
  - (b) it is the founding company or it is at that time controlled by the founding company.

#### Textual Amendments

**F40** Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

VALID FROM 03/05/1994

- <sup>F41</sup>3C (1) This paragraph applies where the trust deed provides that at any time while the trust subsists there must be a single trustee.
- (2) The trust deed must—
- (a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the United Kingdom and controlled by the founding company;
  - (b) appoint the initial trustee;
  - (c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.
- (3) The trust deed must be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions set out in sub-paragraph (4) below are then fulfilled as regards the persons who are then directors of the company; and in that sub-paragraph “the relevant time” is that time and “the trust company” is that company.
- (4) The conditions are that—
- (a) the number of directors is not less than three;
  - (b) all the directors are resident in the United Kingdom;
  - (c) the directors include at least one person who is a professional director and at least two persons who are non-professional directors;
  - (d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with sub-paragraph (7) or (8) below;

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- (e) all the directors so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.
- (5) For the purposes of this paragraph a director is a professional director at a particular time if—
- (a) the director is then a solicitor or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,
  - (b) the director is not then an employee of any company then falling within the founding company's group,
  - (c) the director is not then a director of any such company (other than the trust company), and
  - (d) the director meets the requirements of sub-paragraph (6) below;
- and for the purposes of this paragraph a director is a non-professional director at a particular time if the director is not then a professional director for those purposes.
- (6) A director meets the requirements of this sub-paragraph if—
- (a) he was appointed as an initial director and, before being appointed as director, was selected by (and only by) the persons who later became the non-professional initial directors, or
  - (b) he was appointed as a replacement or additional director and, before being appointed as director, was selected by (and only by) the persons who were the non-professional directors at the time of the selection.
- (7) Directors are selected in accordance with this sub-paragraph if the process of selection is one under which—
- (a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,
  - (b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and
  - (c) persons gaining more votes are preferred to those gaining less.
- (8) Directors are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.
- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
  - (b) it is the founding company or it is at that time controlled by the founding company.

#### Textual Amendments

**F41** Sch. 5 paras. 3A-3C inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 3

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### *Beneficiaries*

- 4 (1) The trust deed must contain provision as to the beneficiaries under the trust, in accordance with the following rules.
- (2) The trust deed must provide that a person is a beneficiary at a particular time (the relevant time) if—
- (a) he is at the relevant time an employee or director of a company which at that time falls within the founding company's group,
  - (b) at each given time in a qualifying period he was an employee or director of a company falling within the founding company's group at that given time, and
  - (c) at that given time he worked as an employee or director of the company concerned at the rate of at least 20 hours a week (ignoring such matters as holidays and sickness).
- (3) The trust deed may provide that a person is a beneficiary at a particular time (the relevant time) if—
- (a) he has at each given time in a qualifying period been an employee or director of a company falling within the founding company's group at that given time,
  - (b) he has ceased to be an employee or director of the company or the company has ceased to fall within that group, and
  - (c) at the relevant time a period of not more than eighteen months has elapsed since he so ceased or the company so ceased (as the case may be).
- (4) The trust deed may provide for a person to be a beneficiary if the person is a charity and the circumstances are such that—
- (a) there is no person who is a beneficiary within any rule which is included in the deed and conforms with sub-paragraph (2) or (3) above, and
  - (b) the trust is in consequence being wound up.
- (5) For the purposes of sub-paragraph (2) above a qualifying period is a period—
- (a) whose length is not less than one year and not more than five years,
  - (b) whose length is specified in the trust deed, and
  - (c) which ends with the relevant time (within the meaning of that sub-paragraph).
- (6) For the purposes of sub-paragraph (3) above a qualifying period is a period—
- (a) whose length is equal to that of the period specified in the trust deed for the purposes of a rule which conforms with sub-paragraph (2) above, and
  - (b) which ends when the person or company (as the case may be) ceased as mentioned in sub-paragraph (3)(b) above.
- (7) The trust deed must not provide for a person to be a beneficiary unless she falls within any rule which is included in the deed and conforms with sub-paragraph (2), (3) or (4) above.
- (8) The trust deed must provide that, notwithstanding any other rule which is included in it, a person cannot be a beneficiary at a particular time (the relevant time) if—
- (a) at that time he has a material interest in the founding company, or
  - (b) at any time in the period of one year preceding the relevant time he has had a material interest in that company.

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- (9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—
- (a) it is at that time resident in the United Kingdom, and
  - (b) it is the founding company or it is at that time controlled by the founding company.
- (10) For the purposes of this paragraph a charity is a body of persons established for charitable purposes only.

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

**C52** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

*Trustees' functions*

- 5 (1) The trust deed must contain provision as to the functions of the trustees.
- (2) The functions of the trustees must be so expressed that it is apparent that their general functions are—
- (a) to receive sums from the founding company and other sums (by way of loan or otherwise);
  - (b) to acquire securities;
  - (c) to transfer securities or sums (or both) to persons who are beneficiaries under the terms of the trust deed;
  - (d) to transfer securities to the trustees of profit sharing schemes approved under Schedule 9 to the Taxes Act 1988, for a price not less than the price the securities might reasonably be expected to fetch on a sale in the open market;
  - (e) pending transfer, to retain the securities and to manage them (whether by exercising voting rights or otherwise).

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

**C53** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

*Sums*

- 6 (1) The trust deed must require that any sum received by the trustees—
- (a) must be expended within the relevant period,
  - (b) may be expended only for one or more of the qualifying purposes, and
  - (c) must, while it is retained by them, be kept as cash or be kept in an account with a bank or building society.
- (2) For the purposes of sub-paragraph (1) above the relevant period is the period of nine months beginning with the day found as follows—
- (a) in a case where the sum is received from the founding company, or a company which is controlled by that company at the time the sum is received, the day

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- following the end of the period of account in which the sum is charged as an expense of the company from which it is received;
- (b) in any other case, the day the sum is received.
- (3) For the purposes of sub-paragraph (1) above each of the following is a qualifying purpose—
- (a) the acquisition of shares in the founding company;
  - (b) the repayment of sums borrowed;
  - (c) the payment of interest on sums borrowed;
  - (d) the payment of any sum to a person who is a beneficiary under the terms of the trust deed;
  - (e) the meeting of expenses.
- (4) The trust deed must provide that, in ascertaining for the purposes of a relevant rule whether a particular sum has been expended, sums received earlier by the trustees shall be treated as expended before sums received by them later; and a relevant rule is one which is included in the trust deed and conforms with sub-paragraph (1) above.
- (5) The trust deed must provide that, where the trustees pay sums to different beneficiaries at the same time, all the sums must be paid on similar terms.
- (6) For the purposes of sub-paragraph (5) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.

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

**C54** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

*Securities*

- 7 (1) Subject to paragraph 8 below, the trust deed must provide that securities acquired by the trustees must be shares in the founding company which—
- (a) form part of the ordinary share capital of the company,
  - (b) are fully paid up,
  - (c) are not redeemable, and
  - (d) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by sub-paragraph (2) below.
- (2) Subject to sub-paragraph (3) below, a restriction is authorised by this sub-paragraph if—
- (a) it is imposed by the founding company's articles of association,
  - (b) it requires all shares held by directors or employees of the founding company, or of any other company which it controls for the time being, to be disposed of on ceasing to be so held, and
  - (c) it requires all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not (or have ceased to be) such directors or employees to be disposed of when they are acquired.
- (3) A restriction is not authorised by sub-paragraph (2) above unless—

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- (a) any disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
  - (b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2) above) may be required to sell them on terms which are the same as those mentioned in paragraph (a) above.
- (4) The trust deed must provide that shares in the founding company may not be acquired by the trustees at a price exceeding the price they might reasonably be expected to fetch on a sale in the open market.
- (5) The trust deed must provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company.

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

**C55** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

- 8 The trust deed may provide that the trustees may acquire securities other than shares in the founding company—
- (a) if they are securities issued to the trustees in exchange in circumstances mentioned in section 85(1) of the <sup>M168</sup>Capital Gains Tax Act 1979, or
  - (b) if they are securities acquired by the trustees as a result of a reorganisation, and the original shares the securities represent are shares in the founding company (construing “reorganisation” and “original shares” in accordance with section 77 of that Act).

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

**C56** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

**Marginal Citations**

**M168** 1979 c. 14.

- 9 (1) The trust deed must provide that—
- (a) where the trustees transfer securities to a beneficiary, they must do so on qualifying terms;
  - (b) the trustees must transfer securities before the expiry of the period of seven years beginning with the date on which they acquired them.
- (2) For the purposes of sub-paragraph (1) above a transfer of securities is made on qualifying terms if—
- (a) all the securities transferred at the same time are transferred on similar terms,
  - (b) securities have been offered to all the persons who are beneficiaries under the terms of the trust deed when the transfer is made, and



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- (c) securities are transferred to all such beneficiaries who have accepted.
- (3) For the purposes of sub-paragraph (2) above, the fact that terms vary according to the levels of remuneration of beneficiaries, the length of their service, or similar factors, shall not be regarded as meaning that the terms are not similar.
- (4) The trust deed must provide that, in ascertaining for the purposes of a relevant rule whether particular securities are transferred, securities acquired earlier by the trustees shall be treated as transferred by them before securities acquired by them later; and a relevant rule is one which is included in the trust deed and conforms with sub-paragraph (1) above.

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

**C57** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

*Other features*

- 10 The trust deed must not contain features which are not essential or reasonably incidental to the purpose of acquiring sums and securities, transferring sums and securities to employees and directors, and transferring securities to the trustees of profit sharing schemes approved under Schedule 9 to the Taxes Act 1988.

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

**C58** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

*Rules about acquisition etc.*

- 11 (1) The trust deed must provide that, for the purposes of the deed, the trustees—
- (a) acquire securities when they become entitled to them;
  - (b) transfer securities to another person when that other becomes entitled to them;
  - (c) retain securities if they remain entitled to them.
- (2) But if the deed provides as mentioned in paragraph 8 above, it must provide for the following exceptions to any rule which is included in it and conforms with sub-paragraph (1)(a) above, namely, that—
- (a) if securities are issued to the trustees in exchange in circumstances mentioned in section 85(1) of the <sup>M169</sup>Capital Gains Tax Act 1979, they shall be treated as having acquired them when they became entitled to the securities for which they are exchanged;
  - (b) if the trustees become entitled to securities as a result of a reorganisation, they shall be treated as having acquired them when they became entitled to the original shares which those securities represent (construing “reorganisation” and “original shares” in accordance with section 77 of that Act).

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- (3) The trust deed must provide that—
- (a) if the trustees agree to take a transfer of securities, for the purposes of the deed they become entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement;
  - (b) if the trustees agree to transfer securities to another person, for the purposes of the deed the other person becomes entitled to them when the agreement is made and not on a later transfer made pursuant to the agreement.

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

**C59** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

**Marginal Citations**

**M169** 1979 c. 14.

*Position after trust's establishment*

- 12 A trust which was at the time it was established a qualifying employee share ownership trust shall continue to be one, except that it shall not be such a trust at any time when the requirements mentioned in paragraph 3(3)(a) to (f) above are not satisfied.

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

**C60** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

VALID FROM 03/05/1994

- [<sup>F42</sup>12A(1) Subject to sub-paragraphs (2) and (3) below, a trust which was at the time it was established a qualifying employee share ownership trust shall continue to be one.
- (2) If the trust deed makes provision under paragraph 3A(a) above, the trust shall not be a qualifying employee share ownership trust at any time when the requirements mentioned in paragraph 3(3)(a) to (f) above are not satisfied.
  - (3) If the trust deed makes provision under paragraph 3A(b) above, the trust shall not be a qualifying employee share ownership trust at any time when the conditions mentioned in paragraph 3B(4)(a) to (e) above are not satisfied.
  - (4) If the trust deed makes provision under paragraph 3A(c) above, the trust shall not be a qualifying employee share ownership trust at any time when—
    - (a) there is not a single trustee,
    - (b) the trustee is not a company which is resident in the United Kingdom and controlled by the founding company, or
    - (c) the conditions mentioned in paragraph 3C(4)(a) to (e) above are not satisfied as regards the directors of the trustee.

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(5) This paragraph applies in relation to trusts established after the day on which the Finance Act 1994 was passed.]

#### Textual Amendments

**F42** Sch. 5 para. 12A inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 5

13 A trust is an employee share ownership trust at a particular time (the relevant time) if it was a qualifying employee share ownership trust at the time it was established; and it is immaterial whether or not it is a qualifying employee share ownership trust at the relevant time.

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

**C61** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

#### Interpretation

14 For the purposes of this Schedule the following are securities—  
(a) shares;  
(b) debentures.

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

**C62** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

15 For the purposes of this Schedule, the question whether one company is controlled by another shall be construed in accordance with section 840 of the Taxes Act 1988.

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

**C63** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

16 (1) For the purposes of this Schedule a person shall be treated as having a material interest in a company if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates,—  
(a) is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 percent of the ordinary share capital of the company, or  
(b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.

(2) In this paragraph—

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- (a) “associate” has the same meaning as in section 417(3) and (4) of the Taxes Act 1988, but subject to sub-paragraph (3) below,
  - (b) “control” has the meaning given by section 840 of that Act, and
  - (c) “participator” has the same meaning as in Part XI of that Act.
- (3) Where a person has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (5) below applies in relation to him.
- (4) In sub-paragraph (3) above “employee benefit trust” has the same meaning as in paragraph 7 of Schedule 8 to the Taxes Act 1988, except that in its application for this purpose paragraph 7(5)(b) of that Schedule shall have effect as if it referred to the day on which this Act was passed instead of to 14th March 1989.
- (5) This sub-paragraph applies in relation to a person if at any time on or after the day on which this Act was passed—
- (a) he, either on his own or with any one or more of his associates, or
  - (b) any associate of his, with or without other such associates,
- has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 percent. of the ordinary share capital of the company.
- (6) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 to the Taxes Act 1988 shall apply for the purposes of sub-paragraph (5) above as they apply for the purposes of that paragraph.

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

**C64** See Finance Act 1990 (c. 29) ss.31–40—roll-over relief for disposal of shares to employee share ownership trusts

VALID FROM 03/05/1994

[<sup>F43</sup>17 For the purposes of this Schedule a trust is established when the deed under which it is established is executed.]

#### Textual Amendments

**F43** Sch. 5 para. 17 inserted (3.5.1994) by 1994 c. 9, s. 102, Sch. 13 para. 8

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## SCHEDULE 6

Section 75.

### RETIREMENT BENEFITS SCHEMES

#### PART I

##### AMENDMENTS OF TAXES ACT

###### *Preliminary*

- 1 The Taxes Act 1988 shall be amended as mentioned in the following provisions of this Part of this Schedule.

###### *Amendments*

- 2 In section 431(4) (pension business of insurance companies) for paragraph(d)(ii) there shall be substituted—  
“(ii) a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV;”
- 3 (1) Section 590 (conditions for approval of schemes) shall be amended as follows.
- (2) In subsection (3)(d) (condition to be satisfied as to lump sum) the words “(disregarding any excess of that remuneration over the permitted maximum)” shall be omitted.
- (3) In subsection (3) for the words from “In paragraph (d) above” to the end there shall be substituted—
- “(e) that, in the case of any employee who is a member of the scheme by virtue of two or more relevant associated employments, the amount payable by way of pension in respect of service in any one of them may not, when aggregated with any amount payable by way of pension in respect of service in the other or others, exceed the relevant amount;
  - (f) that, in the case of any employee who is a member of the scheme by virtue of two or more relevant associated employments, the amount payable by way of commuted pension in respect of service in any one of them may not, when aggregated with any amount payable by way of commuted pension in respect of service in the other or others, exceed the relevant amount;
  - (g) that, in the case of any employee in relation to whom the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the amount payable by way of pension under the scheme may not, when aggregated with any amount payable by way of pension under the other scheme or schemes, exceed the relevant amount;
  - (h) that, in the case of any employee in relation to whom the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the amount payable by way of commuted pension may not, when aggregated with any amount

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payable by way of commuted pension under the otherscheme or schemes, exceed the relevant amount.”

(4) For subsection (7) there shall be substituted—

“(7) Subsections (8) to (10) below apply where the Board are considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with—

- (a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Chapter,
- (b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time before the Board in order for them to decide whether to give approval for the purposes of this Chapter,
- (c) any section 608 scheme or schemes relating to employees of that class or description, and
- (d) any relevant statutory scheme or schemes relating to employees of that class or description.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes taken together, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

(11) The reference in subsection (8)(c) above to a section 608 scheme is a reference to a fund to which section 608 applies.”

4 The following sections shall be inserted after section 590—

**“590A Section 590: supplementary provisions.**

(1) For the purposes of section 590(3)(e) and (f) two or more employments are relevant associated employments if they are employments in the case of which—

- (a) there is a period during which the employee has held both or all of them,
- (b) the period counts under the scheme in the case of both or all of them as a period in respect of which benefits are payable, and
- (c) the period is one during which both or all of the employers in question are associated.

(2) For the purposes of section 590(3)(g) and (h) the scheme is connected with another scheme in relation to an employee if—

- (a) there is a period during which he has been the employee of two persons who are associated employers,

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- (b) the period counts under both schemes as a period in respect of which benefits are payable, and
  - (c) the period counts under one scheme by virtue of service with one employer and under the other scheme by virtue of service with the other employer.
- (3) For the purposes of subsections (1) and (2) above, employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.
- (4) In subsection (3) above the reference to control, in relation to a body corporate, shall be construed—
- (a) where the body corporate is a close company, in accordance with section 416, and
  - (b) where it is not, in accordance with section 840.

**590B Section 590: further supplementary provisions.**

- (1) For the purposes of section 590(3)(e) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{A \times C}{60}$$

- (2) For the purposes of section 590(3)(f) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{3 \times A \times C}{80}$$

- (3) For the purposes of section 590(3)(g) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{B \times C}{60}$$

- (4) For the purposes of section 590(3)(h) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{3 \times B \times C}{80}$$

- (5) For the purposes of this section A is the aggregate number of years service (expressing parts of a year as a fraction), subject to a maximum of 40, which, in the case of the employee, count for the purposes of the scheme at the time the benefits in respect of service in the employment become payable.

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- (6) But where the same year (or part of a year) counts for the purposes of this scheme by virtue of more than one of the relevant associated employments it shall be counted only once in calculating the aggregate number of years service for the purposes of subsection (5) above.
- (7) For the purposes of this section B is the aggregate number of years service (expressing parts of a year as a fraction), subject to a maximum of 40, which, in the case of the employee, count for the purposes of any of the following—
- (a) the scheme, and
  - (b) the other scheme or schemes with which the scheme is connected in relation to him,
- at the time the benefits become payable.
- (8) But where the same year (or part of a year) counts for the purposes of more than one scheme it shall be counted only once in calculating the aggregate number of years service for the purpose of subsection (7) above.
- (9) For the purposes of this section C is the permitted maximum in relation to the year of assessment in which the benefits in question become payable, that is, the figure found for that year by virtue of subsections (10) and (11) below.
- (10) For the years 1988-89 and 1989-90 the figure is £60,000.
- (11) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) and (5).

#### **590C Earnings cap.**

- (1) In arriving at an employee's final remuneration for the purposes of section 590(3)(a) or (d), any excess of what would be his final remuneration (apart from this section) over the permitted maximum for the year of assessment in which his participation in the scheme ceases shall be disregarded.
- (2) In subsection (1) above "the permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (3) and (4) below.
- (3) For the years 1988-89 and 1989-90 the figure is £60,000.
- (4) For any subsequent year of assessment the figure is also £60,000, subject to subsection (5) below.
- (5) If the retail prices index for the month of December preceding a year of assessment falling within subsection (4) above is higher than it was for the previous December, the figure for that year shall be an amount arrived at by—
- (a) increasing the figure for the previous year of assessment by the same percentage as the percentage increase in the retail prices index, and
  - (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.



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- (6) The Treasury shall in the year of assessment 1989-90, and in each subsequent year of assessment, make an order specifying the figure which is by virtue of this section the figure for the following year of assessment.”
- 5 (1) Section 592 (exempt approved schemes) shall be amended as follows.
- (2) In subsection (8) there shall be inserted at the beginning the words “Subject to subsection (8A) below,”.
- (3) After subsection (8) there shall be inserted—
- “(8A) Where an employee’s remuneration for a year of assessment includes remuneration in respect of more than one employment, the amount allowed to be deducted by virtue of subsection (7) above in respect of contributions paid by the employee in that year by virtue of any employment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent, or such higher percentage as the Board may in a particular case prescribe, of his remuneration for the year in respect of that employment.”
- (4) After subsection (8A) there shall be inserted—
- “(8B) In arriving at an employee’s remuneration for a year of assessment for the purposes of subsection (8) or (8A) above, any excess of what would be his remuneration (apart from this subsection) over the permitted maximum for that year shall be disregarded.
- (8C) In subsection (8B) above “permitted maximum”, in relation to a year of assessment, means the figure found for that year by virtue of subsections (8D) and (8E) below.
- (8D) For the year 1989-90 the figure is £60,000.
- (8E) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) and (5).”
- 6 (1) Section 594 (exempt statutory schemes) shall be amended as follows.
- (2) In subsection (1) the word “relevant” shall be inserted before the words “statutory scheme”.
- (3) In subsection (2) there shall be inserted at the beginning the words “Subject to subsection (3) below,”.
- (4) After subsection (2) there shall be inserted—
- “(3) Where a person’s remuneration for a year of assessment includes remuneration in respect of more than one office or employment, the amount allowed to be deducted by virtue of subsection (1) above in respect of contributions paid by the person in that year by virtue of any office or employment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent, or such higher percentage as the Board may in a particular case prescribe, of his remuneration for the year in respect of that office or employment.”
- (5) After subsection (3) there shall be inserted—

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“(4) In arriving at a person’s remuneration for a year of assessment for the purposes of subsection (2) or (3) above, any excess of what would be his remuneration (apart from this subsection) over the permitted maximum for that year shall be disregarded.

(5) In subsection (4) above “permitted maximum”, in relation to a year of assessment, means the figure found for that year by virtue of subsections (6) and (7) below.

(6) For the year 1989-90 the figure is £60,000.

(7) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) and (5).”

7 Section 595(2) and (3) (charge to tax in certain cases) shall be omitted.

8 (1) Section 596 (exceptions from section 595) shall be amended as follows.

(2) In subsection (1)—

- (a) for the words “Neither subsection (1) nor subsection (2) of section 595 shall” there shall be substituted the words “Section 595(1) shall not”; and
- (b) in paragraph (b) the word “relevant” shall be inserted before the words “statutory scheme”.

(3) In subsection (2) for the words “Neither subsection (1) nor subsection (2) of section 595 shall” there shall be substituted the words “Section 595(1) shall not”.

(4) In subsection (3)(a) the words “either” and “or subsection (2)” shall be omitted.

9 The following section shall be inserted after section 596—

**“596A Charge to tax: benefits under non-approved schemes.**

(1) Where in any year of assessment a person receives a benefit provided under a retirement benefits scheme which is not of a description mentioned in section 596(1) (a), (b) or (c), tax shall be charged in accordance with the provisions of this section.

(2) Where the benefit is received by an individual, he shall be charged to tax under Schedule E for that year.

(3) Where the benefit is received by a person other than an individual, the administrator of the scheme shall be charged to tax under Case VI of Schedule D for that year.

(4) The amount to be charged to tax is—

- (a) in the case of a cash benefit, the amount received, and
- (b) in the case of a benefit in kind, an amount equal to whatever is the cash equivalent of the benefit.

(5) In the case of the charge under Case VI of Schedule D, the rate of tax is 40 per cent. or such other rate (whether higher or lower) as may for the time being be specified by the Treasury by order.

(6) Tax shall not be charged under this section in the case of a benefit which is chargeable to tax under Schedule E by virtue of section 19(1)1.

