

*Status: Point in time view as at 27/07/1993.*

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## SCHEDULES

### [<sup>F1</sup> SCHEDULE 7A

Section 177A.

#### RESTRICTION ON SET-OFF OF PRE-ENTRY LOSSES

##### Textual Amendments

- F1** Sch. 7A inserted (27.7.1993 with effect as mentioned in s. 88(3) of the amending Act) by 1993 c. 34, c. 88(2), Sch. 8

##### *Application and construction of Schedule*

- 1 (1) This Schedule shall have effect, in the case of a company which is or has been a member of a group of companies (“the relevant group”), in relation to any pre-entry losses of that company.
- (2) In this Schedule “pre-entry loss”, in relation to any company, means—
- (a) any allowable loss that accrued to that company at a time before it became a member of the relevant group; or
  - (b) the pre-entry proportion of any allowable loss accruing to that company on the disposal of any pre-entry asset;
- and for the purposes of this Schedule the pre-entry proportion of any loss shall be calculated in accordance with paragraphs 2 to 5 below.
- (3) In this Schedule “pre-entry asset”, in relation to any disposal, means (subject to sub-paragraph (4) below) any asset which was held, at the time immediately before it became a member of the relevant group, by any company (whether or not the one which makes the disposal) which is or has at any time been a member of that group.
- (4) Subject to paragraph 3 below, an asset is not a pre-entry asset if—
- (a) the company which held the asset at the time it became a member of the relevant group is not the company which makes the disposal; and
  - (b) since that time that asset has been disposed of otherwise than by a disposal to which section 171 applies;
- but (without prejudice to sub-paragraph (8) below) where, on a disposal to which section 171 does not apply, any asset would cease to be a pre-entry asset by virtue of this sub-paragraph but the company making the disposal retains any interest in or over the asset in question, that interest shall be a pre-entry asset for the purposes of this Schedule.
- (5) References in this Schedule, in relation to a pre-entry asset, to the relevant time are references to the time when the company by reference to which that asset is a pre-entry asset became a member of the relevant group; and for the purposes of this Schedule—
- (a) where a company has become a member of the relevant group on more than one occasion, an asset is a pre-entry asset by reference to that company if

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it would be a pre-entry asset by reference to that company in respect of any one of those occasions; but

- (b) references in the following provisions of this Schedule to the time when a company became a member of the relevant group, in relation to assets held on more than one such occasion as is mentioned in paragraph (a) above, are references to the later or latest of those occasions.

- (6) Subject to so much of sub-paragraph (6) of paragraph 9 below as requires groups of companies to be treated as separate groups for the purposes of that paragraph, if—

- (a) the principal company of a group of companies (“the first group”) has at any time become a member of another group (“the second group”) so that the two groups are treated as the same by virtue of subsection (10) of section 170, and
- (b) the second group, together in pursuance of that subsection with the first group, is the relevant group,

then, except where sub-paragraph (7) below applies, the members of the first group shall be treated for the purposes of this Schedule as having become members of the relevant group at that time, and not by virtue of that subsection at the times when they became members of the first group.

- (7) This sub-paragraph applies where—

- (a) the persons who immediately before the time when the principal company of the first group became a member of the second group owned the shares comprised in the issued share capital of the principal company of the first group are the same as the persons who, immediately after that time, owned the shares comprised in the issued share capital of the principal company of the relevant group; and
- (b) the company which is the principal company of the relevant group immediately after that time—
  - (i) was not the principal company of any group immediately before that time; and
  - (ii) immediately after that time had assets consisting entirely, or almost entirely, of shares comprised in the issued share capital of the principal company of the first group.

- (8) For the purposes of this Schedule, but subject to paragraph 3 below—

- (a) an asset acquired or held by a company at any time and an asset held at a later time by that company, or by any company which is or has been a member of the same group of companies as that company, shall be treated as the same asset if the value of the second asset is derived in whole or in part from the first asset; and
- (b) if—
  - (i) any asset is treated (whether by virtue of paragraph (a) above or otherwise) as the same as an asset held by a company at a later time, and
  - (ii) the first asset would have been a pre-entry asset in relation to that company,

the second asset shall also be treated as a pre-entry asset in relation to that company;

and paragraph (a) above shall apply, in particular, where the second asset is a freehold and the first asset is a leasehold the lessee of which acquires the reversion.

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- (9) In determining for the purposes of this Schedule whether any allowable loss accruing to a company under section 116(10)(b) is a loss that accrued before the company became a member of the relevant group, any loss so accruing shall be deemed to have accrued at the time of the relevant transaction within the meaning of section 116(2).
- (10) In determining for the purposes of this Schedule whether any allowable loss accruing to a company on a disposal under section 212 is a loss that accrued before the company became a member of the relevant group, the provisions of section 213 shall be disregarded.