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- (7) But where the amount chargeable to tax by virtue of section 19(1)1 is less than the amount which would be chargeable to tax under this section—
- (a) subsection (6) above shall not apply, and
  - (b) the amount chargeable to tax under this section shall be reduced by the amount chargeable to tax by virtue of section 19(1)1.
- (8) Tax shall not be charged under this section to the extent that the benefit received is attributable to the payment of a sum—
- (a) which is deemed to be the income of a person by virtue of section 595(1), and
  - (b) in respect of which that person has been assessed to tax.
- (9) For the purpose of subsection (8) above the provision of a benefit shall be presumed not to be attributable to the payment of such a sum as is mentioned in that subsection unless the contrary is shown.

#### **596B Section 596A: supplementary provisions.**

- (1) For the purposes of section 596A the cash equivalent of a benefit in kind is—
- (a) in the case of a benefit other than living accommodation, the amount which would be the cash equivalent of the benefit under Chapter II of Part V if it were chargeable under the appropriate provision of that Chapter (treating any sum made good by the recipient as made good by the employee), and
  - (b) in the case of living accommodation, an amount equal to the value of the accommodation to the recipient determined in accordance with the following provisions of this section less so much of any sum made good by him to those at whose cost the accommodation is provided as is properly attributable to the provision of the accommodation.
- (2) Where the cost of providing the accommodation does not exceed £75,000, the value of the accommodation to the recipient in any period is the rent which would have been payable for the period if the premises had been let to him at an annual rent equal to their annual value as ascertained under section 837.
- (3) But for a period in which those at whose cost the accommodation is provided pay rent at an annual rate greater than the annual value as so ascertained, the value of the accommodation to the recipient is an amount equal to the rent payable by them for the period.
- (4) Where the cost of providing the accommodation does exceed £75,000, the value of the accommodation to the recipient shall be taken to be the aggregate of the value of the accommodation to him determined in accordance with subsections (2) and (3) above and the additional value of the accommodation to him determined in accordance with subsections (5) and (6) below.
- (5) The additional value of the accommodation to the recipient in any period is the rent which would have been payable for that period if the premises had been let to him at an annual rent equal to the appropriate percentage of the amount by which the cost of providing the accommodation exceeds £75,000.

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- (6) Where throughout the period of six years ending with the date when the recipient first occupied the property any estate or interest in the property was held by a relevant person (whether or not it was the same estate, interest or person throughout), the additional value shall be calculated as if in subsection (7) below—
- (a) the amount referred to in paragraph (a) were the market value of that property as at that date, and
  - (b) the amount referred to in paragraph (b) did not include expenditure on improvements made before that date.
- (7) For the purposes of this section, the cost of providing any living accommodation shall be taken to be the aggregate of—
- (a) the amount of any expenditure incurred in acquiring the estate or interest in the property held by a relevant person, and
  - (b) the amount of any expenditure incurred by a relevant person before the year of assessment in question on improvements to the property.
- (8) The aggregate amount mentioned in subsection (7) above shall be reduced by the amount of any payment made by the recipient to a relevant person, so far as that amount represents a reimbursement of any such expenditure as is mentioned in paragraph (a) or (b) of that subsection or represents consideration for the grant to the recipient of a tenancy of the property.
- (9) For the purposes of this section, any of the following persons is a relevant person—
- (a) the person providing the accommodation;
  - (b) any person, other than the recipient, who is connected with a person falling within paragraph (a) above.
- (10) In this section—
- “the appropriate percentage” means the rate applicable for the purposes of section 160 as at the beginning of the year of assessment in question;
- “market value”, in relation to any property, means the price which that property might reasonably be expected to fetch on a sale in the open market with vacant possession, no reduction being made, in estimating the market value, on account of any option in respect of the property held by the recipient, or a person connected with him, or by any of the persons mentioned in subsection (9) above;
- “property”, in relation to any living accommodation, means the property consisting of that living accommodation;
- “tenancy” includes a sub-tenancy;
- and section 839 shall apply for the purposes of this section.”
- 10 In section 598(1)(b) (charge to tax: repayment of employee’s contributions) the word “relevant” shall be inserted before the words “statutory scheme”.
- 11 (1) Section 599 (charge to tax: commutation of entire pension in special circumstances) shall be amended as follows.
- (2) In subsection (2)(b) the word “relevant” shall be inserted before the words “statutory scheme”.

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(3) After subsection (9) there shall be inserted—

“(10) In subsection (1)(a) above “the permitted maximum” means, as regards a charge to tax arising under this section in a particular year of assessment, the figure found for that year by virtue of subsections (11) and (12) below.

(11) For the years 1988-89 and 1989-90 the figure is £60,000.

(12) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) and (5).”

12 (1) The following section shall be inserted after section 599—

**“599A Charge to tax: payments out of surplus funds.**

(1) This subsection applies to any payment which is made to or for the benefit of an employee or to his personal representatives out of funds which are or have been held for the purposes of—

(a) a scheme which is or has at any time been an exempt approved scheme, or

(b) a relevant statutory scheme established under a public general Act, and which is made in pursuance of a duty to return surplus funds.

(2) On the making of a payment to which subsection (1) above applies, the administrator of the scheme shall be charged to income tax under Case VI of Schedule D at the relevant rate on such amount as, after deduction of tax at that rate, would equal the amount of the payment.

(3) Subject to subsection (4) below, the relevant rate shall be 35 per cent.

(4) The Treasury may by order from time to time increase or decrease the relevant rate.

(5) Where a payment made to or for the benefit of an employee is one to which subsection (1) above applies, it shall be treated in computing the total income of the employee for the year in which it is made as income for that year which is—

(a) received by him after deduction of income tax at the basic rate from a corresponding gross amount, and

(b) chargeable to income tax under Case VI of Schedule D.

(6) But, subject to subsection (7) below, no assessment to income tax shall be made on, and no repayment of income tax shall be made to, the employee.

(7) Subsection (6) above shall not prevent an assessment in respect of income tax at a rate other than the basic rate.

(8) Subsection (5) above applies whether or not the employee is the recipient of the payment.

(9) Any payment chargeable to tax under this section shall not be chargeable to tax under section 598, 599 or 600 or under the Regulations mentioned in paragraph 8 of Schedule 3 to the Finance Act 1971.

(10) In this section—

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“employee”, in relation to a relevant statutory scheme, includes any officer;

references to any payment include references to any transfer of assets or other transfer of money’s worth.”

- 13 (1) Section 600 (charge to tax: unauthorised payments to or for employees) shall be amended as follows.
- (2) In subsection (1) the words “or have been” and “or has at any time been” shall be omitted.
- (3) In subsection (2) for paragraphs (a) and (b) there shall be substituted the words “is not expressly authorised by the rules of the scheme or by virtue of paragraph 33 of Schedule 6 to the Finance Act 1989.”
- 14 In section 605 (information) the word “relevant” shall be inserted before the words “statutory scheme” in subsections (2), (3)(a) and (b)(i) and (4).
- 15 The following section shall be inserted after section 611—

**“611A Definition of relevant statutory scheme.**

- (1) In this Chapter any reference to a relevant statutory scheme is a reference to a statutory scheme—
- (a) established before 14th March 1989, or
  - (b) established on or after that date and entered in the register maintained by the Board for the purposes of this section.
- (2) The Board shall maintain a register for the purposes of this section and shall enter in it the relevant particulars of any statutory scheme established on or after 14th March 1989 which is reported to the Board by the authority responsible for establishing it as a scheme the provisions of which correspond with those of an approved scheme.
- (3) The reference in subsection (2) above to the relevant particulars, in relation to a scheme, is a reference to—
- (a) the identity of the scheme,
  - (b) the date on which it was established,
  - (c) the authority responsible for establishing it, and
  - (d) the date on which that authority reported the scheme to the Board.
- (4) Where the Board enter the relevant particulars of a scheme in the register maintained by them for the purposes of this section, they shall inform the authority responsible for establishing the scheme of the date of the entry.”
- 16 In section 828(4) (orders) after “377(8)” there shall be inserted “590C(6)”.
- 17 Paragraph 8 of Schedule 23 (benefits under scheme for additional voluntary contributions causing benefits under main scheme to abate if aggregate benefits exceed limits) shall be omitted.

*Effect of amendments*

- 18 (1) Paragraphs 2, 6(2), 8(2)(b), 10, 11(2), 14 and 15 above shall be deemed to have come into force on 14th March 1989.

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- (2) Paragraphs 3(2) and (3) and 4 above shall have effect in relation to a scheme not approved by the Board before the day on which this Act is passed; but if the scheme came into existence before 14th March 1989 those provisions shall not have effect as regards an employee who became a member of the scheme before 1st June 1989.
- (3) Paragraph 3(4) above shall have effect where a determination is made on or after the day on which this Act is passed.
- (4) Paragraphs 5 and 6(3), (4) and (5) above shall have effect for the year 1989-90 and subsequent years of assessment, but paragraphs 5(4) and 6(5) above shall not have effect as regards a person's remuneration in respect of an office or employment in such circumstances as the Board may by regulations prescribe for the purposes of this sub-paragraph.
- (5) Paragraphs 7 and 8(2)(a) and (3) above shall have effect for the year 1988-89 and subsequent years of assessment.
- (6) Paragraph 8(4) above shall not have effect where a sum has been deemed to be income of a person by virtue of section 595(2) before 6th April 1988.
- (7) Paragraph 9 above shall have effect in relation to payments made and benefits provided on or after the day on which this Act is passed.
- (8) Paragraph 11(3) above shall have effect where the charge to tax under section 599 arises on or after 14th March 1989, but not where the scheme came into existence before that date and the employee became a member of it before 1st June 1989.
- (9) Paragraphs 12 and 13 above shall have effect in relation to payments made on or after the day on which this Act is passed.
- (10) Paragraph 17 above shall have effect in relation to benefits provided on or after the day on which this Act is passed.

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

**C65** For regulations see Part III Vol. 5 (under "Retirement benefit schemes: tax relief on contributions")

## PART II

### APPROVED SCHEMES: GENERAL

#### *Preliminary*

- 19 (1) This Part of this Schedule shall be deemed to have come into force on 14th March 1989 and, subject to sub-paragraphs (2) to (4) below, applies in relation to any retirement benefits scheme (within the meaning of Chapter I of Part XIV of the Taxes Act 1988) approved by the Board before the day on which this Act is passed.
- (2) The Board may by regulations provide that, in circumstances prescribed in the regulations, this Part of this Schedule or any provision of it shall not apply or shall apply with such modifications as may be so prescribed.
- (3) Regulations under sub-paragraph (2) above—

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- (a) may include provision authorising the Board to direct that this Part of this Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate;
  - (b) may take effect (and may authorise any direction given under them to take effect) as from 14th March 1989 or any later date;
  - (c) may make such supplementary provision as appears to the Board to be necessary or expedient.
- (4) This Part of this Schedule shall not apply to a scheme if, before the end of 1989, the administrator of the scheme gives written notice to the Board that it is not to apply.
- (5) Where a notice is given to the Board under sub-paragraph (4) above, the scheme shall cease to be approved—
- (a) if it came into existence before 14th March 1989, with effect from 1st June 1989 or (if later) the date with effect from which it was approved;
  - (b) if it came into existence on or after 14th March 1989, with effect from the date with effect from which it was approved.

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

**C66** For regulations see Part III Vol. 5 (under “Retirement benefit schemes: tax relief on contributions”)

*Remuneration*

- 20 (1) This paragraph applies—
- (a) where the scheme came into existence before 14th March 1989, as regards an employee who became a member of the scheme on or after 1st June 1989;
  - (b) where the scheme came into existence on or after 14th March 1989, as regards any employee who is a member of the scheme (whenever he became a member).
- (2) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary and notwithstanding the effect of anything in Schedule 23 to the Taxes Act 1988) as if, in arriving at the employee’s relevant annual remuneration for the purposes of calculating benefits, any excess of what would be his relevant annual remuneration (apart from this paragraph) over the permitted maximum for the year of assessment in which his participation in the scheme ceases shall be disregarded.
- (3) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if, in arriving at the employee’s remuneration for the year 1988-89 or any subsequent year of assessment for the purposes of any restriction on the aggregate amount of contributions payable under the scheme by the employee and the employer, there were disregarded any excess of what would be his remuneration for the year (apart from this paragraph) over the permitted maximum for the year.
- (4) In this paragraph “the permitted maximum”, in relation to a year of assessment, means the figure found for that year by virtue of sub-paragraphs (5) and (6) below.
- (5) For the years 1988-89 and 1989-90 the figure is £60,000.



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- (6) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C of the Taxes Act 1988, by virtue of section 590C(4) and (5).

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

**C67** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when para. 20 is disapplied or modified; when para. 21 is modified; or when para. 22 is disapplied

- 21 (1) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if the amount of contributions payable under the scheme by an employee in the year 1989-90 or any subsequent year of assessment were limited to 15 per cent. of his remuneration for the year in respect of the employment.
- (2) Where in relation to any year of assessment a percentage higher than 15 per cent. applies for the purposes of section 592(8) or (8A) of the Taxes Act 1988 (relief in respect of contributions) as regards any employee, sub-paragraph (1) above, as regards him, shall have effect in relation to that year with the substitution for 15 per cent. of that higher percentage.

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

**C68** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when para. 20 is disapplied or modified; when para. 21 is modified; or when para. 22 is disapplied

- 22 (1) This paragraph applies—
- (a) where the scheme came into existence before 14th March 1989, as regards an employee who became a member of the scheme on or after 1st June 1989;
  - (b) where the scheme came into existence on or after 14th March 1989, as regards any employee who is a member of the scheme (whenever he became a member).
- (2) For the purposes of paragraph 21(1) above, in arriving at the employee's remuneration for the year any excess of what would be his remuneration for the year (apart from this sub-paragraph) over the permitted maximum for the year shall be disregarded.
- (3) In sub-paragraph (2) above “the permitted maximum”, in relation to a year of assessment, means the figure found for that year by virtue of sub-paragraphs (4) and (5) below.
- (4) For the year 1989-90 the figure is £60,000.
- (5) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C of the Taxes Act 1988, by virtue of section 590C(4) and (5).

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

**C69** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when para. 20 is disapplied or modified; when para. 21 is modified; or when para. 22 is disapplied

*Accelerated accrual*

- 23 (1) This paragraph applies where the scheme allows a member to commute his pension or part of it for a lump sum or sums and—
- (a) where the scheme came into existence before 14th March 1989, applies as regards an employee who became a member of the scheme on or after 1st June 1989, and
  - (b) where the scheme came into existence on or after 14th March 1989, applies as regards any employee who is a member of the scheme (whenever he became a member).
- (2) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary and notwithstanding the effect of paragraph 3 of Schedule 23 to the Taxes Act 1988) as if they did not allow the employee to obtain by way of commutation a lump sum or sums exceeding in all the greater of the following sums—
- (a) a sum of three-eighths of his relevant annual remuneration for each year of service up to a maximum of 40;
  - (b) a sum of the pension payable under the scheme to the employee for the first year in which it is payable multiplied by 2.25.
- (3) The following rules shall apply in calculating, for the purposes of sub-paragraph (2) above, the pension payable under the scheme to the employee for the first year in which it is payable—
- (a) if the pension payable for the year changes, the initial pension payable shall be taken;
  - (b) it shall be assumed that the employee will survive for the year;
  - (c) the effect of commutation, and of any allocation of pension to provide benefits for survivors, shall be ignored.

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

**C70** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when para. 23 is disapplied or modified

- 24 (1) This paragraph applies where the scheme provides a lump sum or sums for a member otherwise than by commutation of his pension or part of it and—
- (a) where the scheme came into existence before 14th March 1989, applies as regards an employee who became a member of the scheme on or after 1st June 1989, and
  - (b) where the scheme came into existence on or after 14th March 1989, applies as regards any employee who is a member of the scheme (whenever he became a member).
- (2) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary and notwithstanding the effect of paragraph 4 of Schedule 23 to the Taxes

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Act 1988) as if they did not allow the payment to the employee, otherwise than by way of commutation, of a lump sum or sum exceeding in all the greater of the following sums—

- (a) a sum of three-eightieths of his relevant annual remuneration for each year of service up to a maximum of 40;
- (b) a sum of the relevant number of eightieths of his relevant annual remuneration.

- (3) For the purposes of sub-paragraph (2) above the relevant number shall be found by taking the number of eightieths (of relevant annual remuneration) by reference to which the pension payable under the scheme to the employee is calculated, multiplying that number by three, and treating the resulting number as 120 if it would otherwise exceed 120.

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

**C71** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when para. 24 is applied

*Associated employments*

- 25 (1) This paragraph applies—
  - (a) where the scheme came into existence before 14th March 1989, as regards an employee who became a member of the scheme on or after 1st June 1989;
  - (b) where the scheme came into existence on or after 14th March 1989, as regards any employee who is a member of the scheme (whenever he became a member).
- (2) Where the employee is a member of the scheme by virtue of two or more relevant associated employments, the rules of the scheme shall have effect as mentioned in sub-paragraph (3) below.
- (3) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they prohibited the amount payable by way of pension in respect of service in any of the relevant associated employments, when aggregated with any amount payable by way of pension in respect of service in the other such employment or employments, from exceeding the relevant amount.
- (4) For the purposes of sub-paragraph (3) above the relevant amount, in relation to the employee, shall be found by applying the following formula—

$$\frac{A \times C}{30}$$

- (5) For the purposes of this paragraph—
  - (a) section 590B(5) and (6) of the Taxes Act 1988 shall apply for the purpose of defining A, and
  - (b) section 590B(9) to (11) of that Act shall apply for the purpose of defining C, as they apply for the purposes of section 590B of that Act, except that for the purposes of this paragraph A shall not exceed 20.

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- (6) The reference to two or more relevant associated employments shall be construed in accordance with section 590A of the Taxes Act 1988.

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

**C72** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when paras. 25 or 26 is applied

*Connected schemes*

- 26 (1) This paragraph applies—
- (a) where the scheme came into existence before 14th March 1989, as regards an employee who became a member of the scheme on or after 1st June 1989;
  - (b) where the scheme came into existence on or after 14th March 1989, as regards any employee who is a member of the scheme (whenever he became a member).
- (2) Where in relation to the employee the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the rules of the scheme shall have effect as mentioned in sub-paragraph (3) below.
- (3) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they prohibited the amount payable by way of pension under the scheme, when aggregated with any amount payable by way of pension under the other scheme or schemes, from exceeding the relevant amount.
- (4) For the purposes of sub-paragraph (3) above the relevant amount, in relation to the employee, shall be found by applying the following formula—

$$\frac{B \times C}{30}$$

- (5) For the purposes of this paragraph—
- (a) section 590B(7) and (8) of the Taxes Act 1988 shall apply for the purpose of defining B, and
  - (b) section 590B(9) to (11) of that Act shall apply for the purpose of defining C, as they apply for the purposes of section 590B of that Act, except that for the purposes of this paragraph B shall not exceed 20.
- (6) References in this paragraph to the scheme being connected with another scheme in relation to the employee shall be construed in accordance with section 590A of the Taxes Act 1988.

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

**C73** See The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regs. 1990 (S.I.1990/2101—in Part III Vol. 5) for circumstances when paras. 25 or 26 is applied

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### *Augmentation*

- 27 (1) This paragraph applies—
- (a) where the scheme came into existence before 14th March 1989, as regards an employee who became a member of the scheme on or after 1st June 1989;
  - (b) where the scheme came into existence on or after 14th March 1989, as regards any employee who is a member of the scheme (whenever he became a member).
- (2) Where in addition to being a member of the scheme (the main scheme) the employee is also a member of an approved scheme (the voluntary scheme) which provides additional benefits to supplement those provided by the main scheme and to which no contributions are made by any employer of his, sub-paragraph (3) below shall apply in relation to any augmentation of the benefits provided for him by the main scheme after he has ceased to participate in it.
- (3) Any rules of the main scheme imposing a limit on the amount of a benefit provided for the employee shall have effect (notwithstanding anything in them to the contrary) as if they provided for the limit to be reduced by the amount of any like benefit provided for the employee by the voluntary scheme.

### *Centralised schemes*

- 28 (1) Where the scheme is a centralised scheme, sub-paragraph (1)(a) and (b) of each of paragraphs 20 and 22 to 27 above shall have effect with the substitution for the reference to the coming into existence of the scheme of a reference to the commencement of the employer's participation in the scheme.
- (2) For the purposes of this paragraph a centralised scheme is a retirement benefits scheme (within the meaning of Chapter I of Part XIV of the Taxes Act 1988) established for the purpose of enabling any employer, other than an employer associated with the person by whom the scheme is established, to participate in it as regards his employees.
- (3) For the purposes of sub-paragraph (2) above one person is associated with another if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.
- (4) In sub-paragraph (3) above the reference to control, in relation to a body corporate, shall be construed—
- (a) where the body corporate is a close company, in accordance with section 416 of the Taxes Act 1988, and
  - (b) where it is not, in accordance with section 840 of that Act.

### *Election*

- 29 (1) In a case where—
- (a) an employee became a member of the scheme on or after 17th March 1987 and before 1st June 1989, and
  - (b) he gives written notice to the administrator of the scheme that this Part of this Schedule is to apply in his case,
- he shall be deemed for the purposes of this Part of this Schedule to have become a member of the scheme on 1st June 1989.

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- (2) A notice under this paragraph shall be given in such form as the Board may prescribe.

#### *Supplementary*

- 30 In this Part of this Schedule “relevant annual remuneration” means final remuneration or, if the scheme provides for benefits to be calculated by reference to some other annual remuneration, that other annual remuneration.

### PART III

#### APPROVED SCHEMES: ADDITIONAL VOLUNTARY CONTRIBUTIONS

#### *Preliminary*

- 31 (1) Subject to sub-paragraphs (2) to (4) below, this Part of this Schedule applies in relation to any retirement benefits scheme which was approved by the Board before the day on which this Act is passed and which makes provision for the payment by an employee of voluntary contributions.
- (2) Paragraph 32 below only applies where—
- (a) the provision for the payment of voluntary contributions is freestanding, and
  - (b) the scheme is not one to which contributions are made by any employer of the employee.
- (3) The Board may by regulations provide that, in circumstances prescribed in the regulations, this Part of this Schedule or any provision of it shall not apply or shall apply with such modifications as may be so prescribed.
- (4) Regulations under sub-paragraph (3) above—
- (a) may include provision authorising the Board to direct that this Part of this Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate;
  - (b) may make such supplementary provision as appears to the Board to be necessary or expedient.

#### *Abatement of benefits*

- 32 (1) The scheme shall have effect (notwithstanding anything in it to the contrary) as if its rules included a rule imposing, in the case of each benefit provided for the employee, such a limit on the amount of the benefit as is mentioned in sub-paragraph (2) below.
- (2) The limit referred to above is a limit of such an amount as is found by—
- (a) taking the amount of the limit imposed by the main scheme on the provision of any like benefit for the employee by that scheme, and
  - (b) subtracting from that amount an amount equal to the relevant amount.
- (3) For the purposes of sub-paragraph (2) above the relevant amount is—
- (a) where the employee is not a member of any other relevant scheme, the amount of any like benefit provided for the employee by the main scheme, and

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- (b) where the employee is a member of another relevant scheme or schemes, an amount equal to the aggregate of the amount mentioned in paragraph (a) above and the amount of any like benefit provided for the employee by the other relevant scheme or schemes.
- (4) In sub-paragraph (3) above, references to the employee being a member of another relevant scheme are references to his being a member of any approved scheme, other than the scheme, which provides additional benefits for him to supplement those provided by the main scheme.
- (5) This paragraph shall have effect in relation to benefits provided on or after the day on which this Act is passed.

#### *Return of surplus funds*

- 33 (1) The scheme shall have effect (notwithstanding anything in it to the contrary) as if its rules included a rule requiring the administrator, in the circumstances mentioned in sub-paragraph (2) or (3) below, as the case may be, to make to the employee or his personal representatives a payment of an amount equal to the prescribed amount out of funds which are or have been held for the purposes of the scheme.
- (2) Where the provision for the payment of voluntary contributions is freestanding, the circumstances referred to above are that the amount of any benefit provided for the employee by the scheme would have been greater had the amount of any like benefit provided for him by the main scheme, or any other relevant scheme of which he is a member, been less.
- (3) Where the provision for the payment of voluntary contributions is not freestanding, the circumstances referred to above are that the amount of any benefit provided for the employee by virtue of the voluntary contributions would have been greater had the amount of any like benefit provided for him by the principal provisions of the scheme, or any other relevant scheme of which he is a member, been less.
- (4) In sub-paragraph (1) above, the reference to the prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act 1988 as the method to be used for calculating the amount of any surplus funds.
- (5) In sub-paragraph (2) above, the reference to the employee being a member of another relevant scheme is a reference to his being a member of any approved scheme, other than the scheme, which provides additional benefits for him to supplement those provided by the main scheme.
- (6) In sub-paragraph (3) above, the reference to the employee being a member of another relevant scheme is a reference to his being a member of any approved scheme, other than the scheme, which provides additional benefits for him to supplement those provided by the principal provisions of the scheme.
- 34 The scheme shall have effect (notwithstanding anything in it to the contrary) as if its rules included a rule enabling the administrator, before making any payment by virtue of paragraph 33 above, to deduct the amount of any tax to which he is charged by section 599A of the Taxes Act 1988 by virtue of making the payment.

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### Supplementary

35 In this Part of this Schedule—

- (a) “administrator”, “approved scheme”, “employee” and “retirement benefits scheme” have the same meanings as in Chapter I of Part XIV of the Taxes Act 1988,
- (b) “freestanding”, in relation to provision for the payment of voluntary contributions, means provision which is contained in a retirement benefits scheme other than the one which provides the benefits which the voluntary contributions are intended to supplement,
- (c) “the main scheme”, in relation to provision for the payment of voluntary contributions which is freestanding, means the retirement benefits scheme which provides the benefits which the voluntary contributions are intended to supplement,
- (d) “principal provisions”, in relation to a retirement benefits scheme which makes provision for the payment of voluntary contributions which is not freestanding, means the provisions of the scheme concerning the provision of the benefits which the voluntary contributions are intended to supplement,
- (e) references to the provision of a benefit for an employee shall, in relation to a deceased employee, be construed as references to the provision of a benefit in respect of him, and
- (f) references to an employee being (or not being) a member of a scheme shall, in relation to a deceased employee, be construed as references to his having been (or not having been) a member of a scheme immediately before the time of his death.

## SCHEDULE 7

Section 77.

### PERSONAL PENSION SCHEMES

#### PART I

##### AMENDMENTS OF TAXES ACT

1 Chapter IV of Part XIV of the Taxes Act 1988 (personal pension schemes) shall be amended as mentioned in the following provisions of this Part of this Schedule.

2 (1) Section 635 (lump sum to member) shall be amended as follows.

(2) The following subsection shall be substituted for subsection (3) (lump sum not to exceed one quarter of value of benefits for member)—

“(3) The lump sum must not exceed one quarter of the difference between—

- (a) the total value, at the time when the lump sum is paid, of the benefits provided for by the arrangements made by the member in accordance with the scheme, and
- (b) the value, at that time, of such of the member’s rights under the scheme as are protected rights for the purposes of the Social Security Act 1986 or the Social Security (Northern Ireland) Order 1986.”



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- (3) Subsection (4) (lump sum not to exceed £150,000 or sum specified by Treasury by order) shall cease to have effect.
- (4) This paragraph shall have effect in relation to the approval of a scheme on or after the day on which this Act is passed; but if the scheme came into existence before that day sub-paragraph (2) above shall not have effect as regards arrangements made by a member in accordance with the scheme before that day.
- 3 (1) In section 640 (maximum amount of deductions) the following table shall be substituted for the table in subsection (2) (maximum amount by reference to age)—

36 to 45	20 per cent.
46 to 50	25 per cent.
51 to 55	30 per cent.
56 to 60	35 per cent.
61 or more	40 per cent.

- (2) This paragraph shall have effect for the year 1989-90 and subsequent years of assessment.
- 4 (1) The following section shall be inserted after section 640—

**“640A Earnings cap.**

- (1) In arriving at an individual’s net relevant earnings for a year of assessment for the purposes of section 640 above, any excess of what would be his net relevant earnings for the year (apart from this subsection) over the allowable maximum for the year shall be disregarded.
- (2) In subsection (1) above “the allowable maximum” means, as regards a particular year of assessment, the figure found for that year by virtue of subsections (3) and (4) below.
- (3) For the year of assessment 1989-90 the figure is £60,000.
- (4) For the year of assessment 1990-91 and any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) and (5).”
- (2) This paragraph shall have effect for the year 1989-90 and subsequent years of assessment.
- 5 (1) Section 644 (meaning of relevant earnings) shall be amended as follows.
- (2) In subsection (2) for “(5)” there shall be substituted “(6F)”.
- (3) The following subsections shall be inserted after subsection (6)—
- “(6A) Emoluments of an individual as an employee of a company are not income within subsection (2) above if—
- (a) he is a controlling director of the company at any time in the year of assessment in question or has been a controlling director of the company at any time in the ten years immediately preceding that year of assessment, and

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- (b) any of subsections (6B) to (6E) below applies in his case.
- (6B) This subsection applies in the case of the individual if—
- (a) at any time in the year of assessment in question he is in receipt of benefits under a relevant superannuation scheme, and
  - (b) the benefits are payable in respect of past service with the company.
- (6C) This subsection applies in the case of the individual if—
- (a) at any time in the year of assessment in question he is in receipt of benefits under a personal pension scheme,
  - (b) the scheme has received a transfer payment relating to him from a relevant superannuation scheme, and
  - (c) the transfer payment is in respect of past service with the company.
- (6D) This subsection applies in the case of the individual if—
- (a) at any time in the year of assessment in question he is in receipt of benefits under a relevant superannuation scheme,
  - (b) the benefits are payable in respect of past service with another company,
  - (c) the emoluments are for a period during which the company mentioned in subsection (6A) above has carried on a trade or business previously carried on by the other company, and
  - (d) the other company carried on the trade or business at any time during the period of service in respect of which the benefits are payable.
- (6E) This subsection applies in the case of the individual if—
- (a) at any time in the year of assessment in question he is in receipt of benefits under a personal pension scheme,
  - (b) the scheme has received a transfer payment relating to him from a relevant superannuation scheme,
  - (c) the transfer payment is in respect of past service with another company,
  - (d) the emoluments are for a period during which the company mentioned in subsection (6A) above has carried on a trade or business previously carried on by the other company, and
  - (e) the other company carried on the trade or business at any time during the period of service in respect of which the transfer payment was made.
- (6F) For the purposes of subsections (6A) to (6E) above—
- (a) a person is a controlling director of a company if he is a director (as defined by section 612(1)), and he is within paragraph (b) of section 417(5), in relation to the company;
  - (b) “relevant superannuation scheme” has the same meaning as in section 645(1);
  - (c) references to benefits payable in respect of past service with a company include references to benefits payable partly in respect of past service with the company; and
  - (d) references to a transfer payment in respect of past service with a company include references to a transfer payment partly in respect of past service with the company.”

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- (4) This paragraph shall be deemed to have come into force on 6th April 1989.
- 6 (1) Section 645 (earnings from pensionable employment) shall be amended as follows.
- (2) In subsection (1)(c) for the words “neither subsection (4) nor subsection (5) below applies” there shall be substituted the words “subsection (4) below does not apply”.
- (3) In subsection (3) the word “and” following paragraph (a) shall be omitted and after paragraph (b) there shall be inserted “and
- (c) which is of a description mentioned in section 596(1)(a), (b) or (c).”
- (4) After subsection (4) there shall be inserted—
- “(4A) Where the emoluments from an office or employment held by an individual are foreign emoluments within the meaning of section 192, this section shall have effect with the substitution of the following for paragraph (c) of subsection (3) above—”
- (c) which corresponds to a scheme of a description mentioned in section 596(1)(a), (b) or (c).”
- (5) Subsection (5) shall cease to have effect.
- (6) This paragraph shall be deemed to have come into force on 6th April 1989.
- 7 (1) In section 646 (“net relevant earnings”) in subsection (1) after the words “(7) below” there shall be inserted the words “and section 646A”.
- (2) This paragraph shall have effect for the year 1989-90 and subsequent years of assessment.
- 8 (1) The following section shall be inserted after section 646—

**“646A Earnings from associated employments.**

- (1) This section applies where in the year of assessment in question—
- (a) an individual holds two or more offices or employments which are associated in that year,
- (b) one or more of them is an office or employment to which section 645 applies (“pensionable job”), and
- (c) one or more of them is an office or employment to which that section does not apply (“non-pensionable job”).
- (2) Where the emoluments for that year from the pensionable job (or jobs) are equal to or exceed the allowable maximum for that year, section 646(1) shall have effect in the case of the individual as if the references to relevant earnings were references to relevant earnings not attributable to the non-pensionable job (or jobs).
- (3) Where the allowable maximum for that year exceeds the emoluments for that year from the pensionable job (or jobs), the individual’s net relevant earnings, so far as attributable to the non-pensionable job (or jobs), shall not be greater than the amount of the excess.
- (4) For the purposes of this section two or more offices or employments held by an individual in a year of assessment are associated in that year if the employers in question are associated at any time during it.

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- (5) For the purposes of subsection (4) above, employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.
- (6) In subsection (5) above the reference to control, in relation to a body corporate, shall be construed—
- (a) where the body corporate is a close company, in accordance with section 416, and
  - (b) where it is not, in accordance with section 840.
- (7) In this section “the allowable maximum” has the same meaning as in section 640A(1).”
- (2) This paragraph shall have effect for the year 1989-90 and subsequent years of assessment.
- 9 In section 655(5) (provisional approval in the case of applications made before 1st February 1990) the words “in cases where the applications are made before 1st February 1990” shall be omitted.

## PART II

### SCHEMES APPROVED BEFORE PASSING OF THIS ACT

#### *Interpretation*

- 10 In this Part of this Schedule—
- (a) “personal pension scheme” has the same meaning as in Chapter IV of Part XIV of the Taxes Act 1988, and
  - (b) references to approval of such a scheme do not include references to provisional approval under regulations made under section 655(5) of that Act.

#### *Lump sum to member*

- 11 (1) This paragraph applies as regards arrangements made by a member of a personal pension scheme approved by the Board before the day on which this Act is passed, if the arrangements are made by the member in accordance with the scheme on or after that day.
- (2) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if any limitation imposed on the maximum amount payable to the member by way of lump sum, and imposed by reference to a fraction of the total value of the benefits for him provided for by the arrangements, were imposed by reference to the same fraction of the difference between—
- (a) the total value, at the time when the lump sum is paid, of the benefits provided for by the arrangements, and
  - (b) the value, at that time, of such of his rights under the scheme as are protected rights for the purposes of the <sup>M170</sup>Social Security Act 1986 or the <sup>M171</sup>Social Security (Northern Ireland) Order 1986.

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**Marginal Citations**

- M170 1986 c. 50.
- M171 S.I. 1986/1888 (N.I. 18).

- 12 (1) This paragraph applies where on or after the day on which this Act is passed a lump sum becomes payable under a personal pension scheme approved by the Board before that day.
- (2) The rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if any limitation imposed on the maximum amount payable to a member by way of lump sum, and imposed by reference to a figure, did not apply.
- (3) The reference in sub-paragraph (2) above to a limitation imposed on the maximum amount payable to a member by way of lump sum does not include a reference to a limitation imposed on the maximum amount so payable out of a transfer payment.

SCHEDULE 8

Section 84.

AMENDMENTS OF CHAPTER I OF PART XII OF TAXES ACT 1988 (INSURANCE COMPANIES)

1 ..... F44

**Textual Amendments**

- F44 Sch. 8 paras. 1, 3(3), 7 repealed by Finance Act 1990 (c.29), s. 132, Sch. 19 Pt. IV, Notes 6, 14

- 2 Section 433 (profits reserved for policy holders or annuitants) shall cease to have effect.
- 3 (1) In section 434 (franked investment income etc.), for subsection (3) there shall be substituted the following subsections—
- “(3) Subject to sections 437 and 438, the policy holders’ fraction of the franked investment income from investments held in connection with a company’s life assurance business shall not be used under Chapter V of Part VI to frank distributions made by the company and, accordingly, for the purposes of that Chapter (other than the application of franked investment income under section 241), in relation to any unrelieved income of a company falling within subsection (1) above, the surplus of franked investment income for any accounting period means the aggregate of—
- (a) the policy holders’ fraction of that franked investment income; and
  - (b) the amount determined under section 241(3) on the basis that the reference therein to franked investment income is a reference only to the shareholders’ fraction of that income.
- (3A) The policy holders’ fraction of the franked investment income from investments held in connection with a company’s life assurance business shall be left out of account in determining, under subsection (7) of section 13, the franked investment income forming part of the company’s profits for the purposes of that section.”

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(2) Subsections (4) and (5) of that section shall be omitted.

(3)

<sup>F45</sup>(4) In subsection (7) of that section for “(4)” there shall be substituted “(3)” and after the words “against which” there shall be inserted “disregarding relief under section 242”.

**Textual Amendments**

**F45** Sch. 8 paras. 1, 3(3), 7 repealed by Finance Act 1990 (c.29), s. 132, **Sch. 19 Pt. IV**, Notes 6, 14

4 After section 434 there shall be inserted the following section—

**“434A Limitations on loss relief and group relief.**

(1) In the case of a company carrying on life assurance business, no relief shall be allowable under Chapter II (loss relief) or Chapter IV (group relief) of Part X against the policy holders’ fraction of the relevant profits for any accounting period.

(2) For the purposes of subsection (1) above, the relevant profits of a company for an accounting period are the total profits of its life assurance business, less any deduction due under section 76, but before allowing any relief under Chapter II or Chapter IV of Part X.”

5 Section 435 (taxation of gains reserved for policy holders and annuitants) shall cease to have effect.

6 In section 436 (annuity and pension business: separate charge on profits) in subsection (3)(a) for the words “section 433” there shall be substituted “sections 82 and 83 of the Finance Act 1989”.

7 ..... <sup>F46</sup>

**Textual Amendments**

**F46** Sch. 8 paras. 1, 3(3), 7 repealed by Finance Act 1990 (c.29), s. 132, **Sch. 19 Pt. IV**, Notes 6, 14

VALID FROM 27/07/1993

[<sup>F47</sup>SCHEDULE 8A

Section 89A.]

MODIFICATION OF SECTIONS 83 AND 89 IN RELATION  
 TO OVERSEAS LIFE INSURANCE COMPANIES

**Textual Amendments**

**F47** Sch. 8A inserted (27.7.1993) by 1993 c. 34, s. 101(2), **Sch.10**

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SCHEDULE 9

Section 90.

LIFE POLICIES ETC. HELD BY COMPANIES

- 1 Chapter II of Part XIII of the Taxes Act 1988 shall be amended as follows.
- 2 At the end of section 539 there shall be added—
  - “(9) A policy of life insurance issued in respect of an insurance made before 14th March 1989 shall be treated for the purposes of sections 540(5A), 547(8) and 548(3A) as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any exercise of rights conferred by the policy shall be regarded for this purpose as a variation.”
- 3 (1) Section 540 shall be amended as follows.
  - (2) In subsection (4), for the words “this section” there shall be substituted the words “subsections (1) and (3) above”.
  - (3) After subsection (5) there shall be inserted—
    - “(5A) Sub-paragraphs (i) and (ii) of subsection (1)(b) above shall not apply in relation to a policy issued in respect of an insurance made on or after 14th March 1989 if, immediately before the happening of the event, the rights conferred by the policy were in the beneficial ownership of a company, or were held on trusts created, or as security for a debt owed, by a company.”
- 4 (1) Section 541 shall be amended as follows.
  - (2) After subsection (4) there shall be inserted—
    - “(4A) Where, immediately before the happening of the chargeable event, the rights conferred by a qualifying endowment policy are held as security for a debt owed by a company, then, if—
      - (a) the conditions in subsection (4B) below are satisfied,
      - (b) the amount of the debt exceeds the total amount previously paid under the policy by way of premiums, and
      - (c) the company makes a claim for the purpose within two years after the end of the accounting period in which the chargeable event happens,this section shall have effect as if the references in subsection (1)(a) and (b) to that total amount were references to the amount of the debt.
    - (4B) The conditions referred to in subsection (4A) above are—
      - (a) that, throughout the period beginning with the making of the insurance and ending immediately before the happening of the chargeable event, the rights conferred by the policy have been held as security for a debt owed by the company;

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- (b) that the capital sum payable under the policy in the event of death during the term of the policy is not less than the amount of the debt when the insurance was made;
  - (c) that any sum payable under the policy by reason of the chargeable event is applied in repayment of the debt (except to the extent that its amount exceeds the amount of the debt);
  - (d) that the debt was incurred to defray money applied—
    - (i) in purchasing an estate or interest in land to be occupied by the company for the purposes of a trade carried on by it, or
    - (ii) for the purpose of the construction, extension or improvement (but not the repair or maintenance) of buildings which are or are to be so occupied.
- (4C) If the amount of the debt is higher immediately before the happening of the chargeable event than it was at some earlier time during the period mentioned in subsection (4B)(a) above, the amount to be taken into account for the purposes of subsection (1) above shall be the lowest amount at which it stood during that period.
- (4D) If during the period mentioned in subsection (4B)(a) above the company incurs a debt by borrowing in order to repay another debt, subsections (4B) and (4C) above shall have effect as if, where appropriate, references to either debt included references to the other.”
- (3) In subsection (5), after paragraph (b) there shall be inserted “and
- (c) “qualifying endowment policy” means a policy which is a qualifying policy by virtue of paragraph 2 of Schedule 15;”.
- 5 (1) Section 547 shall be amended as follows.
- (2) In subsection (1), for paragraph (b) there shall be substituted—
- “(b) if, immediately before the happening of that event, those rights were in the beneficial ownership of a company, or were held on trusts created, or as security for a debt owed, by a company, the amount of the gain shall be deemed to form part of the company’s income (chargeable under Case VI of Schedule D) for the accounting period in which the event happened;”.
- (3) After subsection (7) there shall be inserted—
- “(8) Subsection (1)(b) above shall not have effect as respects—
- (a) a policy of life insurance issued in respect of an insurance made before 14th March 1989,
  - (b) a contract for a life annuity made before that date, or
  - (c) a capital redemption policy issued in respect of an insurance made before that date, or issued by a company resident in the United Kingdom in respect of an insurance made on or after that date.”
- 6 (1) Section 548 shall be amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), after the words “an individual’s total income” there shall be inserted the words “or the income of a company”;



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- (b) in paragraph (c), after the words “that individual” there shall be inserted the words “or company”;
  - (c) for the words “subsection (3)” there shall be substituted the words “subsections (3) and (3A)”.
- (3) After subsection (3) there shall be inserted—
- “(3A) Subsections (1) and (2) do not apply where the rights conferred by the policy or contract are in the beneficial ownership of a company, or are held on trusts created, or as security for a debt owed, by a company, if the policy was issued in respect of an insurance made before 14th March 1989 or the contract was made before that date.”
- 7 In section 552, in subsection (2), after paragraph (b) there shall be inserted “or
- (c) the event is a chargeable event only because of section 540(5A).”
- 8 Paragraph 5 above shall have effect in relation to chargeable events happening in any accounting period of the company concerned which begins after 31st March 1989; but subject to that this Schedule shall have effect as from 14th March 1989.

## SCHEDULE 10

Section 93.

### DEEP DISCOUNT SECURITIES: AMENDMENTS

- 1 Schedule 4 to the Taxes Act 1988 (deep discount securities) shall be amended as mentioned in the following provisions of this Schedule.
- 2 (1) Paragraph 1 shall be amended as follows.
- (2) The following paragraph shall be inserted after sub-paragraph (1)(d)—
- “(dd) “a deep discount security” also means any redeemable security which has been issued by a public body (at whatever time) at a deep discount, other than—
- (i) a security such as is mentioned in paragraph (d)(ii) above;
  - (ii) a security falling within sub-paragraph (5), (6) or (7) below;”.
- (3) In sub-paragraph (1)(g) after the words “the company” there shall be inserted the words “or the public body”.
- (4) The following shall be inserted at the end of sub-paragraph (2)— “ This sub-paragraph applies only in the case of securities issued by a company. ”
- (5) The following sub-paragraphs shall be inserted after sub-paragraph (3)—
- “(4) For the purposes of this Schedule a public body is any of the following which is not a company—
- (a) a government, whether of the United Kingdom or elsewhere;
  - (b) a public or local authority, whether in the United Kingdom or elsewhere.

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- (5) A security falls within this sub-paragraph if it is a gilt-edged security and—
- (a) it was issued before 14th March 1989, or
  - (b) it was issued on or after that date but was issued under the same prospectus as any gilt-edged security issued before that date.
- (6) A security falls within this sub-paragraph if it is a gilt-edged security and—
- (a) it was issued under a prospectus under which no securities were issued before 14th March 1989,
  - (b) it was issued otherwise than on the occasion of the original issue under the prospectus, and
  - (c) all the securities issued on the occasion of the original issue under the prospectus are gilt-edged securities which are not deep discount securities.
- (7) A security falls within this sub-paragraph if it is not a gilt-edged security and was issued (at whatever time) under the same prospectus as any other security which was issued before the security in question and which is not a deep discount security.
- (8) For the purposes of this Schedule “gilt-edged security” has the same meaning as it has for the purposes of the 1979 Act.”
- 3 The following sub-paragraph shall be inserted after paragraph 4(7)—
- “(8) In the case of a deep discount security issued by a public body, this paragraph applies where a disposal is made on or after 14th March 1989 (whatever the date of acquisition).”
- 4 In paragraph 11(1) after the words “deep discount security” there shall be inserted the words “issued by a company”.
- 5 The following paragraph shall be inserted after paragraph 11—
- “11A Where any deep discount security issued by a public body is redeemed before the redemption date by the body which issued it, paragraph 4 above shall have effect subject to paragraph 11(2) above (ignoring the words following paragraph (b)).”
- 6 The following sub-paragraph shall be inserted after paragraph 13(2)—
- “(3) Every public body which issues deep discount securities on or after 1st August 1989 shall cause to be shown on the certificate of each such security the income element for each income period between the date of issue of the security and the redemption date.”
- 7 The following shall be inserted after paragraph 14—

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### **Retirement benefit schemes**

“15 (1) In a case where—

- (a) paragraph 4 above would apply (apart from this paragraph) to a disposal of a security, and
- (b) immediately before the disposal was made the security was held for the purposes of an exempt approved scheme (within the meaning of Chapter I of Part XIV),

that paragraph shall not apply to the disposal.

- (2) Sub-paragraph (1) above shall not apply unless the disposal is made on or after 14th March 1989.

### **Stock lending**

16 (1) In a case where—

- (a) a security is the subject of a transfer which falls within section 129(3), and
- (b) the transfer constitutes a disposal to which (apart from this paragraph) paragraph 4 above would apply,

that paragraph shall not apply to the disposal.

- (2) Sub-paragraph (1) above shall not apply unless the disposal is made on or after 14th March 1989.

### **Trustees**

17 (1) Where on the disposal by trustees of a deep discount security an amount is treated as income chargeable to tax by virtue of paragraph 4(1) above, the rate at which it is chargeable shall be a rate equal to the sum of the basic rate and the additional rate for the year of assessment in which the disposal is made.

- (2) Where the trustees are trustees of a scheme to which section 469 applies, sub-paragraph (1) above shall not apply if or to the extent that the amount is treated as income in the accounts of the scheme.

- (3) Sub-paragraph (1) above shall not apply unless the disposal is made on or after 14th March 1989.

### **Underwriters**

18 (1) An underwriting member of Lloyd's shall be treated for the purposes of this Schedule as absolutely entitled as against the trustees to the securities forming part of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's, or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.