*Pre-entry proportion of losses on pre-entry assets*

- 2 (1) Subject to paragraphs 3 to 5 below, the pre-entry proportion of an allowable loss accruing on the disposal of a pre-entry asset shall be whatever would be the allowable loss accruing on that disposal if that loss were the sum of the amounts determined, for every item of relevant allowable expenditure, according to the following formula—

$$A \times \frac{B}{C} \times \frac{D}{E}$$

- (2) In sub-paragraph (1) above, in relation to any disposal of a pre-entry asset—
- A is the total amount of the allowable loss;
  - B is the sum of the amount of the item of relevant allowable expenditure for which an amount falls to be determined under this paragraph and the indexed rise in that item;
  - C is the sum of the total amount of all the relevant allowable expenditure and the indexed rises in each of the items comprised in that expenditure;
  - D is the length of the period beginning with the relevant pre-entry date and ending with the relevant time or, if that date is after that time, nil; and
  - E is the length of the period beginning with the relevant pre-entry date and ending with the day of the disposal.
- (3) In sub-paragraph (2) above “the relevant pre-entry date”, in relation to any item of relevant allowable expenditure, means whichever is the later of—
- (a) the date on which that item of expenditure is, or (on the assumption applying by virtue of sub-paragraphs (4) and (5) below) would be, treated for the purposes of section 54 as having been incurred; and
  - (b) 1st April 1982.
- (4) Where any asset (“the second asset”) is treated by virtue of section 127 as the same as another asset (“the first asset”) previously held by any company, this paragraph and (so far as applicable) paragraph 3 below shall have effect, except in relation to the calculation of any indexed rise—
- (a) as if any item of relevant allowable expenditure consisting in consideration given for the acquisition of the second asset had been incurred at the same time as the expenditure consisting in the consideration for the acquisition of the first asset; and
  - (b) where there is more than one such time as if that item were incurred at those different times in the same proportions as the consideration for the acquisition of the first asset.

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- (5) Without prejudice to sub-paragraph (4) above, this paragraph shall have effect in relation to any asset which—
- (a) was held by a company at the time when it became a member of the relevant group, and
  - (b) is treated as having been acquired by that company for such a consideration as secured that on the disposal in pursuance of which it was acquired neither a gain nor a loss accrued,
- as if that company and every person who acquired that asset or the equivalent asset at a material time had been the same person and, accordingly, as if the asset had been acquired by that company when it or the equivalent asset was acquired by the first of those persons to have acquired it at a material time and the time at which any expenditure had been incurred were to be determined accordingly.
- (6) In sub-paragraph (5) above, the reference, in relation to any asset, to a material time is a reference to any time which—
- (a) is before the occasion on which the company in question is treated as having acquired the asset for such a consideration as is mentioned in that sub-paragraph; and
  - (b) is or is after the last occasion before that occasion on which any person acquired that asset or the equivalent asset otherwise than by virtue of an acquisition which—
    - (i) is treated as an acquisition for such a consideration; or
    - (ii) is the acquisition by virtue of which any asset is treated as the equivalent asset;
- and this paragraph shall have effect in relation to any asset to which that sub-paragraph applies without regard to the provisions of section 56(2).
- (7) In sub-paragraphs (5) and (6) above, the reference in relation to the acquisition of any asset by any company, to the equivalent asset is a reference to any asset which (whether by virtue of paragraph 1(8) above or otherwise) would be treated in relation to that company as the same as the asset in question.
- (8) The preceding provisions of this paragraph and (so far as applicable) paragraph 3 below shall have effect where—
- (a) a loss accrues to any company under section 116(10)(b), and
  - (b) the old asset consists in or is treated for the purposes of that paragraph as including pre-entry assets,
- as if the disposal on which the loss accrues were that disposal of the old asset which is assumed to have been made for the purposes of the calculation required by section 116(10)(a).
- (9) In this paragraph—
- “indexed rise” shall be construed in accordance with section 54 and, where the formula set out in sub-paragraph (1) above is applied for the purposes of paragraph 3 below, without regard to section 110; and
- “relevant allowable expenditure”, in relation to any allowable loss, means the expenditure which falls by virtue of section 38(1)(a) or (b) to be taken into account in the computation of that loss.