- (2) Sub-paragraph (1) above applies where a disposal is made on or after 14th March 1989 (whatever the date of acquisition).

- (3) Where a security forms part of a premiums trust fund at the end of 31st December of any relevant year, for the purposes of this Schedule the

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trustees of the fund shall be deemed to dispose of the security at that time; and for this purpose relevant years are 1989 and subsequent years.

- (4) Where a security forms part of a premiums trust fund at the beginning of 1st January of any relevant year, for the purposes of this Schedule the trustees of the fund shall be deemed to acquire the security at that time; and for this purpose relevant years are 1990 and subsequent years.
- (5) Sub-paragraph (6) below applies where the following state of affairs exists at the beginning of 1st January of any year or the end of 31st December of any year—
- (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2),
  - (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
  - (c) securities have not been transferred in return, and
  - (d) section 129(3) applies to the transfer made by the trustees.
- (6) The securities transferred by the trustees shall be treated for the purposes of sub-paragraphs (3) and (4) above as if they formed part of the premiums trust fund at the beginning of 1st January concerned or the end of 31st December concerned (as the case may be).
- (7) Paragraph 7 above shall have effect subject to sub-paragraph (3) above.
- (8) Paragraph 7(2) above shall not apply where—
- (a) the deceased was an underwriting member of Lloyd's who died on or after 14th March 1989, and
  - (b) immediately before his death the security concerned formed part of a premiums trust fund, a special reserve fund or any other trust fund required or authorised by the rules of Lloyd's, or required by the underwriting agent through whom the deceased's business or any part of it was carried on, to be kept in connection with the business.
- (9) In a case where an amount treated as income chargeable to tax by virtue of paragraph 4(1) above constitutes profits or gains mentioned in section 450(1)—
- (a) section 450(1)(b) shall apply; and
  - (b) paragraph 4(1)(b) above shall not apply.
- (10) For the purpose of computing income tax for the year 1987–88 sub-paragraph (9) above shall have effect as if—
- (a) the reference to section 450(1) were to paragraph 2 of Schedule 16 to the Finance Act 1973, and
  - (b) the reference to section 450(1)(b) were to paragraph 2(b) of that Schedule.
- (11) In this paragraph “business” and “premiums trust fund” have the meanings given by section 457.

### **Gilts: special rules**

- 19 (1) In a case where—

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- (a) securities have been issued by a public body under a prospectus under which no securities were issued before 14th March 1989,
- (b) some of the securities issued under the prospectus are gilt-edged securities which are would-be deep discount securities,
- (c) some of the securities issued under the prospectus are gilt-edged securities which are not would-be deep discount securities, and
- (d) there is a time when the aggregate nominal value of the securities falling within paragraph (b) above (at that time) exceeds the aggregate nominal value of the securities falling within paragraph (c) above (at that time),

sub-paragraph (2) below shall apply in relation to any gilt-edged security which has been or is issued under the prospectus at any time (whether before, at or after the time mentioned in paragraph (d) above).

- (2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(d) above, paragraphs 4, 7, 8, 11A, 12 and 14 to 18 above shall have effect as if—
  - (a) the security were a deep discount security,
  - (b) it had been issued as such (whatever the time it was issued), and
  - (c) it had been acquired as such (whatever the time it was acquired).
- (3) For the purposes of sub-paragraph (1) above a would-be deep discount security is a security which would be a deep discount security apart from paragraph 1(6) above.
- (4) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a disposal for the purposes of the 1979 Act, the death of a person competent to dispose of the security, a disposal mentioned in paragraph 18(3) above, and an acquisition mentioned in paragraph 18(4) above.

### **Non-gilts: special rules**

20 (1) In a case where—

- (a) all the securities issued by a public body on the occasion of the original issue under a particular prospectus (whatever the time of the issue) are neither gilt-edged securities nor deep discount securities,
- (b) some of the securities issued under the prospectus are not gilt-edged securities but are new would-be deep discount securities, and
- (c) there is a time when the aggregate nominal value of the securities falling within paragraph (b) above (at that time) exceeds the aggregate nominal value of the securities which (looking at the state of affairs at that time) have been issued under the prospectus and are neither gilt-edged securities nor new would-be deep discount securities,

sub-paragraph (2) below shall apply in relation to any security which is not a gilt-edged security but which has been or is issued under the prospectus at any time (whether before, at or after the time mentioned in paragraph (c) above).

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- (2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(c) above, paragraphs 4, 7, 8, 11A, 12 and 14 to 18 above shall have effect as if—
- (a) the security were a deep discount security,
  - (b) it had been issued as such (whatever the time it was issued), and
  - (c) it had been acquired as such (whatever the time it was acquired).
- (3) For the purposes of sub-paragraph (1) above a new would-be deep discount security is a security which—
- (a) would be a deep discount security apart from paragraph 1(7) above, and
  - (b) was issued on or after 14th March 1989.
- (4) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a disposal for the purposes of the 1979 Act, the death of a person competent to dispose of the security, a disposal mentioned in paragraph 18(3) above, and an acquisition mentioned in paragraph 18(4) above.”

## SCHEDULE 11

Section 94.

## DEEP GAIN SECURITIES

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

- C74** Sch. 11 modified (27.7.1993) by 1993 c. 34, ss. 65(2)(4)(7)(8), 66(1)  
Sch. 11 applied (27.7.1993) by 1993 c. 34, ss. 164(12), (with s. 165)

*Deep gain securities*

- 1 (1) For the purposes of this Schedule a deep gain security is a redeemable security (whenever issued) which fulfils the first and second conditions.
- (2) The first condition is that, taking the security at the time it is issued and assuming redemption, the amount payable on redemption might constitute a deep gain; and if the security is capable of redemption on one of a number of occasions, this condition is fulfilled if it is fulfilled as regards any one of them.
- (3) For the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity only at the option of the person who issued the security (and no other person).
- [<sup>F54</sup>(3A) In the case of a security issued before 13th November 1991, for the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity otherwise than in pursuance of the exercise by the person who holds the security for the time being of an option exercisable only on the effluxion of time or the happening of an event which (judged at the time of the security’s issue) is certain or likely to occur.

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(3B) In the case of a security issued on or after 13th November 1991, for the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity otherwise than at the option of the person who holds the security for the time being and as regards which the following conditions are fulfilled (judged at the time of the security’s issue)—

- (a) the event occasioning redemption is such that, if it occurred and there was no provision for redemption, the interests of the person holding the security at the time of the occurrence might be adversely affected,
- (b) the event occasioning redemption is neither certain nor likely to occur,
- (c) the event occasioning redemption is not one of a number of events occasioning or allowing redemption before maturity at least one of which is certain or likely to occur, and
- (d) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might be expected to accrue from the provision for redemption.

(3C) The condition set out in sub-paragraph (3B)(a) above is fulfilled if it is fulfilled by reference to any one potential holder, whether or not it is fulfilled by reference to other potential holders.

(3D) In a case where—

- (a) the security is one which under the terms of issue can be converted into or exchanged for a security of a different kind, and
- (b) it falls to be decided whether the condition set out in paragraph (b) or (c) of sub-paragraph (3B) above is fulfilled,

the condition concerned shall not be treated as fulfilled unless it is fulfilled having regard only to circumstances in which (judged at the time of the security’s issue) the right to convert or exchange cannot be or is unlikely to be exercised.

(3E) In the case of a security issued on or after 13th November 1991, for the purposes of sub-paragraph (2) above “redemption” does not include any redemption which may be made before maturity at the option of the person who holds the security for the time being and as regards which the following conditions are fulfilled (judged at the time of the security’s issue)—

- (a) the event allowing the option to be exercised is such that, if it occurred and there was no provision for redemption, the interests of the person holding the security at the time of the occurrence might be adversely affected,
- (b) the event allowing the option to be exercised is neither certain nor likely to occur,
- (c) the event allowing the option to be exercised is not one of a number of events occasioning or allowing redemption before maturity at least one of which is certain or likely to occur, and
- (d) the obtaining of a tax advantage by any person is not the main benefit, or one of the main benefits, that might be expected to accrue from the provision for redemption.

(3F) The condition set out in sub-paragraph (3E)(a) above is fulfilled if it is fulfilled by reference to any one potential holder, whether or not it is fulfilled by reference to other potential holders.

(3G) In a case where—

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- (a) the security is one which under the terms of issue can be converted into or exchanged for a security of a different kind, and
  - (b) it falls to be decided whether the condition set out in paragraph (b) or (c) of sub-paragraph (3E) above is fulfilled,  
the condition concerned shall not be treated as fulfilled unless it is fulfilled having regard only to circumstances in which (judged at the time of the security's issue) the right to convert or exchange cannot be or is unlikely to be exercised.]
- (4) The second condition is that the security—
- (a) is not a deep discount security (either because the amount payable on redemption is not known at issue or for some other reason),
  - (b) is not a share in a company,
  - (c) is not a qualifying indexed security,
  - (d) is not a convertible security, and
  - (e) does not fall within sub-paragraph (5), (6) or (7) below.
- (5) A security falls within this sub-paragraph if it is a gilt-edged security and—
- (a) it was issued before 14th March 1989, or
  - (b) it was issued on or after that date but was issued under the same prospectus as any gilt-edged security issued before that date.
- (6) A security falls within this sub-paragraph if it is a gilt-edged security and—
- (a) it was issued under a prospectus under which no securities were issued before 14th March 1989,
  - (b) it was issued otherwise than on the occasion of the original issue under the prospectus, and
  - (c) all the securities issued on the occasion of the original issue under the prospectus are gilt-edged securities which are not deep gain securities.
- (7) A security falls within this sub-paragraph if it is not a gilt-edged security and was issued (at whatever time) under the same prospectus as any other security which was issued before the security in question and which is not a deep gain security.
- (8) For the purposes of this paragraph—
- (a) a deep discount security is a security which is a deep discount security for the purposes of Schedule 4 to the Taxes Act 1988,
  - (b) “qualifying indexed security” has the meaning given by paragraph 2 below, and
  - (c) a gilt-edged security is a security which is a gilt-edged security for the purposes of the <sup>M172</sup>Capital Gains Tax Act 1979.
- (9) For the purposes of this paragraph the amount payable on redemption of a security constitutes a deep gain if the issue price is less than the amount so payable, and the amount by which it is less represents more than—
- (a) 15 per cent. of the amount so payable, or
  - (b) half Y per cent. of the amount so payable, where Y is the number of complete years between the date of issue and the redemption date.
- (10) For the purposes of this paragraph the amount payable on redemption does not include any amount payable by way of interest.



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#### Textual Amendments

**F54** Sch. 11 para. 1(3A)-(3G) substituted (*retrospectively and deemed always to have had effect*) for para. 1(3A) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras.2, 7, 8

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

**C75** See Finance Act 1990 (c. 29), s. 56, Sch. 10 para. 11(4)—*definition employed for purposes of Finance Act 1990 (c. 29), Sch. 10—convertible securities*

#### Marginal Citations

**M172** 1979 c. 14.

### *Qualifying indexed securities*

- 2 (1) For the purposes of paragraph 1 above a qualifying indexed security is a security which fulfils each of the conditions set out below.
- (2) The first condition is that—
- (a) the security is denominated in sterling and under the terms of issue the amount payable on redemption is determined by reference to the movement of the retail prices index,
  - (b) the security is denominated in a currency other than sterling and under the terms of issue the amount payable on redemption is determined by reference to any similar general index of prices which is published by the government, or by an agent of the government, of the territory in whose currency the security is denominated, or
  - (c) [<sup>F55</sup>the security was quoted in the official list of a recognised stock exchange at the time it was issued], and under the terms of issue the amount payable on redemption is determined by reference to the movement of a published index of prices of shares quoted in the official list of a recognised stock exchange.
- (3) The second condition is that the terms of issue make no provision for conversion into, or redemption in, a currency other than that in which the security is denominated on issue.
- (4) The third condition is that under the terms of issue—
- (a) interest is payable on the security,
  - (b) not more than one year can elapse between the day of issue and the first day on which interest becomes payable, or between any day on which interest becomes payable and the next day on which it becomes payable,
  - (c) the interest payable is determined by reference to a rate which is not less than a reasonable commercial rate (judged by reference to the date of issue and by reference to securities of a similar nature to the one in question), and
  - (d) the interest payable is also determined by reference to the movement of the index by reference to which the amount payable on redemption is determined.
- (5) The fourth condition is that where that index is applied to determine the amount payable on redemption or to determine interest it must, under the terms of issue, be applied precisely and without restriction.

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- (6) The fifth condition is that—
- (a) the security is expressed to be issued for a definite period stated on the face of the security, and
  - (b) the period so stated commences with the day of issue and is five years or more.
- (7) The sixth condition is that the terms of issue contain no provision enabling the person who holds the security for the time being to require any of the following before the expiry of a period which commences with the day of issue and which is five years or more—
- (a) the security to be repurchased by the person who issued it;
  - (b) the security to be purchased by a person other than the person who issued it;
  - (c) the security to be converted into another kind of security;
  - (d) the security to be redeemed in circumstances other than any of the qualifying circumstances (set out in sub-paragraph (13) below).
- (8) The seventh condition is that, where the issue is handled by an agent for the person making the issue or by an underwriter, the terms on which the agent or underwriter offers the security—
- (a) contain no provision for the security to be repurchased by the person who issued it, converted into another kind of security, or redeemed, before the expiry of a period which commences with the day of issue and which is five years or more, and
  - (b) contain no provision enabling the person who holds the security for the time being to require the security to be purchased, by a person other than the person who issued it, before the expiry of a period which commences with the day of issue and which is five years or more.
- [<sup>F56</sup>(8A) If a security was issued before 9th June 1989, was not quoted in the official list of a recognised stock exchange at the time it was issued, but was quoted in such a list on 8th June 1989, for the purposes of subparagraph (2)(c) above it shall be deemed to have been quoted in that list at the time it was issued.
- (8B) If a security was issued on or after 9th June 1989, and was quoted in the official list of a recognised stock exchange at a time after it was issued but before the end of the qualifying period, for the purposes of sub-paragraph (2)(c) above it shall be deemed to have been quoted in that list at the time it was issued; and the qualifying period is the period of one month beginning with the day on which the security was issued]
- (9) For the purposes of sub-paragraph (5) above “redemption” does not include any redemption which may be made before maturity only at the option of the person who issued the security (and no other person).
- (10) In a case where the amount payable on redemption, or the amount of interest, is under the terms of issue determined by reference to the movement of the index for a period (a notional period) in place of a later actual period (a process commonly known as lagging) the fourth condition shall be treated as fulfilled if the following rules are fulfilled—
- (a) under the terms of issue the notional period must start not more than eight months before the actual period starts and must end not more than eight months before the actual period ends, and

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- (b) where the index is applied for the notional period it must, under the terms of issue, be applied precisely and without restriction.
- (11) In a case where the terms of issue contain provision for the amount payable on redemption to be not less than an amount stated in the terms, the provision shall not prevent the fourth condition being fulfilled if—
- (a) the security was issued before 9th June 1989, and
  - (b) the amount stated does not constitute a deep gain (within the meaning given by paragraph 1(9) above).
- [<sup>F56</sup>(11A) In a case where the terms of issue contain provision for the amount payable on redemption to be not less than a specified percentage of the issue price, the provision shall not prevent the fourth condition being fulfilled if the specified percentage is not greater than 10.]
- (12) In a case where—
- (a) the terms of issue contain provision for the amount payable on redemption in any of the qualifying circumstances (set out in sub-paragraph (13) below) to be not less than an amount stated in the terms, and
  - (b) the security was issued before 9th June 1989,
- the provision shall not prevent the fourth condition being fulfilled.
- [<sup>F57</sup>(12A) In a case where—
- (a) the terms of issue contain provision for the amount payable on redemption in any of the qualifying circumstances (set out in sub-paragraph (13) below) to be not more than the issue price, and
  - (b) the security was issued on or after 9th June 1989,
- the provision shall not prevent the fourth condition being fulfilled.]
- (13) For the purposes of sub-paragraphs (7) [<sup>F58</sup>, (12) and (12A)] above the following are qualifying circumstances—
- (a) there is a fundamental change in the rules governing the index and the change would be detrimental to the interests of the person who holds the security for the time being;
  - (b) the index ceases to be published without being replaced by a comparable index;
  - [<sup>F59</sup>(c) in the case of a security issued before 13th November 1991, any circumstances except circumstances in which the person who holds the security for the time being exercises an option exercisable only on the effluxion of time or the happening of an event which (judged at the time of the security's issue) is certain or likely to occur;
  - (d) in the case of a security issued on or after 13th November 1991, any circumstances for redemption which may be made before maturity otherwise than at the option of the person who holds the security for the time being and as regards which the conditions set out in paragraph 1(3B) above are fulfilled (judged at the time of the security's issue and read subject to paragraph 1(3C) and (3D) above);
  - (e) in the case of a security issued on or after 13th November 1991, any circumstances for redemption which may be made before maturity at the option of the person who holds the security for the time being and as regards which the conditions set out in paragraph 1(3E) above are fulfilled (judged

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at the time of the security's issue and read subject to paragraph 1(3F) and (3G) above).]

- (14) In a case where an issue is handled by an agent for the person making the issue, or by an underwriter, for the purposes of sub-paragraphs (2) to (5) and (10) above the terms of issue shall be taken to include any terms on which the agent or underwriter offers the security.
- (15) For the purposes of this paragraph the amount payable on redemption does not include any amount payable by way of interest.
- (16) For the purposes of this paragraph "control" (in relation to a company) shall be construed in accordance with section 840 of the Taxes Act 1988.

#### Textual Amendments

- F55** Finance Act 1990 (c. 29), s. 58(2)(7)—*deemed always to have had effect. Previously* "the security was issued before 9th June 1989 and was quoted in the official list of a recognised stock exchange on 8th June 1989"
- F56** Finance Act 1990 (c. 29), s. 58(3)(4) *respectively—deemed always to have had effect (subs. (7))*
- F57** Finance Act 1990 (c. 29), s. 58(5)(7)—*deemed always to have had effect*
- F58** Finance Act 1990 (c. 29), s. 58(6)(a)(7)—*deemed always to have had effect. Previously* "and (12)"
- F59** Sch. 11 para. 2(13)(c)-(e) substituted (*retrospectively and deemed always to have had effect*) for sub-para. (13)(c)(d) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras. 3, 7, 8

#### Convertible securities

- 3 (1) For the purposes of paragraph 1 above a security is a convertible security if—
- it was issued by a company before 9th June 1989,
  - under the terms of issue it can be converted into or exchanged for share capital in a company (whether or not the company is the one which issued the security), and
  - the condition set out in sub-paragraph (2) below is fulfilled.
- (2) The condition is that—
- at some time in the qualifying period the security was quoted in the official list of a recognised stock exchange,
  - at some time in that period relevant share capital was so quoted, or
  - each of paragraphs (a) and (b) above is satisfied (though not necessarily as regards the same time).
- (3) For the purposes of sub-paragraph (2) above the qualifying period is the period of one month beginning with the day on which the security was issued.
- (4) For the purposes of sub-paragraph (2) above relevant share capital is share capital in the company into whose share capital the security can be converted or for whose share capital the security can be exchanged; and relevant share capital need not be share capital into or for which the security can be converted or exchanged.
- (5) References in this paragraph to share capital are to share capital by whatever name called.

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[<sup>F60</sup>Issue price]

**Textual Amendments**

**F60** Sch. 11 para. 3A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 12 para.4.

- [3A (1) This paragraph applies where—
- (a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,
  - (b) on a later occasion securities (new securities) of the same kind are issued,
  - (c) a sum (the extra return) is payable in respect of each new security, by the person issuing it, to reflect the fact that interest is accruing on the old securities,
  - (d) the issue price of each new security includes an element (whether or not separately identified) representing payment for the extra return, and
  - (e) the extra return is equal to the amount of interest payable for the relevant period on each old security.
- (2) In such a case, the issue price of each new security shall be deemed for the purposes of paragraph 1(9) above to be its actual issue price less an amount equal to the extra return payable in respect of the security.
- (3) For the purposes of this paragraph securities are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.
- (4) For the purposes of this paragraph the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are issued.
- (5) For the purposes of this paragraph the relevant day is—
- (a) the last (or only) interest payment day to fall in respect of the old securities before the day on which the new securities are issued, or
  - (b) the day on which the old securities were issued, in a case where no interest payment day fell in respect of them before the day on which the new securities are issued;
- and an interest payment day, in relation to the old securities, is a day on which interest is payable under them.]

*Meaning of transfer etc.*

- 4 (1) This paragraph has effect for the purposes of this Schedule.
- (2) “Transfer”, in relation to a security, means transfer by way of sale, exchange, gift or otherwise.
- [<sup>F61</sup>(2A) But (notwithstanding sub-paragraph (2) above) “transfer” does not include a transfer made on a conversion of a security into share capital in a company.]

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- (3) Where an agreement for the transfer of a security is made, it is transferred, and the person to whom it is agreed to be transferred becomes entitled to it, when the agreement is made and not on a later transfer made pursuant to the agreement; and “entitled”, “transfer” and cognate expressions shall be construed accordingly.
- (4) A person holds a security at a particular time if he is entitled to it at the time.
- (5) A person acquires a security when he becomes entitled to it; and “acquisition” shall be construed accordingly.
- (6) If an agreement is conditional (whether on the exercise of an option or otherwise) for the purposes of sub-paragraph (3) above it is made when the condition is exercised.

#### Textual Amendments

**F61** Finance Act 1990 (c. 29), s. 56, Sch. 10 para. 27(2), 29(1)—deemed always to have had effect

#### *Charge to tax on transfer*

- 5 (1) This paragraph applies if—
  - (a) there is a transfer of a deep gain security on or after 14th March 1989 (irrespective of when the person making the transfer acquired it), and
  - (b) the amount obtained on transfer exceeds the amount paid on acquisition.
- (2) In such a case—
  - (a) an amount equal to the difference between those two amounts, less the amount of any costs, shall be treated as income of the person making the transfer,
  - (b) the income shall be chargeable to tax under Case III or Case IV (as the case may be) of Schedule D,
  - (c) the income shall be treated as arising in the year of assessment in which the transfer takes place, and
  - (d) notwithstanding anything in sections 64 to 67 of the Taxes Act 1988, the tax shall be computed on the income arising in the year of assessment for which the computation is made.
- (3) For the purposes of this paragraph—
  - (a) the amount obtained on transfer is the amount obtained, in respect of the transfer, by the person making it,
  - (b) the amount paid on acquisition is the amount paid by that person in respect of his acquisition of the security (or his last acquisition of it before the transfer), and
  - (c) costs are the costs incurred by that person in connection with the transfer and with his acquisition of the security (or his last acquisition of it before the transfer).
- (4) For the purposes of sub-paragraph (3)(a) above the person making the transfer shall be treated as obtaining in respect of it—
  - (a) any amount he actually obtains in respect of it, and
  - (b) any amount he is entitled to obtain, but does not obtain, in respect of it.

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(5) Sub-paragraph (4) above shall not apply where paragraph 7, 8 or 9 below applies.

VALID FROM 27/07/1993

*[<sup>F62</sup> Exchange gains and losses]*

**Textual Amendments**

**F62** Sch. 11 para. 5A and crossheading inserted (27.7.1993) by 1993 c. 34, s. 170, Sch. 18 para.7

<sup>F63</sup>5A (1) This paragraph applies where—

- (a) there is a transfer or redemption of a deep gain security, and
- (b) the person making the transfer or (as the case may be) the person who was entitled to the security immediately before redemption is a qualifying company.

(2) For the purposes of paragraph 5 above the amount treated as income—

- (a) shall be increased by the amount of any non-trading exchange loss, or the aggregate of the amounts of any non-trading exchange losses, accruing to the company as regards the underlying right for any accrual period or periods constituting or falling within the holding period;
- (b) shall (after taking account of paragraph (a) above) be reduced by the amount of any non-trading exchange gain, or the aggregate of the amounts of any non-trading exchange gains, accruing to the company as regards the underlying right for any accrual period or periods constituting or falling within the holding period.

(3) For the purposes of this paragraph—

- (a) the underlying right is the right to settlement under the debt on the security;
- (b) “accrual period” and “qualifying company” have the same meanings as in Chapter II of Part II of the Finance Act 1993;
- (c) the question whether a non-trading exchange gain or loss accrues to the company as regards the underlying right for an accrual period shall be decided in accordance with that Chapter.

(4) For the purposes of this paragraph the holding period is the period which—

- (a) begins when the company acquired (or last acquired) the security before the transfer or redemption, and
- (b) ends when the transfer or redemption is made.

**Textual Amendments**

**F63** Sch. 11 para. 5A inserted (27.7.1993) by 1993 c. 34, s. 170, Sch. 18 para.7

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### *Redemption*

- 6 (1) Paragraph 5 above applies where there is a redemption of a deep gain security as well as where there is a transfer.
- (2) In its application by virtue of sub-paragraph (1) above, paragraph 5 above shall have effect as if—
- (a) references to the person making the transfer were to the person who was entitled to the security immediately before redemption, and
  - (b) other references to transfer were to redemption.

### *Death*

- 7 (1) Where an individual who is entitled to a security dies, for the purposes of this Schedule—
- (a) he shall be treated as transferring it to his personal representatives immediately before his death, and
  - (b) he shall be treated as obtaining in respect of the transfer an amount equal to the market value of the security at the time of the transfer.
- (2) Where a security is transferred by personal representatives to a legatee, for the purposes of paragraph 5 above they shall be treated as obtaining in respect of the transfer an amount equal to the market value of the security at the time of the transfer.
- (3) In sub-paragraph (2) above “legatee” includes any person taking (whether beneficially or as trustee) under a testamentary disposition or on an intestacy or partial intestacy, including any person taking by virtue of an appropriation by the personal representatives in or towards satisfaction of a legacy or other interest or share in the deceased’s property.

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

**C76** Sch. 11 para. 7(1) excluded (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 176(3)(c), 184(3)

### *Connected persons*

- 8 (1) This paragraph applies where a security is transferred from one person to another (whether or not on or after 14th March 1989) and they are connected with each other.
- (2) For the purposes of paragraph 5 above—
- (a) the person making the transfer shall be treated as obtaining in respect of it an amount equal to the market value of the security at the time of the transfer, and
  - (b) the person to whom the transfer is made shall be treated as paying in respect of his acquisition of the security an amount equal to that market value.
- (3) Section 839 of the Taxes Act 1988 (connected persons) shall apply for the purposes of this paragraph.



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### *Market value*

- 9 (1) This paragraph applies where a security is transferred from one person to another (whether or not on or after 14th March 1989) and—
- (a) the transfer is made for a consideration which consists of or includes consideration not in money or money's worth, or
  - (b) the transfer is made otherwise than by way of a bargain made at arm's length.
- (2) For the purposes of paragraph 5 above—
- (a) the person making the transfer shall be treated as obtaining in respect of it an amount equal to the market value of the security at the time of the transfer, and
  - (b) the person to whom the transfer is made shall be treated as paying in respect of his acquisition of the security an amount equal to that market value.

### *Underwriters*

- 10 (1) An underwriting member of Lloyd's shall be treated for the purposes of this Schedule as absolutely entitled as against the trustees to the securities forming part of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's, or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.
- (2) Where a security forms part of a premiums trust fund at the end of 31st December of any relevant year, for the purposes of this Schedule—
- (a) the trustees of the fund shall be treated as transferring it on that day, and
  - (b) they shall be treated as obtaining in respect of the transfer an amount equal to the market value of the security at the time of the transfer;
- and for this purpose relevant years are 1989 and subsequent years.
- (3) Where a security forms part of a premiums trust fund at the beginning of 1st January of any relevant year, for the purposes of this Schedule—
- (a) the trustees of the fund shall be treated as acquiring it on that day, and
  - (b) they shall be treated as paying in respect of the acquisition an amount equal to the market value of the security at the time of the acquisition;
- and for this purpose relevant years are 1990 and subsequent years.
- (4) Sub-paragraph (5) below applies where the following state of affairs exists at the beginning of 1st January of any year or the end of 31st December of any year—
- (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2) of the Taxes Act 1988,
  - (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
  - (c) securities have not been transferred in return, and
  - (d) section 129(3) of that Act applies to the transfer made by the trustees.

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- (5) The securities transferred by the trustees shall be treated for the purposes of sub-paragraphs (2) and (3) above as if they formed part of the premiums trust fund at the beginning of 1st January concerned or the end of 31st December concerned (as the case may be).
- (6) Paragraph 7(1) above shall not apply where the individual concerned is an underwriting member of Lloyd's and the security concerned forms part of a premiums trust fund, a special reserve fund or any other trust fund required or authorised by the rules of Lloyd's, or required by the underwriting agent through whom the individual's business or any part of it is carried on, to be kept in connection with the business.
- (7) In a case where an amount treated as income chargeable to tax by virtue of paragraph 5(2) above constitutes profits or gains mentioned in section 450(1) of the Taxes Act 1988—
  - (a) section 450(1)(b) shall apply, and
  - (b) paragraph 5(2)(c) above shall not apply.
- (8) For the purpose of computing income tax for the year 1987-88 sub-paragraph (7) above shall have effect as if—
  - (a) the reference to section 450(1) of the Taxes Act 1988 were to paragraph 2 of Schedule 16 to the <sup>M173</sup>Finance Act 1973, and
  - (b) the reference to section 450(1)(b) were to paragraph 2(b) of that Schedule.
- (9) In this paragraph “business” and “premiums trust fund” have the meanings given by section 457 of the Taxes Act 1988.

#### Marginal Citations

M173 1973 c. 51.

#### Trustees

- 11 (1) Where on a transfer or redemption of a security by trustees an amount is treated as income chargeable to tax by virtue of paragraph 5 above, the rate at which it is chargeable shall be a rate equal to the sum of the basic rate and the additional rate for the year of assessment in which the transfer is made.
- (2) Where the trustees are trustees of a scheme to which section 469 of the Taxes Act 1988 applies, sub-paragraph (1) above shall not apply if or to the extent that the amount is treated as income in the accounts of the scheme.

#### Foreign currency

- 12 (1) Where, for the purposes of paragraph 5 above and apart from this paragraph, the amount obtained on transfer would be an amount expressed in a currency other than sterling, it shall be treated for those purposes as the sterling equivalent on the day of the transfer of the amount so expressed.

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- (2) Where, for the purposes of paragraph 5 above and apart from this paragraph, the amount paid on acquisition would be an amount expressed in a currency other than sterling, it shall be treated for those purposes as the sterling equivalent on the day of the acquisition of the amount so expressed.
- (3) Where, for the purposes of paragraph 5 above and apart from this paragraph, the amount of the costs incurred by a person in connection with a transfer would be an amount expressed in a currency other than sterling, it shall be treated for those purposes as the sterling equivalent on the day of the transfer of the amount so expressed.
- (4) Where, for the purposes of paragraph 5 above and apart from this paragraph, the amount of the costs incurred by a person in connection with an acquisition would be an amount expressed in a currency other than sterling, it shall be treated for those purposes as the sterling equivalent on the day of the acquisition of the amount so expressed.
- (5) In sub-paragraphs (1) and (3) above “transfer” includes “redemption”.
- (6) For the purposes of this paragraph the sterling equivalent of an amount on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

#### *Receipts in United Kingdom*

- 13 (1) Sub-paragraph (2) below applies where—
  - (a) by virtue of paragraph 5(2) above an amount is treated as income of a person and as chargeable to tax under Case IV of Schedule D, and
  - (b) the person satisfies the Board, on a claim in that behalf, that he is not domiciled in the United Kingdom, or that (being a Commonwealth citizen or a citizen of the Republic of Ireland) he is not ordinarily resident in the United Kingdom.
- (2) In such a case—
  - (a) any amounts received in the United Kingdom in respect of the amount treated as income shall be treated as income arising in the year of assessment in which they are so received, and
  - (b) paragraph 5(2) above shall have effect with the substitution of paragraph (a) above for paragraph 5(2)(c).
- (3) For the purposes of sub-paragraph (2) above—
  - (a) there shall be treated as received in the United Kingdom all amounts paid, used or enjoyed in, or in any manner or form transmitted or brought to, the United Kingdom, and
  - (b) subsections (6) to (9) of section 65 of the Taxes Act 1988 shall apply as they apply for the purposes of subsection (5) of that section.

#### *Retirement benefit schemes*

- 14 In a case where—

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- (a) paragraph 5 above would apply (apart from this paragraph) to a transferor redemption of a security, and
  - (b) immediately before the transfer or redemption was made the security was held for the purposes of an exempt approved scheme (within the meaning of Chapter I of Part XIV of the Taxes Act 1988),
- that paragraph shall not apply to the transfer or redemption.

#### *Charities*

- 15 (1) In a case where—
- (a) paragraph 5 above would apply (apart from this paragraph) to a transferor redemption of a security,
  - (b) immediately before the transfer or redemption was made the security was held by a charity, and
  - (c) the amount which would (apart from this paragraph) be treated as income by virtue of paragraph 5 above is applicable and applied for charitable purposes,
- that paragraph shall not apply to the transfer or redemption.
- (2) In this paragraph “charity” has the same meaning as in section 506 of the Taxes Act 1988.

#### *Stock lending*

- 16 In a case where—
- (a) a security is the subject of a transfer which falls within section 129(3) of the Taxes Act 1988, and
  - (b) paragraph 5 above would apply to the transfer (apart from this paragraph),
- that paragraph shall not apply to the transfer.

#### *Accrued income scheme*

- 17 In a case where—
- (a) a security is the subject of a transfer to which paragraph 5 above applies, and
  - (b) apart from this paragraph, the transfer would be a transfer for the purposes of sections 710 to 728 of the Taxes Act 1988,
- the transfer shall not be a transfer for those purposes.

#### *Other provisions excluded*

- 18 In a case where paragraph 5 above applies to the redemption of a security, sections 123 and 348 to 350 of the Taxes Act 1988 shall not apply to any proceeds of the redemption.

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### Identification of securities

- 19 Section 88 of the <sup>M174</sup>Finance Act 1982 shall apply to the identification, for the purposes of this Schedule, of deep gain securities transferred or redeemed as it applies to the identification, for the purposes of capital gains tax, of deep discount securities disposed of.

#### Marginal Citations

**M174** 1982 c. 39.

### [<sup>F64</sup>Early redemption: special rules]

#### Textual Amendments

**F64** Sch. 11 para 19A and cross heading inserted (*retrospectively and deemed always to have had effect*) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras 4, 7, 8

- <sup>F65</sup>19A(1) Sub-paragraph (2) below applies where—
- (a) a security is issued on or after 13th November 1991,
  - (b) it would be a deep gain security apart from paragraph 1(3B) or (3E) above,
  - (c) it is redeemed before maturity, and
  - (d) immediately before redemption it was held by a person connected with the person who issued it.
- (2) As regards the redemption, paragraphs 5 to 19 above shall have effect as if—
- (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (3) Sub-paragraph (4) below applies where—
- (a) the conditions set out in sub-paragraph (1)(a) to (c) above are fulfilled,
  - (b) the security was transferred in the period ending with redemption and beginning with the day falling one year before the day of redemption, and
  - (c) the transfer was by a person connected with the person who issued the security.
- (4) As regards the transfer, paragraphs 5 to 19 above shall have effect as if—
- (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (5) Section 839 of the Taxes Act 1988 (connected persons) shall apply for the purposes of this paragraph.

#### Textual Amendments

**F65** Sch. 11 para 19A and cross heading inserted (*retrospectively and deemed always to have had effect*) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras 4, 7, 8

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*Gilts: special rules*

- 20 (1) In a case where—
- (a) securities have been issued under a prospectus under which no securities were issued before 14th March 1989,
  - (b) some of the securities issued under the prospectus are gilt-edged securities which are would-be deep gain securities,
  - (c) some of the securities issued under the prospectus are gilt-edged securities which are not would-be deep gain securities, and
  - (d) there is a time when the aggregate nominal value of the securities falling within paragraph (b) above (at that time) exceeds the aggregate nominal value of the securities falling within paragraph (c) above (at that time),
- sub-paragraph (2) below shall apply in relation to any gilt-edged security which has been or is issued under the prospectus at any time (whether before, at or after the time mentioned in paragraph (d) above).
- (2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(d) above, paragraphs 5 to 19 above shall have effect as if—
- (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (3) For the purposes of sub-paragraph (1) above a would-be deep gain security is a security which would be a deep gain security apart from paragraph 1(6) above.
- (4) In sub-paragraph (1) above “gilt-edged security” has the same meaning as in paragraph 1 above.
- (5) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a transfer or acquisition for the purposes of this Schedule.

*Non-gilts: special rules*

- 21 (1) In a case where—
- (a) all the securities issued on the occasion of the original issue under a particular prospectus (whatever the time of the issue) are neither gilt-edged securities nor deep gain securities,
  - (b) some of the securities issued under the prospectus are not gilt-edged securities but are new would-be deep gain securities, and
  - (c) there is a time when the aggregate nominal value of the securities falling within paragraph (b) above (at that time) exceeds the aggregate nominal value of the securities which (looking at the state of affairs at that time) have been issued under the prospectus and are neither gilt-edged securities nor new would-be deep gain securities,
- sub-paragraph (2) below shall apply in relation to any security which is not a gilt-edged security but which has been or is issued under the prospectus at any time (whether before, at or after the time mentioned in paragraph (c) above).
- (2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(c) above, paragraphs 5 to 19 above shall have effect as if—

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- (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (3) For the purposes of sub-paragraph (1) above [<sup>F66</sup>, and subject to paragraph 21A below,] a new would-be deep gain security is a security which—
- (a) would be a deep gain security apart from paragraph 1(7) above, and
  - (b) was issued on or after 14th March 1989.
- (4) In sub-paragraph (1) above “gilt-edged security” has the same meaning as in paragraph 1 above.
- (5) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a transfer or acquisition for the purposes of this Schedule.

#### Textual Amendments

**F66** Words in Sch. 11 para. 21(3) inserted (*retrospectively and deemed always to have had effect*) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras. 5(1), 7, 8

[<sup>F67</sup>21A(1) A security which (apart from this paragraph) would be a new would-be deep gain security for the purposes of paragraph 21(1) above is not such a security if the following three conditions are fulfilled.

- (2) The first condition is that all the securities issued on the occasion of the original issue were issued before 13th November 1991.
- (3) The second condition is that the security is issued on or after 13th November 1991.
- (4) The third condition is that, even if paragraph 1(7) above did not prevent the security being a deep gain security, it would nevertheless not be a deep gain security if for the purposes of paragraph 1(2) above “redemption” did not include any redemption which may be made before maturity otherwise than in pursuance of the exercise by the person who holds the security for the time being of an option exercisable only on the effluxion of time or the happening of an event which (judged at the time of the security’s issue) is certain or likely to occur.]

#### Textual Amendments

**F67** Sch. 11 para. 21A inserted (*retrospectively and deemed always to have had effect*) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras. 5(2), 7, 8

### *Indexed securities: special rules*

- 22 (1) Sub-paragraph (2) below applies where—
- (a) a qualifying indexed security has been issued,
  - (b) the person by whom it was issued and the person for the time being holding it make an agreement, on or after 14th March 1989, varying the terms under which it is held, and

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- (c) the terms as varied are such that, had the security been issued on those terms, it would be a deep gain security.
- (2) As regards any event occurring in relation to the security after the agreement is made, paragraphs 5 to 19 above shall have effect as if—
  - (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (3) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a transfer or acquisition for the purposes of this Schedule.
- (4) In this paragraph “qualifying indexed security” has the meaning given by paragraph 2 above.

*[<sup>F68</sup> Convertible securities: special rules (1)]*

**Textual Amendments**

**F68** Finance Act 1990 (c. 29), s. 56, Sch. 10 paras. 27(3), 29(4) on and after 9 June 1989

- 22A (1) Sub-paragraph (2) below applies where—
- (a) a security is a qualifying convertible security, for the purposes of Schedule 10 to the Finance Act 1990, at the time of its issue,
  - (b) apart from paragraph 21 of Schedule 4 to the Taxes Act 1988, it would be a deep discount security at that time, and
  - (c) at a later time it ceases to be a qualifying convertible security for the purposes of Schedule 10 to the Finance Act 1990.
- (2) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (1)(c) above, paragraphs 5 to 19 above shall have effect as if—
- (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (3) For the purposes of sub-paragraph (2) above events, in relation to a security, include anything constituting a transfer or acquisition for the purposes of this Schedule.

*Convertible securities: special rules (2)*

- 22B (1) In a case where—
- (a) a security is a qualifying convertible security, for the purposes of Schedule 10 to the Finance Act 1990, at the time of its issue, and
  - (b) apart from this sub-paragraph it would be a deep gain security at that time, then (subject to sub-paragraph (3) below) the security shall be treated, at the time of its issue and at all subsequent times, as not being a deep gain security.
- (2) Sub-paragraph (3) below applies where—
- (a) sub-paragraph (1) above applies in the case of a security, and
  - (b) at a time after its issue it ceases to be a qualifying convertible security for the purposes of Schedule 10 to the Finance Act 1990.



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- (3) As regards any event occurring in relation to the security after the time mentioned in sub-paragraph (2)(b) above, paragraphs 5 to 19 above shall have effect as if—
- (a) the security were a deep gain security, and
  - (b) it had been acquired as such (whatever the time it was acquired).
- (4) For the purposes of sub-paragraph (3) above events, in relation to a security, include anything constituting a transfer or acquisition for the purposes of this Schedule.

*[<sup>F69</sup>No particular redemption date: special rule]*

#### Textual Amendments

**F69** Sch. 11 para 22C and cross heading inserted (*retrospectively and deemed always to have had effect*) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras 6, 7, 8

<sup>F70</sup>22C(1) This paragraph applies to a security whose terms contain no particular date by which it is to be redeemed.

- (2) In the case of such a security the following expressions, wherever they appear in this Schedule, shall be construed as if the words “before maturity” were omitted—
- (a) the expression “redemption which may be made before maturity”;
  - (b) the expression “redemption before maturity”;
  - (c) the expression “redeemed before maturity”.

#### Textual Amendments

**F70** Sch. 11 para 22C and cross heading inserted (*retrospectively and deemed always to have had effect*) by Finance (No. 2) Act 1992 (c. 48), s. 33, Sch. 7 paras 6, 7, 8

#### *Power to modify*

- 23 (1) The Treasury may make regulations amending paragraph 2 above so as to do one or more of the following—
- (a) vary any condition for the time being set out in that paragraph;
  - (b) omit any condition for the time being so set out;
  - (c) add a new condition to any for the time being so set out;
  - (d) substitute a condition or conditions for any condition or conditions for the time being so set out.
- (2) Regulations under sub-paragraph (1) above—
- (a) shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons,
  - (b) shall apply where there is a transfer within the meaning of this Schedule, or a redemption, on or after such day as may be specified in the regulations, and
  - (c) may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury to be necessary or expedient.

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## SCHEDULE 12

Section 107.

## CLOSE COMPANIES

## PART I

## ADMINISTRATIVE PROVISIONS

*Interpretation*

- 1 In this Part of this Schedule “the relevant provisions” means—
- (a) sections 13A, 231 and 419 to 422 of the Taxes Act 1988, and
  - (b) Chapter III of Part XI of that Act (as it has effect in relation to accounting periods beginning before 1st April 1989).

*Provision of information by company*

- 2 The inspector may, by notice, require any company which is, or appears to him to be, a close company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such particulars as he thinks necessary for the purposes of the relevant provisions.

*Provision of information by shareholders*

- 3 (1) If for the purposes of the relevant provisions any person in whose name any shares are registered is so required by notice by the inspector, he shall state whether or not he is the beneficial owner of the shares and, if not the beneficial owner of the shares, shall furnish the name and address of the person or persons on whose behalf the shares are registered in his name.
- (2) This paragraph shall apply in relation to loan capital as it applies in relation to shares.

*Information about bearer securities*

- 4 (1) The inspector may, for the purposes of the relevant provisions, by notice require—
- (a) any company which appears to him to be a close company to furnish him with particulars of any bearer securities issued by the company, and the names and addresses of the persons to whom the securities were issued and the respective amounts issued to each person, and
  - (b) any person to whom bearer securities were issued by the company, or to or through whom such securities were subsequently sold or transferred, to furnish him with such further information as he may require with a view to enabling him to ascertain the names and addresses of the persons beneficially interested in the securities.
- (2) In this paragraph—
- “loan creditor” has the same meaning as in Part XI of the Taxes Act 1988, and

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“securities” includes shares, stock, bonds, debentures and debenture stock and also any promissory note or other instrument evidencing indebtedness to a loan creditor of the company.

## PART II

### AMENDMENTS CONNECTED WITH REPEAL OF CHAPTER III OF PART XI OF TAXES ACT 1988

#### *The Taxes Management Act 1970 (c.9)*

- 5 In the first column of the Table in section 98 of the Taxes Management Act 1970 (penalty for failure to give particulars etc.) there shall be added at the end— “Paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989.”

#### *The Capital Gains Tax Act 1979 (c.14)*

- 6 (1) In section 136 of the Capital Gains Tax Act 1979 (relief in respect of loans to traders) in subsection (10)(b) for the words “paragraph 7 of Schedule 19 to the Taxes Act 1988” there shall be substituted the words “paragraph 1 of Schedule 20 to the M175 Finance Act 1985”.
- (2) This paragraph shall have effect where the claim under section 136 is made after 31st March 1989.

#### **Marginal Citations**

M175 1985 c. 54.

#### *The Income and Corporation Taxes Act 1988 (c.1)*

- 7 In section 13 of the Taxes Act 1988 (small companies’ rate) in subsection (9) for the words “paragraph 17 of Schedule 19” there shall be substituted the words “paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989”.
- 8 (1) In section 168(11) of the Taxes Act 1988 (cases in which a person has a material interest in a company for the purposes of Chapter II of Part V of that Act) for the words from “in a company” to the end of paragraph (b) there shall be substituted—
- “in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
- (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 percent. of the ordinary share capital of the company, or
  - (b) in the case of a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.” and at the end there shall be added the words “, and “participator” has the meaning given by section 417(1) ”.

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- (2) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989.
- 9 (1) In section 187(3) of the Taxes Act 1988 (cases in which a person has a material interest in a company for the purposes of sections 185 to 187 of, and Schedules 9 and 10 to, that Act) for the words from “in a company” to the end of paragraph (b) there shall be substituted—
- “in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
- (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 25 percent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company, or
- (b) where the company is a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 percent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the assets which would then be available for distribution among the participators.” and at the end there shall be added the words “ and “participator” has the meaning given by section 417(1) ”.
- (2) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989.
- 10 (1) In section 214 of the Taxes Act 1988 (chargeable payments connected with exempt distributions) in subsection (1)(c) for the words from “338(2)(a)” to “Schedule 19” there shall be substituted the words “and 338(2)(a)”.
- (2) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989, except in any case where section 427(4) of the Taxes Act 1988 has effect by virtue of section 103(2) of this Act.
- 11 In section 234 of the Taxes Act 1988 (information relating to distributions) in subsection (9) for the words from “paragraph 17” to “that Schedule” there shall be substituted the words “paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989 for the purposes of the relevant provisions (as defined in paragraph 1 of that Schedule)”.
- 12 (1) Section 360 of the Taxes Act 1988 (loan to buy interest in a close company) shall be amended in accordance with this paragraph.
- (2) In subsection (1)(a) for the words from “satisfying” to “424(4)” there shall be substituted the words “complying with section 13A(2)”.
- (3) In subsections (2)(a) and (3)(a) for the words “satisfy any of the conditions of section 424(4)” there shall be substituted the words “comply with section 13A(2)”.
- (4) This paragraph shall have effect in relation to interest paid on or after the day on which this Act is passed (and, accordingly, the conditions of section 424(4) of the Taxes Act 1988 shall continue to have effect for the purposes of section 360 of that Act in relation to interest paid before that day).