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### *Disposals of pooled assets*

- 3
- (1) This paragraph shall apply (subject to paragraphs 4 and 5 below) where any assets acquired by any company fall to be treated with other assets as indistinguishable parts of the same asset (“a pooled asset”) and the whole or any part of that asset is referable to pre-entry assets.
  - (2) For the purposes of this Schedule, where a pooled asset has at any time contained a pre-entry asset—
    - (a) the pooled asset shall be treated, until all the pre-entry assets included in that asset have (on the assumptions for which this paragraph provides) been disposed of, as incorporating a part which is referable to pre-entry assets; and
    - (b) the size of that part shall be determined in accordance with the following provisions of this paragraph.
  - (3) Where there is a disposal of any part of a pooled asset and the proportion of the asset which is disposed of does not exceed the proportion of that asset which is represented by any part of it which is not, at the time of the disposal, referable to pre-entry assets, that disposal shall be deemed for the purposes of this Schedule to be confined to assets which are not pre-entry assets so that—
    - (a) except where paragraph 4(2) below applies, no part of any loss accruing on that disposal shall be deemed to be a pre-entry loss, and
    - (b) the part of the pooled asset which after the disposal is to be treated as referable to pre-entry assets shall be correspondingly increased.
  - (4) Where there is a disposal of any part of a pooled asset and the proportion of the asset which is disposed of does exceed the proportion of that asset mentioned in sub-paragraph (3) above, that disposal shall be deemed for the purposes of this Schedule to relate to pre-entry assets only so far as required for the purposes of the excess, so that—
    - (a) any loss accruing on that disposal shall be deemed for the purposes of this Schedule to be an allowable loss on the disposal of a pre-entry asset;
    - (b) the pre-entry proportion of that loss shall be deemed (except where paragraph 4(3) below applies) to be the amount (so far as it does not exceed the amount of the loss actually accruing) which would have been the pre-entry proportion under paragraph 2 above of any loss accruing on the disposal of the excess if the excess were a separate asset; and
    - (c) the pooled asset shall be treated after the disposal as referable entirely to pre-entry assets.
  - (5) Where there is a disposal of the whole of a pooled asset or of any part of a pooled asset which, at the time of the disposal, is referable entirely to pre-entry assets, paragraphs (a) and (b) of sub-paragraph (4) above shall apply to the disposal of the asset or the part as they apply in relation to the assumed disposal of the excess mentioned in that sub-paragraph but, in the case of the disposal of the whole of a pooled asset only a part of which is referable to pre-entry assets, as if the reference in paragraph (b) of that sub-paragraph to the excess were a reference to that part.
  - (6) For the purpose of determining, under sub-paragraph (4) or (5) above, what would have been the pre-entry proportion of any loss accruing on the disposal of any assets as a separate asset it shall be assumed that none of the assets treated as comprised in that asset has ever been comprised in a pooled asset with any assets other than those which are taken to constitute that separate asset for the purposes of the determination.

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- (7) The assets which are comprised in any asset which is treated for any of the purposes of this paragraph as a separate asset shall be identified on the following assumptions, that is to say—
- (a) that assets are disposed of in the order of the dates which for the purposes of paragraph 2 above are the relevant pre-entry dates in relation to the consideration for their acquisition;
  - (b) subject to that, that assets with earlier relevant times are disposed of before those with later relevant times;
  - (c) that disposals made when a company was not a member of the relevant group are made in accordance with the preceding provisions of this paragraph, as they have effect in relation to the group of companies of which the company was a member at the time of the disposal or, as the case may be, of which it had most recently been a member before that time; and
  - (d) subject to paragraphs (a) to (c) above, that a company disposes of assets in the order in which it acquired them.
- (8) Where in the case of any asset there is more than one date which is the relevant pre-entry date in relation to the consideration for its acquisition, the date taken into account for the purposes of sub-paragraph (7)(a) above shall be the date which is the earlier or earliest of those dates if any date which is the relevant pre-entry date in relation to the acquisition of an option to acquire that asset is disregarded.
- (9) In applying the formula set out in paragraph 2(1) above in relation to the disposal of an asset which is treated for any of the purposes of this paragraph as comprised in a separate asset—
- (a) the amount or value of any consideration for the acquisition or disposal of that asset; and
  - (b) the incidental costs of the acquisition or disposal of that asset,
- shall be determined (to the exclusion of any apportionment under section 129 or 130) by apportioning any consideration or costs relating to both that asset and other assets acquired or disposed of at the same time according to the proportion that is borne by that asset to all the assets to which the consideration or costs related.
- (10) Where—
- (a) any asset (“the latest asset”) falls (whether by virtue of paragraph 1(8) above or otherwise) to be treated as acquired at the same time as another asset (“the original asset”) which was acquired before the latest asset, and
  - (b) the latest asset is either comprised in a pooled asset a part of which is referable to pre-entry assets or is or includes an asset which is to be treated as so comprised,
- sub-paragraph (7) above shall apply not only in relation to the latest asset as if it were the original asset but also, in the first place, for identifying the asset which is to be treated as the original asset for the purposes of this paragraph.
- (11) Sub-paragraphs (3)(b) and (4)(c) above shall have effect in relation to any disposal without prejudice to the effect of any subsequent acquisition of assets falling to be treated as part of a pooled asset on the determination of whether, and to what extent, any part of that pooled asset is to be treated as referable to pre-entry assets.