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- 13 (1) Section 360A of the Taxes Act 1988 (cases in which a person has a material interest in a company for the purposes of section 360(2)(a)) shall be amended in accordance with this paragraph.
- (2) In subsection (1) for the words from “in a company” onwards there shall be substituted—
- “in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
- (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company, or
- (b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.”
- (3) In subsection (10) after the word “section” there shall be inserted the words “participator” has the meaning given by section 417(1) and”.
- (4) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989.
- 14 (1) In section 576 of the Taxes Act 1988 (which relates to relief for losses on certain unquoted shares) in subsection (5), for paragraph (a) of the definition of “trading company” there shall be substituted—
- “(a) a company whose business consists wholly or mainly of the carrying on of a trade or trades”.
- (2) This paragraph shall have effect in relation to disposals made after 31st March 1989.
- 15 (1) In section 623 of the Taxes Act 1988 (meaning of “relevant earnings” for the purposes of Chapter III of Part XIV of that Act) in subsection (2) for the words “(construed in accordance with paragraph 7 of Schedule 19)” there shall be substituted the words “(that is to say, income which, if the company were an individual, would not be earned income)”.
- (2) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989.
- 16 (1) In section 644 of the Taxes Act 1988 (meaning of “relevant earnings” for the purposes of Chapter IV of Part XIV of that Act) in subsection (6) for the definition of “investment income” there shall be substituted—
- ““investment income” means income which, if the company were an individual, would not be earned income.”
- (2) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989.
- 17 In section 745 of the Taxes Act 1988 (power to obtain information for the purposes of Chapter III of Part XVII of that Act) in subsection (4) for the words from “trading” onwards there shall be substituted the words “companies whose business consists wholly or mainly of the carrying on of a trade or trades.”

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- 18 (1) Paragraph 7 of Schedule 8 to the Taxes Act 1988 (cases in which a person has a material interest in a company for the purposes of a profit-related payscheme) shall be amended in accordance with this paragraph.
- (2) In sub-paragraph (2) for the words from “in a company” onwards there shall be substituted—
- “in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—
- (a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 25 percent. of the ordinary share capital of the company, or
- (b) in the case of a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 per cent. of the assets which would then be available for distribution among the participators”.
- (3) In sub-paragraph (3) the second “and” shall be omitted and after the definition of “control” there shall be inserted “and
- “participator” has the meaning given by section 417(1)”.
- (4) This paragraph shall have effect in relation to accounting periods beginning after 31st March 1989.

SCHEDULE 13

Section 121.

CAPITAL ALLOWANCES: MISCELLANEOUS AMENDMENTS

1–26 ..... F71

**Textual Amendments**  
**F71** Sch. 13 paras. 1–26, 28–30 repealed by Capital Allowance Act 1990 (c. 1), s. 164(4)(5), Sch. 2

*Patent rights*

- 27 (1) Section 521 of the Taxes Act 1988 shall be amended as follows.
- (2) In subsection (5) (which limits allowable expenditure in the case of certain sales entered into between connected persons or for the purpose of obtaining an allowance) —
- (a) the words “within the terms of section 839” shall be omitted, and
- (b) for the words “the disposal value” onwards there shall be substituted the words “the relevant amount determined in accordance with subsection (6) below”.
- (3) After subsection (5) there shall be added—

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- “(6) The relevant amount referred to in subsection (5) above is—
- (a) in a case in which, by virtue of subsections (2) to (4) above, a disposal value falls to be brought into account by reason of the sale, an amount equal to that disposal value,
  - (b) in a case in which no disposal value falls to be brought into account as mentioned in paragraph (a) above, but the seller receives on the sale a capital sum in respect of which he is chargeable to tax in accordance with section 524, an amount equal to that sum,
  - (c) in any other case, an amount equal to whichever of the following is the smallest—
    - (i) the price which the rights would have fetched if sold in the open market,
    - (ii) where capital expenditure was incurred by the seller on acquiring the rights, the amount of that expenditure,
    - (iii) where capital expenditure was incurred by any person connected with the seller on acquiring the rights, the amount of the expenditure incurred by that person.

(7) Section 839 (connected persons) shall apply for the purposes of this section.”

(4) This paragraph shall have effect in relation to expenditure incurred on or after the day on which this Act is passed.

28–30 ..... F72

**Textual Amendments**

**F72** Sch. 13 paras. 1–26, 28–30 repealed by Capital Allowance Act 1990 (c. 1), s. 164(4)(5), Sch. 2

SCHEDULE 14

Section 124.

CAPITAL GAINS TAX: GIFTS ETC.

*Gifts of business assets*

1 (1) Section 126 of the <sup>M176</sup> Capital Gains Tax Act 1979 shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) If—

- (a) an individual (in this section referred to as “the transferor”) makes a disposal otherwise than under a bargain at arm’s length of an asset within subsection (1A) below, and
- (b) a claim for relief under this section is made by the transferor and the person who acquires the asset (in this section referred to as “the transferee”) or, where the trustees of a settlement are the transferee, by the transferor alone,

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then, subject to subsection (2) and sections 126A and 126B below, subsection (3) below shall apply in relation to the disposal.

(1A) An asset is within this subsection if—

- (a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—
  - (i) the transferor, or
  - (ii) his family company, or
  - (iii) a member of a trading group of which the holding company is his family company, or
- (b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—
  - (i) the shares or securities are neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market, or
  - (ii) the trading company or holding company is the transferor's family company.”

(3) At the end of subsection (2) there shall be added the words “or

- (c) in the case of a disposal of qualifying corporate bonds within the meaning of section 64 of the Finance Act 1984, a gain is deemed to accrue by virtue of paragraph 10(1)(b) of Schedule 13 to that Act, or
- (d) subsection (3) of section 147A below applies in relation to the disposal (or would apply if a claim for relief were duly made under that section).”

(4) In subsection (7)—

- (a) in paragraph (a), for the words “has the meaning” there shall be substituted the words “, “holding company”, “trading company” and “trading group” have the meanings”, and
- (b) paragraph (b) shall be omitted.

(5) After subsection (8) there shall be added—

“(9) Where a disposal in respect of which a claim is made under this section is (or proves to be) a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

- (a) the inheritance tax attributable to the value of the asset, and
- (b) the amount of the chargeable gain as computed apart from this subsection,

and, in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

(10) Where an amount of inheritance tax—

- (a) falls to be redetermined in consequence of the transferor's death within seven years of making the chargeable transfer in question, or
- (b) is otherwise varied,



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after it has been taken into account under subsection (9) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.”

**Marginal Citations**

M176 1979 c. 14.

2 After section 126 there shall be inserted—

**“126A Section 126 relief: gifts to non-residents.**

- (1) Section 126(3) above shall not apply where the transferee is an individual is neither resident nor ordinarily resident in the United Kingdom.
- (2) Section 126(3) above shall not apply where the transferee is an individual or a company if that individual or company—
  - (a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

**126B Section 126 relief: gifts to foreign-controlled companies.**

- (1) Section 126(3) above shall not apply where the transferee is a company which is within subsection (2) below.
- (2) A company is within this subsection if it is controlled by a person who, or by persons each of whom,—
  - (a) is neither resident nor ordinarily resident in the United Kingdom, and
  - (b) is connected with the person making the disposal.
- (3) For the purposes of subsection (2) above, a person who (either alone or with others) controls a company by virtue of holding assets relating to that or any other company and who is resident or ordinarily resident in the United Kingdom shall be regarded as neither resident nor ordinarily resident there if—
  - (a) he is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and
  - (b) by virtue of the arrangements he would not be liable in the United Kingdom to tax on a gain arising on a disposal of the assets.

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### **126C Section 126 relief: emigration of controlling trustees.**

- (a) relief under section 126 above is given in respect of a disposal of an asset to a company which is controlled by the trustees of a settlement (“the relevant disposal”),
  - (b) at the time of the relevant disposal the person making it is connected with the trustees, and
  - (c) at a time when the company has not disposed of the asset and the trustees have not ceased to control the company, they become neither resident nor ordinarily resident in the United Kingdom.
- (2) Where this subsection applies then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the trustees immediately before the time mentioned in subsection (1)(c) above, and its amount shall be equal to the held-over gain (within the meaning of section 126 above) on the relevant disposal.
- (3) For the purposes of paragraph (c) of subsection (1) above, the company shall be taken to have disposed of an asset before the time referred to in that paragraph only if it has made a disposal or disposals in connection with which the whole of the held-over gain on the relevant disposal was represented by reductions made in accordance with section 126(3) above; and where the company has made a disposal in connection with which part of that gain was so represented, the amount of chargeable gain deemed by virtue of this section to accrue to the trustees shall be correspondingly reduced.
- (4) The disposals by the company that are to be taken into account under subsection (3) above shall not include any disposal to which section 273 of the Taxes Act 1970 (transfers within a group) applies; but where the company disposes of an asset by a disposal to which that section applies, the first subsequent disposal of the asset by another member of the group which is a disposal to which that section does not apply shall be taken into account under subsection (3) above as if it had been made by the company.
- (5) Where an amount of tax assessed on trustees by virtue of this section is not paid within the period of twelve months beginning with the date when the tax becomes payable then, subject to subsection (6) below, the transferor may be assessed and charged (in the name of the trustees) to all or any part of that tax.
- (6) No assessment shall be made under subsection (5) above more than six years after the end of the year in which the relevant disposal was made.
- (7) Where the transferor pays an amount of tax in pursuance of subsection (5) above, he shall be entitled to recover a corresponding sum from the trustees.
- (8) Gains on disposals made after a chargeable gain has under this section been deemed to accrue by reference to a held-over gain shall be computed without any reduction under section 126(3)(b) above in respect of that held-over gain.
- (9) Section 126B(3) above shall apply for the purposes of subsection (1)(c) above as it applies for the purposes of section 126B(2).”

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- 3 (1) Schedule 4 to the <sup>M177</sup> Capital Gains Tax Act 1979 shall be amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1)(b), for the words “section 126(1)(a)” there shall be substituted the words “section 126(1)” and for the words “that paragraph” there shall be substituted the words “section 126(1A)(a)”; and
  - (b) in sub-paragraph (2), the words “at the rate of 50 per cent.” shall be omitted, and at the end of paragraph (b) there shall be added the words “, or
  - (c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).”
- (3) For paragraph 2 there shall be substituted—
- “2 (1) If—
- (a) the trustees of a settlement make a disposal otherwise than under a bargain at arm’s length of an asset within sub-paragraph (2) below, and
  - (b) a claim for relief under section 126 of this Act is made by the trustees and the person who acquires the asset (in this Schedule referred to as “the transferee”) or, where the trustees of a settlement are also the transferee, by the trustees making the disposal alone,
- then, subject to subsection (2) of section 126 and to sections 126A and 126B, subsection (3) of section 126 shall apply in relation to the disposal.
- (2) An asset is within this sub-paragraph if—
- (a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—
    - (i) the trustees making the disposal, or
    - (ii) a beneficiary who had an interest in possession in the settled property immediately before the disposal, or
  - (b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—
    - (i) the shares or securities are neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market, or
    - (ii) not less than 25 per cent. of the voting rights exercisable by shareholders of the company in general meeting are exercisable by the trustees at the time of the disposal.
- (3) Where section 126(3) applies by virtue of this paragraph, references to the trustees shall be substituted for the references in sections 126(3)(a) and 126C to the transferor; and where it applies in relation to a disposal which is deemed to occur by virtue of section 54(1) or 55(1) of this Act, section 126(6) shall not apply.”
- (4) In paragraph 3—
- (a) in sub-paragraph (1)—
    - (i) the words from “by virtue” to “(settled property)” shall be omitted,

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- (ii) for the words “(a) of paragraph 2(1)” there shall be substituted “2(1)(a)”, and
  - (iii) for the words “the said paragraph (a)” there shall be substituted the words “paragraph 2(2)(a) above”, and
  - (b) in sub-paragraph (2), the words “at the rate of 50 per cent.” shall be omitted, and at the end of paragraph (b) there shall be added the words “, or
    - (c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).”
- (5) In paragraph 4—
- (a) in sub-paragraph (2)(a), for the words “section 126(1)” there shall be substituted the words “section 126(1A)”, and for the words “subparagraph (1)” there shall be substituted the words “sub-paragraph(2)”;
  - (b) for sub-paragraph (2)(c) there shall be substituted—
    - “(c) “the transferor” has the same meaning as in section 126 of this Act except that, in a case where paragraph 2 above applies, it refers to the trustees mentioned in that paragraph.”;
  - (c) for sub-paragraph (3) there shall be substituted—
    - “(3) In this Part of this Schedule—
      - (a) any reference to a disposal of an asset is a reference to a disposal which falls within subsection (1) of section 126 of this Act by virtue of subsection(1A)(a) of that section or, as the case may be, falls within sub-paragraph (1) of paragraph 2 above by virtue of sub-paragraph (2)(a) of that paragraph, and
      - (b) any reference to a disposal of shares is a reference to a disposal which falls within subsection (1) of section 126 of this Act by virtue of subsection(1A)(b) of that section or, as the case may be, falls within sub-paragraph (1) of paragraph 2 above by virtue of sub-paragraph (2)(b) of that paragraph.” and
    - (d) in sub-paragraph (4), for the words “as the case may be” there shall be substituted the words “where it applies”, and the words “(taking account” onwards shall be omitted.
- (6) At the end of each of paragraph 5 and paragraph 6 there shall be added—
- “(2) This paragraph shall not apply where the circumstances are such that a reduction in respect of the asset—
    - (a) is made under Chapter II of Part V of the Inheritance Tax Act 1984 in relation to a chargeable transfer taking place on the occasion of the disposal, or
    - (b) would be so made if there were a chargeable transfer on that occasion, or
    - (c) would be so made but for section 124A of that Act (assuming where there is no chargeable transfer on that occasion, that there were).”
- (7) For paragraph 7 there shall be substituted—

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- “7 (1) If in the case of a disposal of shares assets which are not business assets are included in the chargeable assets of the company whose shares are disposed of, or, where that company is the holding company of a trading group, in the group’s chargeable assets, and either—
- (a) at any time within the period of twelve months before the disposal not less than 25 per cent. of the voting rights exercisable by shareholders of the company in general meeting are exercisable by the transferor, or
  - (b) the transferor is an individual and, at any time within that period, the company is his family company,
- the amount of the held-over gain shall be reduced by multiplying it by the fraction defined in sub-paragraph (2) below.
- (2) The fraction referred to in sub-paragraph (1) above is that of which—
- (a) the denominator is the market value on the date of the disposal of all the chargeable assets of the company, or as the case may be of the group, and
  - (b) an asset is a chargeable asset in relation to a company or a group at any time if, on a disposal at that time, a gain accruing to the company, or as the case may be to a member of the group, would be a chargeable gain.
- (4) Where the shares disposed of are shares of the holding company of a trading group, then for the purposes of this paragraph—
- (a) the holding by one member of the group of the ordinary share capital of another member shall not count as a chargeable asset, and
  - (b) if the whole of the ordinary share capital of a 51 per cent. subsidiary of the holding company is not owned directly or indirectly by that company, the value of the chargeable assets of the subsidiary shall be taken to be reduced by multiplying it by the fraction of which the denominator is the whole of the ordinary share capital of the subsidiary and the numerator is the amount of that share capital owned directly or indirectly by the holding company.
- (5) Expressions used in sub-paragraph (4) above have the same meanings as in section 838 of the Taxes Act 1988.”

**Marginal Citations**

M177 1979 c. 14.

*Gifts on which inheritance tax is chargeable etc.*

- 4 The following sections shall be inserted after section 147 of the <sup>M178</sup> Capital Gains Tax Act 1979—

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**“147A Gifts on which inheritance tax is chargeable etc.**

(1) If—

- (a) an individual or the trustees of a settlement (in this section referred to as “the transferor”) make a disposal within subsection (2) below of an asset,
- (b) the asset is acquired by an individual or the trustees of a settlement (in this section referred to as “the transferee”), and
- (c) a claim for relief under this section is made by the transferor and the transferee or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (6) and section 147B below, subsection (3) below shall apply in relation to the disposal.

(2) A disposal is within this subsection if it is made otherwise than under a bargain at arm’s length and—

- (a) is a chargeable transfer within the meaning of the Inheritance Tax Act 1984 (or would be but for section 19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act),
- (b) is an exempt transfer by virtue of—
  - (i) section 24 of that Act (transfers to political parties),
  - (ii) section 26 of that Act (transfers for public benefit),
  - (iii) section 27 of that Act (transfers to maintenance funds for historic buildings etc.), or
  - (iv) section 30 of that Act (transfers of designated property),
- (c) is a disposition to which section 57A of that Act applies and by which the property disposed of becomes held on trusts of the kind referred to in subsection (1)(b) of that section (maintenance funds for historic buildings etc.),
- (d) by virtue of subsection (4) of section 71 of that Act (accumulation and maintenance trusts) does not constitute an occasion on which inheritance tax is chargeable under that section,
- (e) by virtue of section 78(1) of that Act (transfers of works of art etc.) does not constitute an occasion on which tax is chargeable under Chapter III of Part III of that Act, or
- (f) is a disposal of an asset comprised in a settlement where, as a result of the asset or part of it becoming comprised in another settlement, there is no charge, or a reduced charge, to inheritance tax by virtue of paragraph 9, 16 or 17 of Schedule 4 to that Act (transfers to maintenance funds for historic buildings etc.).

(3) Where this subsection applies in relation to a disposal—

- (a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and
- (b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset in question,

shall each be reduced by an amount equal to the held-over gain on the disposal.

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- (4) Subject to subsection (5) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from this section.
- (5) In any case where—
- (a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of any provision of this Act) for a disposal in respect of which a claim for relief is made under this section, and
  - (b) that actual consideration exceeds the sums allowable as a deduction under section 32 above,
- the held-over gain on the disposal shall be reduced by the excess referred to in paragraph (b) above or, if part of the gain on the disposal is relieved under Schedule 20 to the Finance Act 1985 (retirement relief), by so much, if any, of that excess as exceeds the parts so relieved.
- (6) Subsection (3) above does not apply in relation to a disposal of assets within section 67(1) above on which a gain is deemed to accrue by virtue of paragraph 10(1)(b) of Schedule 13 to the Finance Act 1984.
- (7) In the case of a disposal within subsection (2)(a) above there shall be allowed as a deduction in computing the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—
- (a) the inheritance tax attributable to the value of the asset, and
  - (b) the amount of the chargeable gain as computed apart from this subsection.
- (8) Where an amount of inheritance tax is varied after it has been taken into account under subsection (7) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.
- (9) Where subsection (3) above applies in relation to a disposal which is deemed to occur by virtue of section 54(1) or 55(1) above, subsection (5) above shall not apply.
- (10) Where a disposal is partly within subsection (2) above, or is a disposal within paragraph (f) of that subsection on which there is a reduced charge such as is mentioned in that paragraph, the preceding provisions of this section shall have effect in relation to an appropriate part of the disposal.

#### **147B Section 147A relief: gifts to non-residents.**

- (1) Section 147A(3) above shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.
- (2) Section 147A(3) above shall not apply where the transferee is an individual who—
- (a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988 as resident in a territory outside the United Kingdom, and

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- (b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.”

#### Marginal Citations

M178 1979c.14.

#### *Payment of tax by instalments*

- 5 The following section shall be inserted after section 7 of the <sup>M179</sup> Capital Gains Tax Act 1979—

#### “7A Payment by instalments of tax on gifts.

- (1) Subsection (2) below applies where—
- (a) the whole or any part of any assets to which this section applies is disclosed of by way of gift or is deemed to be disposed of under section 54(1) or 55(1) below, and
  - (b) the disposal is one—
    - (i) to which neither section 126(3) nor section 147A(3) below applies (or would apply if a claim were duly made), or
    - (ii) to which either of those sections does apply but on which the held-over gain (within the meaning of the section applying) is less than the chargeable gain which would have accrued on that disposal apart from that section.
- (2) Where this subsection applies, the capital gains tax chargeable on a gain accruing on the disposal may, if the person paying it by notice in writing to the inspector so elects, be paid by ten equal yearly instalments.
- (3) The assets to which this section applies are—
- (a) land or an estate or interest in land,
  - (b) any shares or securities of a company which, immediately before the disposal, gave control of the company to the person by whom the disposal was made or deemed to be made, and
  - (c) any shares or securities of a company not falling under paragraph (b) above and not quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market.
- (4) Where tax is payable by instalments by virtue of this section, the first instalment shall be due on the day on which the tax would be payable apart from this section.
- (5) Subject to the following provisions of this section —
- (a) tax payable by instalments by virtue of this section shall carry interest in accordance with Part IX (except section 88) of the Taxes Management Act 1970, and
  - (b) the interest on the unpaid portion of the tax shall be added to each instalment and paid accordingly.



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- (6) Tax payable by instalments by virtue of this section which is for the time being unpaid, with interest to the date of payment, shall become due and payable immediately if—
- (7) Tax which apart from this subsection would be payable by instalments by virtue of this section and which is for the time being unpaid, with interest to the date of payment, shall become due and payable immediately if—
  - (a) the disposal was by way of gift to a person connected with the donor or was deemed to be made under section 54(1) or 55(1) below, and
  - (b) the assets are disposed of for valuable consideration under a subsequent disposal (whether or not the subsequent disposal is made by the person who acquired them under the first disposal).”

**Marginal Citations**  
M179 1979c. 14.

*Minor and consequential amendments*

- 6 (1) In section 56A of the <sup>M180</sup> Capital Gains Tax Act 1979 (gifts relief in cases within section 55 or 56)—
  - (a) in subsection (1), for the words “79 of the <sup>M181</sup> Finance Act 1980” there shall be substituted the words “126 or 147A below”, and
  - (b) in subsection (4), for the words “79(1) of the Finance Act 1980” there shall be substituted the words “126 or, as the case may be, 147A below”.
- (2) In section 155(1) of that Act, the following definition shall be inserted after the definition of “quoted”— “ “recognised stock exchange” has the meaning given by section 841 of the Taxes Act 1988, ”.
- (3) In section 79 of the <sup>M182</sup> Finance Act 1981 (emigration of donee)—
  - (a) in subsection (1), for paragraph (a) there shall be substituted—
    - “(a) relief is given under section 126 of the Capital Gains Tax Act 1979 in respect of a disposal to an individual or the trustees of a settlement or under section 147A of that Act in respect of any disposal (“the relevant disposal”);”, and for the words “the said section 79” there shall be substituted the words “section 126 or 147A”, and
  - (b) for the words “subsection (1)(b) of the said section 79” in subsection (2) and for the words “section 79(1)(b) of the Finance Act 1980” in subsections (6) and (10) there shall be substituted the words “section 126(3)(b) or 147A(3)(b) of the Capital Gains Tax Act 1979”.
- (4) In section 64(5)(b) of the <sup>M183</sup> Finance Act 1984 (qualifying corporate bonds), for the words “of that Act or section 79 of the Finance Act 1980” there shall be substituted the words “or 147A of that Act”.
- (5) In section 58 of the <sup>M184</sup> Finance Act 1986 (gifts into dual resident trusts)—

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- (a) in subsection (1), for the words “79 of the Finance Act 1980 (general relief)” there shall be substituted the words “126 OR 147A of the Capital Gains Tax Act 1979 (relief”, and for the words “subsection (1)” there shall be substituted the words “subsection (3)”,
  - (b) subsection (2)(b) shall be omitted, and
  - (c) in subsection (3) <sup>F73</sup> . . . , for the words “the 1980 provision” in each place where they occur there shall be substituted the words “section 126 or 147A of the <sup>M185</sup> Capital Gains Tax Act 1979”.
- (6) In paragraph 3(3) of Schedule 28 to the <sup>M186</sup> Taxes Act 1988 (offshore income gains), for the words “79 of the <sup>M187</sup> Finance Act 1980 (relief for gifts), that section” there shall be substituted the words “126 or 147A of the Capital Gains Tax act 1979 (relief for gifts), the claim”.

#### Textual Amendments

**F73** Words in Sch. 14 para. 6(5)(c) repealed (*applies where the time subsequent to the relevant disposal falls on or after 19.03.1991*) by Finance Act 1991 (c. 31, SIF 63:2), ss. 123, 92, Sch. 19 Pt. VI Note 4.

#### Marginal Citations

**M180** 1979 c. 14.

**M181** 1980 c. 48.

**M182** 1981 c. 35.

**M183** 1984 c. 43.

**M184** 1986 c. 41.

**M185** 1979 c. 14.

**M186** 1980 c. 43.

**M187** 1980 c. 43.

## SCHEDULE 15

Section 141.

### CAPITAL GAINS: RE-BASING TO 1982 ETC.

#### *Postponed charges etc.: pre-1st April 1982 events*

- 1 (1) None of the enactments specified in sub-paragraph (2) below shall apply in consequence of an event occurring on or after 6th April 1988 if its application would be directly attributable to the disposal of an asset on or before 31st March 1982.
- (2) The enactments referred to in sub-paragraph (1) above are—
- (a) section 268A(4) of the Taxes Act 1970 (postponement of charge where securities acquired in exchange for business acquired by non-resident company);
  - (b) section 84 of the Capital Gains Tax Act 1979 (postponement of charge or loss where gilts acquired on compulsory acquisition of shares);
  - (c) section 111B(3) of that Act (postponement of charge where depreciating asset acquired on compulsory acquisition of land); and

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- (d) section 117(2) of that Act (postponement of charge where depreciating asset acquired as replacement for business asset).

- 2 Paragraph 3(1) of Schedule 9 to the <sup>M188</sup>Finance Act 1988 (halving of charges deferred from before 6th April 1988) shall have effect, and shall be deemed always to have had effect, with the insertion of the words “and to paragraph 1 of Schedule 15 to the Finance Act 1989” after the words “sub-paragraph (3) below”.

**Marginal Citations**

**M188** 1988 c. 39.

*Reduction of 1982 value in certain cases*

- 3 (1) Sub-paragraph (2) below applies where—
- (a) subsection (2) of section 96 of the Finance Act 1988 applies in relation to the disposal of an asset,
  - (b) if that subsection did not apply, any of the enactments specified in sub-paragraph (3) below would operate to disallow expenditure as a deduction in computing a gain accruing on the disposal, and
  - (c) the disallowance would be attributable to the reduction of the amount of the consideration for a disposal made after 31st March 1982 but before 6th April 1988.
- (2) Where this sub-paragraph applies the amount allowable as a deduction on the disposal shall be reduced by the amount which would be disallowed if section 96(2) did not apply.
- (3) The enactments referred to in sub-paragraph (1) above are—
- (a) section 21(2) of the Capital Gains Tax Act 1979 (disallowance of allowable expenditure where allowance already given against receipts of compensation or insurance money);
  - (b) section 72(4) of that Act (disallowance where allowance already given against capital distribution);
  - (c) section 83(4) of that Act (disallowance where allowance already given against premium on conversion of securities); and
  - (d) section 109 of that Act (disallowance where allowance already given against gain from small part disposal).
- (4) This paragraph shall apply to disposals on or after 6th April 1989.

*No gain/no loss disposals*

- 4 (1) Section 68(7A) of the <sup>M189</sup>Finance Act 1985 shall have effect, and shall be deemed always to have had effect—
- (a) as if in paragraph (a) for “146(3)” there were substituted “146(2) or (3), 146A(2)”, and

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(b) as if after paragraph (e) there were inserted—  
 “(ee) section 130(3) of the Transport Act 1985;”.

(2) Paragraph 1(3) of Schedule 8 to the <sup>M190</sup>Finance Act 1988 shall have effect, and shall be deemed always to have had effect, as if after paragraph (e) there were inserted—  
 “(ee) section 130(3) of the Transport Act 1985;”.

#### Marginal Citations

**M189** 1985 c. 54.

**M190** 1988 c. 39.

### *Elections*

5 Paragraph 13(5) of Schedule 8 to the Finance Act 1988 shall have effect, and shall be deemed always to have had effect, as if for the words “subsection (5)” there were substituted the words “subsection (6)”

## [<sup>F74</sup>SCHEDULE 16

Section 181.

### BROADCASTING: ADDITIONAL PAYMENTS BY PROGRAMME CONTRACTORS

#### Textual Amendments

**F74** S. 181, Sch. 16 repealed (prosp. as mentioned in S.I. 1990/2347, art. 3(3)) by Broadcasting Act 1990 (c. 42, SIF 96), ss. 127-129, 134, 203(3), 204(2), Schs. 9-12, Sch. 21

## PART I

### AMENDMENTS OF THE PRINCIPAL SECTIONS

- 1 (1) Section 32 of the <sup>M191</sup>Broadcasting Act 1981 (rental payments by programme contractors) shall be amended as follows.
- (2) In subsection (1)(b), after the word “amounts” there shall be inserted the words “in respect of profits and in respect of advertising revenue”.
- (3) In subsection (2)(b), after the word “amounts” there shall be inserted the words “in respect of profits”.
- (4) In subsection (4), for the word “Table”, where it first occurs, there shall be substituted the word “Tables” and the following Tables shall be substituted for the Table in that subsection—

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“TABLE A

RATES OF ADDITIONAL PAYMENTS IN  
RESPECT OF ADVERTISING REVENUE

	<i>Rate for determining amount of additional payments</i>
For so much of the advertising revenue for the accounting period as does not exceed the free slice for advertising revenue.	Nil
For so much of the advertising revenue for the accounting period as exceeds the free slice for advertising revenue.	The relevant revenue rate except where the rate is nil

For the purposes of this Table—

- (a) a nil rate, instead of the relevant revenue rate, is applicable in the case of persons who are DBS programme contractors or DBS teletext contractors;
- (b) the relevant revenue rate is 10 per cent; and
- (c) the free slice for advertising revenue is £15 million or, in the case of a TV programme contractor, that amount with the addition of the payments payable by him in pursuance of section 13(2).

TABLE B

RATES OF ADDITIONAL PAYMENTS IN RESPECT OF PROFITS

For so much of the profits for the accounting period after deducting any amount payable under Table A as does not exceed the free slice for profits.	Nil
For so much of the profits for the accounting period after deducting any amount payable under Table A as exceeds the free slice for profits.	The relevant profits rate except where the rate is nil.

For the purposes of this Table—

- (a) a nil rate, instead of the relevant profits rate, is applicable in the case of—
  - (i) programme contractors who provide local sound broadcasts, and
  - (ii) DBS programme contractors or DBS teletext contractors;
- (b) the relevant profits rate is 25 per cent; and
- (c) the free slice for profits is £2 million.”

(5) Subsection (4A) shall be omitted.

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- (6) In subsection (5), for the words “relevant sum mentioned in subsection(4A)” there shall be substituted the words “relevant sum mentioned in theTables above”.
- (7) In subsection (7), after the words “additional payments” there shallbe inserted the words “in respect of profits”.
- (8) In subsection (8), for the words “any of the provisions of subsections(4), (4A)” there shall be substituted the words “any of the provisionsof subsections (4)”.
- (9) For subsection (9) there shall be substituted the followingsubsections—
- “(9) The power of the Secretary of State under subsection (8) shall includepower to amend the provisions in question as there mentioned—
- (a) only in their application in relation to the additional payments mentionedin subsection (1)(b); or
  - (b) only in their application in relation to the additional payments mentionedin subsection (2)(b); or
  - (c) differently in their application as mentioned in paragraphs (a) and (b)respectively; or
  - (d) only in their application in relation to additional payments in respectof advertising revenue; or
  - (e) only in their application in relation to additional payments in respectof profits; or
  - (f) differently in their application as mentioned in paragraphs (d) and (e)respectively.
- (9A) In the application of the provisions mentioned in subsection (8) inrelation to the additional payments mentioned in subsection (1)(b), the powerof the Secretary of State under subsection (8) shall also include power toamend those provisions as mentioned in subsection (8)—
- (a) only in relation to persons who are TV programme contractors (includingpersons who are both TV programme contractors and teletext contractors); or
  - (b) only in relation to persons who are DBS programme contractors (includingpersons who are both DBS programme contractors and teletext contractors); or
  - (c) only in relation to persons who are teletext contractors (other than DBSteletext contractors) but are not TV or DBS programme contractors; or
  - (d) only in relation to persons who are DBS teletext contractors but are notTV or DBS programme contractors; or
  - (e) differently in relation to persons within paragraphs (a), (b), (c) and (d)respectively.”

**Marginal Citations**

M191 1981 c. 68.

- 2 (1) Section 33 of the <sup>M192</sup>Broadcasting Act 1981 (supplementalprovisions) shall be amended as follows.

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- (2) In subsection (1), for the words “advertising receipts” there shall be substituted the words “advertising revenue”.
- (3) In subsection (2), for the words “advertising receipts” there shall be substituted the words “advertising revenue” and for the words “those receipts derive” there shall be substituted the words “the revenue derives”.
- (4) In subsection (3)(c), for the words “advertising receipts” there shall be substituted the words “advertising revenue” and for the word “derive” there shall be substituted the word “derives”.

**Marginal Citations**

M192 1981 c. 68.

- 3 (1) Section 34 of the Broadcasting Act 1981 (instalments payable on account by programme contractors for their accounting periods) shall be amended as follows.
  - (2) In subsection (3)(c), for the words “receipts are” there shall be substituted the words “revenue is”.
- 4 (1) Section 35 of the <sup>M193</sup>Broadcasting Act 1981 (provision for supplementing additional payments) shall be amended as follows.
  - (2) In subsection (1)—
    - (a) in paragraph (a), after the words “additional payments” there shall be inserted the words “in respect of profits”;
    - (b) in paragraph (b)(ii), the words “in the case of second category profits,” shall be omitted; and
    - (c) at the end, there shall be added the words “in respect of profits of his for that period”.

**Marginal Citations**

M193 1981 c. 68.

**PART II**

PROVISIONS INSERTED AS SCHEDULE 4 TO THE BROADCASTING ACT 1981

“SCHEDULE 4

RENTAL PAYMENTS

*Advertising revenue*

- 1 (1) The advertising revenue of a programme contractor for an accounting period shall be computed in accordance with this paragraph.
  - (2) Advertising revenue shall consist of the payments received or to be received by the programme contractor in consideration of the insertion of advertisements in programmes

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provided by the programme contractor and broadcast in the United Kingdom by the Authority.

- (3) In the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), the advertising revenue of a programme contractor other than a teletext contractor who is not a TV programme contractor includes payments received or to be received by him in consideration of the insertion of programmes consisting of advertisements provided by him for broadcasting on the Fourth Channel and so broadcast.
- (4) If, in connection with the insertion of advertisements which are paid for by payments constituting advertising revenue, any payments are made to the programme contractor to meet any additional payments, those payments shall be regarded as made in consideration of the insertion of the advertisements in question.
- (5) In the case of an advertisement inserted in a programme under arrangements made between a programme contractor and a person acting as advertising agent, the amount of any receipt by the programme contractor which represents a payment by the advertiser from which the advertising agent has deducted any amount by way of commission shall, except in a case falling within sub-paragraph (6), be the amount of the payment by the advertiser after the deduction of the commission.
- (6) If the amount deducted by way of commission as mentioned in sub-paragraph (5) exceeds 15 per cent. of the payment by the advertiser, the amount of the receipt shall be the amount of that payment less 15 per cent.
- (7) Any contract shall provide that where for any insertion of an advertisement a programme contractor receives or is entitled to an entire consideration not solely referable to that insertion, the advertising revenue shall be calculated by reference to so much only of the consideration as is referable to that insertion according to an apportionment made in such manner as the contract may provide.

#### *Profits*

- 2 (1) The profits of a programme contractor for an accounting period shall be computed in accordance with this paragraph.
- (2) The profits shall consist of the excess of relevant income over relevant expenditure.
- (3) “Relevant income” means—
  - (a) in relation to a programme contractor other than a DBS programme contractor or a DBS teletext contractor, income which accrues to the contractor in connection (directly or indirectly) with—
    - (i) the provision by the contractor of programmes for broadcasting on ITV, the Fourth Channel or a local sound broadcasting service, or
    - (ii) the provision by the contractor, for broadcasting, distribution or showing in the United Kingdom, of programmes provided by him for broadcasting on ITV, the Fourth Channel or a local sound broadcasting service;
  - (b) in relation to a DBS programme contractor or DBS teletext contractor, income which accrues to the contractor in connection (directly or indirectly) with—
    - (i) the provision by the contractor to the Authority, in accordance with the terms of his contract as a DBS programme contractor or (as the case may be) DBS teletext contractor, of programmes for broadcasting in



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- the Authority's DBS service to which his contract with the Authority relates, or
- (ii) the provision by the contractor, for broadcasting, distribution or showing in the United Kingdom, of programmes broadcast in the Authority's DBS service.
- (4) Without prejudice to the generality of sub-paragraph (3), "relevant income" includes—
- (a) all revenue which is advertising revenue for the purposes of this paragraph; and
- (b) such part of any income which—
- (i) accrues to any subsidiary of or company related to the programme contractor or to the contractor's holding company, and
- (ii) would be relevant income of that contractor if he and the subsidiary or related company or his holding company were a single programme contractor,
- as, in the opinion of the Authority, should be attributed to the contractor as reflecting his financial interest in the subsidiary or the respective financial interests of the holding company in the contractor and the company related to the contractor or the financial interest of the holding company in the contractor, as the case may be.
- (5) For the purposes of this paragraph advertising revenue includes—
- (a) in relation to a DBS programme contractor, payments received or to be received by him in respect of charges made for the reception of programmes provided by him and broadcast in a DBS service;
- (b) in relation to a teletext contractor, payments received or to be received by him in respect of charges made for the reception of programmes provided by him and broadcast in a DBS or additional teletext service.
- (6) "Relevant expenditure" means any expenditure of the programme contractor which is properly chargeable to revenue account and which is incurred in connection with the provision by him of programmes of a kind mentioned in sub-paragraph (3).
- (7) Without prejudice to the generality of sub-paragraph (6), "relevant expenditure" includes—
- (a) expenditure in connection with the sale of rights to insert advertisements in programmes; and
- (b) such part of any expenditure which—
- (i) is incurred by any subsidiary of or company related to the programme contractor or by the contractor's holding company, and
- (ii) would be relevant expenditure of that contractor if he and the subsidiary or related company or his holding company were a single programme contractor,
- as, in the opinion of the Authority, should be attributed to the contractor as reflecting his financial interest in the subsidiary or the respective financial interests of the holding company in the contractor and the company related to the contractor or the financial interest of the holding company in the contractor, as the case may be;
- (c) in the case of a DBS programme contractor or a teletext contractor, any expenditure incurred in connection with the collection of charges for the reception of programmes provided by him and broadcast in a DBS service or in a DBS or additional teletext service, as the case may be; and

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- (d) in the case of a DBS programme or DBS teletext contractor, any expenditure incurred in connection with the provision of the satellite transponder.
- (8) In ascertaining relevant income or relevant expenditure no account shall be taken of interest on any loan.
- (9) Items of relevant income and items of relevant expenditure shall be attributed to accounting periods in accordance with the foregoing provisions of this Schedule.
- (10) In this paragraph “programme” means—
  - (a) in the application of this Schedule in relation to the additional payments mentioned in section 32(1)(b), a television programme; and
  - (b) in the application of this Schedule in relation to the additional payments mentioned in section 32(2)(b), a local sound broadcast.

*Carry forward of losses*

- 3 (1) Where, in any accounting period, the relevant expenditure of a programme contractor exceeds his relevant income, the excess shall be carried forward to the following accounting period and treated as relevant expenditure for that period for the purpose of computing his profits for that period.
- (2) When a programme contractor’s contract with the Authority comes to an end, no losses incurred at any time during the currency of that contract may be carried forward under this paragraph and set against income attributable to any subsequent contract between him and the Authority.

*Computation of profits of programme contractors*

- 4 (1) It shall be the duty of the Authority—
  - (a) to draw up, and from time to time review, a statement setting out the principles to be followed in ascertaining, for any accounting period, a programme contractor’s—
    - (i) advertising revenue, and
    - (ii) relevant income and relevant expenditure for the purpose of computing his profits;
  - (b) in computing the advertising revenue and the profits of a programme contractor for any accounting period, to take account of that statement (including any revision thereof which has taken effect before the end of that period).
- (2) A statement under this paragraph may set out different principles for TV programme contractors, DBS programme contractors, programme contractors for the provision of local sound broadcasting and teletext contractors.
- (3) Before drawing up or revising a statement under this paragraph the Authority shall consult the Secretary of State and the Treasury.
- (4) The Authority shall—
  - (a) publish the statement drawn up under this paragraph and every revision of that statement; and
  - (b) transmit a copy of the statement, and of every revision of it, to the Secretary of State;

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and the Secretary of State shall lay copies of the statement and of every such revision before each House of Parliament.

- (5) The principles relating to advertising revenue and to profits may be set out in separate statements under this paragraph; and where this is done its provisions apply to each statement.

#### *Disputes*

- 5 (1) For the purposes of the principal sections and this Schedule—
- (a) the amount of any advertising revenue, or
  - (b) the amount of any profits, or
  - (c) the amount of any additional payments, or of an instalment of additional payments,
- shall, in the event of a disagreement between the Authority and the programme contractor, be the amount determined by the Authority.
- (2) No determination of the Authority under this paragraph shall be called in question in any court of law, or be the subject of any arbitration; but nothing in this sub-paragraph shall prevent the bringing of proceedings for judicial review.

#### *Accounting periods*

- 6 (1) Subject to the provisions of this Schedule, each period for which a body corporate which is a programme contractor makes up a profit and loss account which is laid before the body corporate in general meeting shall be an accounting period, whether that period is a year or not.
- (2) If part of the said period for which a profit and loss account is made up falls before, and part after—
- (a) the commencement of a relevant order under section 32, or
  - (b) the time when the programme contractor begins or ceases to provide programmes for broadcasting by the Authority,
- the two parts shall be treated as separate accounting periods.

In paragraph (a) “relevant order” means, in the application of this Schedule in relation to the additional payments mentioned in subsection (1)(b) or (as the case may be) subsection (2)(b) of section 32, an order having effect in relation to those payments.

- (3) Where two parts of such a period as is mentioned in sub-paragraph (1) fall to be divided from each other under sub-paragraph (2)(a), section 32(4) shall have effect as if the profits and advertising revenue for each part were the profits and advertising revenue for the whole multiplied by—

$$\frac{X}{X + Y}$$

where X and Y are respectively the number of weeks in that part and the number of weeks in the other part, counting (in each case) an odd four days or more as a week.

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- (4) If sub-paragraph (2)(b) would produce an accounting period of three months or less, that period shall be added on to the accounting period (if any) which precedes or succeeds it (and which does not fall to be divided from it under sub-paragraph (2)(b)).
  - (5) A contract which varies another contract may modify the preceding provisions of this paragraph.
  - (6) Nothing in this paragraph shall create an accounting period during which the programme contractor is not providing programmes for broadcasting by the Authority.
- 7 If a programme contractor is not a body corporate the contractor's accounting periods shall be such as the Authority may direct, or as may be provided in the contract.

### *Information*

- 8 (1) Every contract shall impose on the contractor such requirements with respect to the furnishing of information to the Authority as appear to the Authority, after consultation with the Secretary of State, to be requisite—
- (a) for enabling the Authority to perform their functions under the provisions of the principal sections and this Schedule, and
  - (b) for enabling the Authority to furnish to the Secretary of State such information as he may require for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.
- (2) Without prejudice to the generality of sub-paragraph (1), the duty imposed on the Authority by that sub-paragraph includes the duty to impose, so far as is reasonably practicable, such requirements as will enable the Authority to determine the amounts (if any) which, in relation to any programme contractor, are to be treated as advertising revenue and relevant income and relevant expenditure for the computation of profits by virtue, respectively, of paragraphs 1 and 2.
- (3) It shall be the duty of the Authority to furnish to the Secretary of State such information (whether obtained from contractors or otherwise) as is in their possession and is required by the Secretary of State for the purpose of determining whether, and in what manner, to exercise his powers of making orders under the said provisions.
- 9 It shall be the duty of the Authority in framing any contract to include terms ensuring that the Authority will have the right to inspect accounts and records—
- (a) of the programme contractor, and
  - (b) of any subsidiary of the programme contractor,
- for the purpose of discharging their functions under the principal sections and this Schedule.

### *Interpretation*

- 10 (1) In this Schedule, and in the principal sections, except where the context otherwise requires—
- “accounting period” shall be construed in accordance with paragraph 6;
  - “additional payments” and “contract”—
- (a) in the application of this Schedule and the principal sections in relation to the additional payments mentioned in section 32(1)(b), mean respectively additional payments payable by virtue of that paragraph and a

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contract between the Authority and a programme contractor under which television programmes are to be provided by the programme contractor, and

- (b) in their application in relation to the additional payments mentioned in section 32(2)(b), mean respectively additional payments payable by virtue of that paragraph and a contract between the Authority and a programme contractor under which local sound broadcasts are to be provided by the programme contractor;

“related”, in relation to a company and a programme contractor, means that another person (whether alone or jointly with one or more persons and whether directly or indirectly) holds, or is beneficially entitled to, 50 per cent or more of the equity share capital, or possesses 50 per cent or more of the voting power, in the company and in the programme contractor and “holding company” means that other person; and

“subsidiary”, in relation to any person, means a company in which that person (whether alone or jointly with one or more persons and whether directly or indirectly) holds, or is beneficially entitled to, 10 per cent or more of the equity share capital, or possesses 10 per cent or more of the voting power.

- (2) In this Schedule “payment” includes any valuable consideration, and references to revenue and receipts and expenditure shall be construed accordingly.”

### PART III

#### TRANSITIONAL PROVISIONS

- 1 (1) In this paragraph—

“new statutory provisions” means the provisions of the <sup>M194</sup>Broadcasting Act 1981 as amended by this Act; and

“existing statutory provisions” means the provisions of that Act as they had effect immediately before the coming into force of section 181.

- (2) Any contract between the Authority and a programme contractor which is in force immediately before the day on which section 181 of this Act comes into force shall, until it is varied or superseded by a further contract between them or expires or is otherwise terminated (whichever first occurs), be deemed to be modified by virtue of this Schedule so as—

- (a) to substitute provisions in conformity with the new statutory provisions for so much of the contract as is in accordance with the existing statutory provisions and is not in conformity with the new statutory provisions, and
- (b) to incorporate in the contract such additional provisions as a contract between the Authority and a programme contractor is required to include in accordance with the new statutory provisions;

and (subject to paragraph 5 of Schedule 4 to the 1981 Act) any provision of the contract which provides for arbitration as to any matters contained in the contract in accordance with the existing statutory provisions shall be construed as making the like provision for arbitration in relation to matters deemed to be included in the contract by virtue of this sub-paragraph.

- (3) Where it appears to the Authority that the new statutory provisions call for the inclusion of additional terms in any such contract, but do not afford sufficient particulars of what those terms should be, the Authority may, after consulting the programme contractor, decide what those terms are to be.

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- (4) This paragraph shall not be taken to have effect in relation to any contract entered into by a programme contractor and any person other than the Authority before the day on which section 181 of this Act comes into force.

**Marginal Citations**

M194 1981 c. 68.

- 2 Where any accounting period of a programme contractor begins before 1st January 1990 and ends after 31st December 1989, the additional payments payable by the programme contractor in relation to that accounting period under section 32 of the <sup>M195</sup>Broadcasting Act 1981 shall be the aggregate of—

- (a) the amounts payable by him on the assumption that section 181 of this Act was not in force at any time during the accounting period, multiplied by—

$$\frac{X}{X + Y},$$

and

- (b) the amounts payable by him on the assumption that that section was in force throughout the accounting period, multiplied by—

$$\frac{Y}{X + Y};$$

where (taking any odd four days or more as a week)—

X is the number of weeks in the accounting period falling before 1st January 1990, and

Y is the number of weeks in the accounting period falling after 31st December 1989.

**Marginal Citations**

M195 1981 c. 68.

- 3 Where, under the existing statutory provisions, any excess of first category expenditure over first category income of a programme contractor would have been carried forward and treated as relevant first category expenditure of his for an accounting period ending after 31st December 1989 if those provisions had applied in relation to that period then the excess shall be carried forward and treated, under the new statutory provisions, as relevant expenditure of the contractor for any accounting period which ends after that date.
- 4 In this Part of this Schedule, references to programme contractors shall be read as including references to teletext contractors.]

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## SCHEDULE 17

Section 187.

### REPEALS

#### PART I

##### CUSTOMS AND EXCISE

1979 c. 2.	The Customs and Excise Management Act 1979.	Section 17(5)(a).Section 147(1).
1979 c. 4.	The Alcoholic Liquor Duties Act 1979.	Section 73.
1988 c. 39.	The Finance Act 1988.	Section 11(2).

The repeals of section 147(1) of the Customs and Excise Management Act 1979 and section 11(2) of the Finance Act 1988 have effect in relation to offences committed on or after the day on which this Act is passed.

#### PART II

##### VEHICLES EXCISE DUTY

1971 c. 10.	The Vehicles (Excise) Act 1971.	In Part I of Schedule 3, paragraph 5A, and in paragraph 8(2)(d) the words “any load other than”. In Part I of Schedule 4, paragraphs 12 and 13, and in paragraph 15(1) the definitions of “agricultural machine”, “fisherman’s tractor”, “mobile crane”, “recovery vehicle” and “works truck” and the word “and” preceding the last of those definitions.
1971 c. 68.	The Finance Act 1971.	Section 6(1).
1972 c. 10 (N.I.).	The Vehicles (Excise) Act (Northern Ireland) 1972.	In Part I of Schedule 3, paragraph 5A, and in paragraph 8(2)(d) the words “any load other than”. In Part I of Schedule 4, paragraphs 12 and 13, and in paragraph 15(1) the definitions of “agricultural machine”, “fisherman’s tractor”, “mobile crane”, “recovery vehicle” and “workstruck” and the

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		word “and” preceding the last of those definitions.
1976 c. 40.	The Finance Act 1976.	Section 14.
1982 c. 39.	The Finance Act 1982.	In Schedule 5, paragraph 16(6).
1987 c. 16.	The Finance Act 1987.	In Part II of Schedule 1, paragraph 4.
1988 c. 39.	The Finance Act 1988.	Section 4(3)(a). In Part II of Schedule 2, paragraph 3.

- 1 The repeals in paragraph 8 of Part I of Schedule 3 to the Vehicles(Excise) Act 1971 and paragraph 8 of Part I of Schedule 3 to the Vehicles(Excise) Act (Northern Ireland) 1972 come into force on the day on which this Act is passed.
- 2 The remaining repeals have effect in relation to licences taken out after 14th March 1989.

### PART III

#### VALUE ADDED TAX

1983 c. 55.	The Value Added Tax Act 1983.	In Schedule 5, Group 6 and, in Group 8A, Note (5).
1984 c. 43.	The Finance Act 1984.	In Schedule 6, Part II.
S.I. 1986/704.	The Value Added Tax (Land) Order 1986.	The whole Order.
S.I. 1986/716.	The Value Added Tax (Land) (No.2) Order 1986.	The whole Order.
S.I. 1987 /1072.	The Value Added Tax (Construction of Buildings) (No.2) Order 1987.	Article 2.

- 1 The repeal of Group 6 of Schedule 5 to the Value Added Tax Act 1983 has effect in relation to supplies made on or after 1st April 1989.
- 2 The remaining repeals have effect in accordance with Schedule 3 to this Act.

### PART IV

#### INCOME AND CORPORATION TAX: GENERAL

1970 c. 9.	The Taxes Management Act 1970.	In section 15(11), paragraph (b) and the word “and” preceding it.
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1988 c. 1.

The Income and Corporation  
Taxes Act 1988.

In section 131(2), the words “for the same or another chargeable period”. In section 149(1), the words “for that period” and the words “for that or any other period”. Section 170. Section 175(3). In section 176(1), the words “(but not more than six months)”. In section 178(2), paragraph (b) and the word “or” preceding it. Section 203(4). In section 231, in subsection (4) the words “and where” onwards, and subsection (5). Section 433. Section 434(4) and (5). Section 435. Section 436(3)(b). Section 507(2). In section 590(3)(d), the words “(disregarding any excess of that remuneration over the permitted maximum)”. Section 595(2) and (3). In section 596(3)(a), the word “either” and the words “or subsection (2)”. In section 600(1), the words “or have been” and the words “or has at any time been”. Section 635(4). In section 645, in subsection (3), the word “and” following paragraph (a) and subsection (5). In section 655(5), the words “in cases where the applications are made before 1st February 1990”. Section 769(7)(b) and (c). In section 824(10), the definition of “United Kingdom estate”. In Schedule 8, in paragraph 7(1), the words “, or is an associate of a person who has,”; in paragraph 13, in subparagraph (1) the word “fixed” and subparagraphs (2) and (3); and, in paragraph 14, subparagraph (2), in subparagraph (5) the words “specified in, or” and sub-

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		paragraph (7). In Schedule 9, in paragraph 10, paragraph (ii) of subparagraph (c) and the word “and” preceding it. In Schedule 23, paragraph 8.
1988 c. 39.	The Finance Act 1988.	In section 68(1), the words from “at the fixed price” to “tendered”.
1	The repeals in sections 131 and 149 and of section 170 of the Income and Corporation Taxes Act 1988 have effect in accordance with section 42 of this Act.	
2	The repeals in sections 231 and 824 of the Income and Corporation Taxes Act 1988 have effect in accordance with sections 110 and 111 of this Act.	
3	The repeals in sections 433 to 435 of the Income and Corporation Taxes Act 1988 have effect in accordance with section 84(5) of this Act and the repeal of section 436(3)(b) of that Act has effect in accordance with section 87(5) of this Act.	
4	The repeals in sections 590, 595, 596 and 600 of, and in Schedule 23 to, the Income and Corporation Taxes Act 1988 have effect in accordance with Schedule 6 to this Act.	
5	The repeals in sections 635, 645 and 655 of the Income and Corporation Taxes Act 1988 have effect in accordance with Schedule 7 to this Act.	
6	The repeal of section 769(7)(b) and (c) of the Income and Corporation Taxes Act 1988 has effect in accordance with section 100 of this Act.	
7	The repeal in the Finance Act 1988 has effect in relation to offers made on or after 11th October 1988.	

## PART V

### CLOSE COMPANIES

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

C77 Sch. 17 Pt. V restricted (retrospectively) by 1993 c. 34, s. 79(2)(a)

1970 c. 9.	The Taxes Management Act 1970.	Section 29(2). In section 31(3)(b), the words “426.”. In the Table in section 98, in the first column, the reference to paragraph 17 of Schedule 19 to the principal Act. In Schedule 3, in rule 8, the words from “or relating” to “Schedule 19 to the principal Act”.
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1972 c. 41.	The Finance Act 1972.	In Schedule 24, paragraph 6.
1979 c. 14.	The Capital Gains Tax Act 1979.	In section 89(1), paragraph (b) and the word “or” preceding it.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 127(3), paragraph (b) and the word “or” preceding it. In section 230, the word “either”, the words from “or to” to “Schedule 19” and the words “in either case”. In section 239(7), the words “subsections (5) to (7) of section 430 and”. In section 249(3), the words “and paragraph 12(1) to (3) of Schedule 19”. In section 250(7), the words “and paragraph 12 of Schedule 19”. Section 414(3). In section 416(1), the words from “except” to “Schedule 19”. Sections 423 to 430. In section 539(1), the words “including tax under section 426”. In section 681, in subsection (1), paragraph (b) and the word “and” preceding it and subsections (2) and (3). Section 686(3) and (4). Section 687(3)(b) and (c). In section 701(8), the words “426(3)”. Section 742(9)(d) and (10). In section 825(1)(a), the words from “and any” to “430(7) (a)”. In Schedule 4, paragraph 10(3). In Schedule 8, in paragraph 7(3), the second “and”. Schedule 19. In Schedule 29, in the Table in paragraph 32, the entries relating to section 29(2) of the Taxes Management Act 1970 and sections 89(1)(b) and 136(10)(b) of the Capital Gains Tax Act 1979.
1988 c. 39.	The Finance Act 1988.	Section 102(2)(a).

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- 1 The repeal in section 98 of the Taxes Management Act 1970 and the repeal of paragraph 17 of Schedule 19 to the Income and Corporation Taxes Act 1988 have effect on and after the day on which this Act is passed.
- 2 The repeal in section 89 of the Capital Gains Tax Act 1979 (and the corresponding repeal in Schedule 29 to the Income and Corporation Taxes Act 1988) have effect where the due date of issue of the share capital issued to a close company falls in an accounting period of the company beginning after 31st March 1989.
- 3 The repeal of section 414(3) of the Income and Corporation Taxes Act 1988 has effect from 1st April 1989.
- 4 The repeal of sections 423 to 430 of, and Schedule 19 to, the Income and Corporation Taxes Act 1988 has effect in accordance with section 103 of this Act.
- 5 The repeals in section 681 of the Income and Corporation Taxes Act 1988 have effect in relation to the income of bodies corporate for accounting periods beginning after 31st March 1989.
- 6 The remaining repeals have effect in relation to accounting periods beginning after 31st March 1989.

## PART VI

### CAPITAL ALLOWANCES

1968 c. 3.	The Capital Allowances Act 1968.	Section 9(b). Section 14. Section 50. Section 67(11). In section 68, in subsections (1) and (3), the words “or forestry”, in each place where they occur, and in subsection (2), the words “and forestry income”. Section 80. In section 87(4), the words “or forestry”, in both places where they occur. In section 92(5), the words “allowed or” and the words “balancing allowance or”. Section 93(1) and (2). Schedule 8.
1971 c. 68.	The Finance Act 1971.	In Schedule 8, paragraph 2 and, in paragraph 7, in sub-paragraph (1) the words “Subject to sub-paragraph (2) below” and the words from “by reason of” to the end of paragraph (b) and sub-paragraph (2).
1978 c. 42.	The Finance Act 1978.	In Schedule 6, paragraph 8.

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1980 c. 48.	The Finance Act 1980.	In section 74(6), the words from the beginning to “and”. In section 75(6), the words from the beginning to “and”.
1982 c. 39.	The Finance Act 1982.	In Schedule 12, paragraph 11.
1986 c. 41.	The Finance Act 1986.	Section 56(5). In Schedule 15, in paragraphs 1 to 3, the words “or forestry”, in each place where they occur, in paragraph 7(3), the words “subject to paragraph 9 below”, and in paragraph 11, the words “and forestry income” and the words “or forestry income”.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 521(5), the words “within the terms of section 839”.

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- 1 The repeal in paragraph 7(1)(b) of Schedule 8 to the Finance Act 1971 has effect in cases where machinery or plant is brought into use on or after the day on which this Act is passed.
- 2 The repeals in sections 68 and 87(4) of the Capital Allowances Act 1968 and in paragraphs 1 to 3 and 11 of Schedule 15 to the Finance Act 1986 have effect in relation to chargeable periods beginning on or after 6th April 1993.
- 3 The repeal in section 521(5) of the Income and Corporation Taxes Act 1988 has effect in accordance with paragraph 27 of Schedule 13 to this Act.
- 4 The repeals of the provisions listed in sub-paragraph (5) of paragraph 28 of Schedule 13 to this Act have effect in accordance with that paragraph.

## PART VII

### CAPITAL GAINS

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1973 c. 51.	The Finance Act 1973.	In section 38(3B)(a), the words “within the period of two years ending at the date of the disposal”.
1979 c. 14.	The Capital Gains Tax Act 1979.	Section 126(7)(b). Section 142A(5)(c). In Schedule 4, in paragraph 1(2), the words “at the rate of 50 per cent.”, in paragraph 3(1), the words from “by virtue” to “(settled property)”, in paragraph 3(2), the words “at the rate of 50 per cent.” and in paragraph

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		4(4), the words “(taking account” onwards.
1980 c. 48.	The Finance Act 1980.	Section 79.
1981 c. 35.	The Finance Act 1981.	Section 78. Section 96(3)(e) and (4).
1982 c. 39.	The Finance Act 1982.	Sections 81 and 82.
1984 c. 43.	The Finance Act 1984.	Section 64(2)(a).
1984 c. 51.	The Inheritance Tax Act 1984.	In section 97(2), the words from “and in this section” to the end.
1985 c. 54.	The Finance Act 1985.	In section 70(10), paragraph (a) and the word “and” following it.
1986 c. 41.	The Finance Act 1986.	In section 58(2), paragraph (b) and the word “and” preceding it. Section 101(2).
1987 c. 51.	The Finance (No.2) Act 1987.	Section 78.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In Schedule 29, in the Table in paragraph 32, the entry relating to section 126(7) of the Capital Gains Tax Act 1979.

- 1 The repeal in the Finance Act 1973 has effect in accordance with section 130 of this Act.
- 2 The repeal in section 142A of the Capital Gains Tax Act 1979 has effect in accordance with section 92 of this Act.
- 3 The repeal of section 81 of the Finance Act 1982 has effect in relation to disposals on or after 6th April 1989 or, in the case of section 81(1)(b), assets acquired on or after that date.
- 4 The repeal of section 64(2)(a) of the Finance Act 1984 has effect in accordance with section 139(1) of this Act.
- 5 The repeal in section 97(2) of the Inheritance Tax Act 1984 has effect in accordance with section 138(7) of this Act.
- 6 The repeal in the Finance (No.2) Act 1987 has effect in accordance with section 140 of this Act.
- 7 The remaining repeals have effect in relation to disposals on or after 14th March 1989 (except that they shall not have effect in relation to such a disposal in a case where the enactment in question operates in consequence of relief having been given under section 79 of the Finance Act 1980 in respect of a disposal made before that date).

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## PART VIII

### MANAGEMENT

1970 c. 9.	The Taxes Management Act 1970.	Section 16(6). In section 20, subsections (4) and (5) and, in subsection(6), the words “and in relation” onwards. In section 20B(7), the words from “to a person” to “daughter”. Sections 37 to 39. In section 40(2), the words “Subject to section 41 below,”. Section 41. In section 53(1), the words “and the reference” onwards. In section 61(5), the words “within the said five days” and the words from “The costs” to “the collector, and”. Section 62(3), so far as unrepealed. Section 64(3), so far as unrepealed. Section 70(5). Section 86(6). Section 87(4) and (5). In section 98, in the Table, in column 1, in the entry relating to Part III of the Taxes Management Act 1970, the words “, except sections 16 and 24(2)” and the entry relating to section 481(5)(k) of the Income and Corporation Taxes Act 1988. In section 118(1), the definition of “neglect”.
1973 c. 51.	The Finance Act 1973.	In Schedule 16A, paragraph 10.
1975 c. 45.	The Finance (No.2) Act 1975.	In section 47(1), the words “of not less than £25”.
1976 c. 24.	The Development Land Tax Act 1976.	In Schedule 8, paragraphs 17 and 18, so far as unrepealed.
1980 c. 48.	The Finance Act 1980.	Section 62.
1982 c. 39.	The Finance Act 1982.	Section 69.
1987 c. 51.	The Finance (No.2) Act 1987.	In section 84, subsections (1) to (3) and (5) to (8).
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 824, in subsections (1)(a) and (b), the words “of not less than £25”

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		and, in subsection (5), the words “of not less than £25” and paragraph (b) and the word “and” preceding it. In section 825(2), the words “of not less than £100”. In Schedule 19A, paragraph 10.
1988 c. 39.	The Finance Act 1988.	In section 126, subsection (1) and, in subsection (4)(b), the words “and(9)”. In Schedule 3, paragraph 29.
1989 c. 26.	The Finance Act 1989.	Section 165(2).

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- 1 The repeals in sections 16, 53 and 98 of the Taxes Management Act 1970 have effect in accordance with section 164 of this Act.
- 2 The repeals in sections 20 and 20B of the Taxes Management Act 1970 and section 126 of the Finance Act 1988 have effect with respect to notices given, or warrants issued, on or after the day on which this Act is passed.
- 3 The repeals of sections 37 to 39, in section 40, of section 41 and in section 118 of the Taxes Management Act 1970 and in Schedule 3 to the Finance Act 1988 have effect in accordance with section 149 of this Act.
- 4 The repeals in section 61 of the Taxes Management Act 1970 come into force on the day appointed under section 152(7) of this Act.
- 5 The repeals in sections 86 and 87 of the Taxes Management Act 1970, the Finance (No.2) Act 1975, the Finance Act 1980 and sections 824 and 825 of the Income and Corporation Taxes Act 1988 have effect in accordance with section 158 of this Act.
- 6 The repeal in the Finance Act 1982 has effect in accordance with section 156(4) of this Act.
- 7 The repeal of subsection (2) of section 165 of this Act has effect in relation to failures beginning on or after the day appointed under that subsection.

## PART IX

### STAMP DUTY: INSURANCE

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54 & 55 Vict. c. 39.	The Stamp Act 1891.	Section 91. Section 98(1). Section 100. Section 118. In Schedule 1, paragraph (3) of the heading beginning “Bond, Covenant, or Instrument of any kind whatsoever”, the whole of the heading beginning “Insurance”, and the whole of the heading beginning “Policy of Life Insurance”.
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4 & 5 Eliz. 2 c. 54.	The Finance Act 1956.	Section 38.
4 & 5 Eliz. 2 c. 11 (N.I.).	The Finance Act (Northern Ireland) 1956.	Section 6.
7 & 8 Eliz. 2 c. 58.	The Finance Act 1959.	In section 30(4), the words preceding paragraph (a) and the words following paragraph (c).
7 & 8 Eliz. 2 c. 9 (N.I.).	The Finance Act (Northern Ireland) 1959.	In section 5(4), the words preceding paragraph (a) and the words following paragraph (c).
1966 c. 18.	The Finance Act 1966.	Section 47.
1966 c. 21 (N.I.).	The Finance Act (Northern Ireland) 1966.	Section 5.
1970 c. 24.	The Finance Act 1970.	In Schedule 7, paragraphs 7(4) and 17.
1970 c. 21 (N.I.).	The Finance Act (Northern Ireland) 1970.	In Schedule 2, paragraphs 7(4) and 17.
1982 c. 39.	The Finance Act 1982.	Section 130.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In Schedule 14, in paragraph 3(4) the words from “and section 100” to the end.

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These repeals have effect in accordance with section 173 of this Act.

## PART X

### RATES OF INTEREST

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1970 c. 9.	The Taxes Management Act 1970.	Section 89.
1970 c. 24.	The Finance Act 1970.	Section 30.
1970 c. 21 (N.I.).	The Finance Act (Northern Ireland) 1970.	Section 1(1) and (2).
1973 c. 51.	The Finance Act 1973.	In Schedule 16A, in paragraph 3(4), paragraph (a) and the word “and” following it and the words “they apply”.
1975 c. 22.	The Oil Taxation Act 1975.	In Schedule 2, in the Table in paragraph 1, the entry relating to section 89 of the Taxes Management Act 1970.

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1975 c. 45.	The Finance (No.2) Act 1975.	Section 47(2).
1980 c. 1.	The Petroleum Revenue Tax Act 1980.	Section 2(3).
1984 c. 51.	The Inheritance Tax Act 1984.	Section 233(2) and (4).
1986 c. 41.	The Finance Act 1986.	Section 92(4) and (5).In Schedule 19, paragraph 32.
1987 c. 51.	The Finance (No.2) Act 1987.	Section 89.
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 824, subsection (1A), in subsection (2) the words “and(1A)” and in subsection (6) the words “Without prejudice to subsection(1A) above”.In section 825, subsection (2A) and in subsection (5) the words “Without prejudice to subsection (2A) above”.In Schedule 19A, in paragraph 3(4), para-graph (a) and the word “and” following it and the words “they apply”.
1988 c. 39.	The Finance Act 1988.	In Schedule 13, paragraphs 7(b) and (f) and 8.

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These repeals have effect in accordance with section 178(7) of this Act.

## PART XI

### BROADCASTING

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1981 c. 68.	The Broadcasting Act 1981.	Section 32(4A).In section 35(1)(b)(ii), the words “in the case of secondcategory profits,”.
1982 c. 39.	The Finance Act 1982.	In section 144, subsections (1), (2), (4) and (5).
1984 c. 46.	The Cable and Broadcasting Act 1984.	Section 40(2).In Schedule 5, in paragraph 40, sub-paragraphs (7), (8) and(9).
1986 c. 41.	The Finance Act 1986.	In Schedule 22, paragraph 1, and paragraphs 4 to 8.

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These repeals have effect on 1st January 1990.

## PART XII

### GOVERNMENT STOCK: REDEMPTION

11 and 12 Geo. 5 c. 32.	The Finance Act 1921.	Sections 50 and 51. Schedule 3.
5 and 6 Geo. 6 c. 21.	The Finance Act 1942.	In Schedule 11, in Part II, the amendments of the Finance Act 1921.
9 and 10 Geo. 6 c. 64.	The Finance Act 1946.	Section 66.
1969 c. 48.	The Post Office Act 1969.	Section 108(1)(c).
1982 c. 41.	The Stock Transfer Act 1982.	Section 4.

So far as relating to stock registered in the National Savings Stock Register these repeals have effect on the coming into force of the first regulations made by virtue of section 3(1)(bb) of the National Debt Act 1972 and so far as relating to other stock and bonds they have effect on the coming into force of the first regulations made by virtue of section 47(1)(bb) of the Finance Act 1942.

## PART XIII

### NATIONAL SAVINGS

1971 c. 29.	The National Savings Bank Act 1971.	Section 5(2), (5), (6) and (7). In section 26(2), paragraph (b) and the word “or” preceding it.
1982 c. 39.	The Finance Act 1982.	In Schedule 20, paragraph 4(2).

These repeals, apart from the repeal of section 5(2), (5) and (6) of the National Savings Bank Act 1971, come into force on 1st October 1989.

## PART XIV

### TITHE REDEMPTION

26 Geo. 5 & 1 Edw. 8 c. 43.	The Tithe Act 1936.	Section 2(1). In section 4(2), in paragraph (a) the words “the amount” onwards. Section 7. Part II. Section 31(7). In section 47(1), the definition of “interest date”. In section 47(4), the words “of
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		any stock, or”.InSchedule 7, paragraph 3(a) of Part I, Part II, and paragraph 2 of Part III.
5 & 6 Geo. 6 c. 21.	The Finance Act 1942.	In Schedule 11, in Part I the entry relating to Redemption Stock and inPart II the amendment of the Tithe Act 1936.
14 & 15 Geo. 6 c. 62.	The Tithe Act 1951.	In section 8(2), the words from “which” to “Act”, and the words “and appended” onwards.
6 & 7 Eliz. 2 c. 55.	The Local Government Act 1958.	In Schedule 8, paragraph 15.
1968 c. 13.	The National Loans Act 1968.	In section 16(7), the words “Part II of the Tithe Act 1936”.Section16(9)(a).In section 22(3), the words “Part II of the Tithe Act 1936”.InSchedule 1, the entries relating to section 26 of the Tithe Act 1936.
1972 c. 65.	The National Debt Act 1972.	In section 15(1), the words “section 24 of the Tithe Act 1936”.
1979 c. 14.	The Capital Gains Tax Act 1979.	In Schedule 2, in Part II, the entry relating to securities issued underPart II of the Tithe Act 1936.

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These repeals have effect from the day appointed under section 187(2)of this Act.

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**Changes to legislation:**

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