*Rule to prevent pre-entry losses on pooled assets being treated as post-entry losses*

- 4 (1) This paragraph shall apply if—

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- (a) there is a disposal of any part of a pooled asset which for the purposes of paragraph 3 above is treated as incorporating a part which is referable to pre-entry assets;
  - (b) the assets disposed of are or include assets (“the post-entry element of the disposal”) which for the purposes of that paragraph are treated as having been incorporated in the part of the pooled asset which is not referable to pre-entry assets;
  - (c) an allowable loss (“the actual loss”) accrues on the disposal; and
  - (d) the amount which in computing the allowable loss is allowed as a deduction of relevant allowable expenditure (“the expenditure actually allowed”) exceeds the relevant allowable expenditure attributable to the post-entry element of the disposal.
- (2) Subject to sub-paragraph (6) below, where the post-entry element of the disposal comprises all of the assets disposed of—
  - (a) the actual loss shall be treated for the purposes of this Schedule as a loss accruing on the disposal of a pre-entry asset; and
  - (b) the pre-entry proportion of that loss shall be treated as being the amount (so far as it does not exceed the amount of the actual loss) by which the expenditure actually allowed exceeds the relevant allowable expenditure attributable to the post-entry element of the disposal.
- (3) Subject to sub-paragraph (6) below, where—
  - (a) the actual loss is treated by virtue of paragraph 3 above as a loss accruing on the disposal of a pre-entry asset, and
  - (b) the expenditure actually allowed exceeds the actual cost of the assets to which the disposal is treated as relating,the pre-entry proportion of the loss shall be treated as being the amount which (so far as it does not exceed the amount of the actual loss) is equal to the sum of that excess and what would, apart from this paragraph and paragraph 5 below, be the pre-entry proportion of the loss accruing on the disposal.
- (4) For the purposes of sub-paragraph (3) above the actual cost of the assets to which the disposal is treated as relating shall be taken to be the sum of—
  - (a) the relevant allowable expenditure attributable to the post-entry element of the disposal; and
  - (b) the amount which, in computing the pre-entry proportion of the loss in accordance with paragraph 3(4)(b) and (6) above, would be treated for the purposes of C in the formula in paragraph 2(1) above as the total amount allowable as a deduction of relevant allowable expenditure in respect of such of the assets disposed of as are treated as having been incorporated in the part of the pooled asset which is referable to pre-entry assets.
- (5) Without prejudice to sub-paragraph (6) below, where sub-paragraph (2) or (3) above applies for the purpose of determining the pre-entry proportion of any loss, no election shall be capable of being made under paragraph 5 below for the purpose of enabling a different amount to be taken as the pre-entry proportion of that loss.
- (6) Where—
  - (a) the pre-entry proportion of the loss accruing to any company on the disposal of any part of a pooled asset falls to be determined under sub-paragraph (2) or (3) above,

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- (b) the amount determined under that sub-paragraph exceeds the amount determined under sub-paragraph (7) below (“the alternative pre-entry loss”), and
  - (c) the company makes an election for the purposes of this sub-paragraph, the pre-entry proportion of the loss determined under sub-paragraph (2) or (3) above shall be reduced to the amount of the alternative pre-entry loss.
- (7) For the purposes of sub-paragraph (6) above the alternative pre-entry loss is whatever apart from this paragraph would have been the pre-entry proportion of the loss on the disposal in question, if for the purposes of this Schedule the identification of the assets disposed of were to be made disregarding the part of the pooled asset which was not referable to pre-entry assets, except to the extent (if any) by which the part referable to pre-entry assets fell short of what was disposed of.
- (8) An election for the purposes of sub-paragraph (6) above with respect to any loss shall be made by the company to which the loss accrued by notice to the inspector given within—
- (a) the period of two years beginning with the end of the accounting period of that company in which the disposal is made on which the loss accrues; or
  - (b) such longer period as the Board may by notice allow;
- and paragraph 5 below may be taken into account under sub-paragraph (7) above in determining the amount of the alternative pre-entry loss as if an election had been made under that paragraph but shall be so taken into account only if the election for the purposes of sub-paragraph (6) above contains an election corresponding to the election that, apart from this paragraph, might have been made under that paragraph.
- (9) For the purposes of this paragraph the relevant allowable expenditure attributable to the post-entry element of the disposal shall be the amount which, in computing any allowable loss accruing on a disposal of that element as a separate asset, would have been allowed as a deduction of relevant allowable expenditure if none of the assets comprised in that element had ever been comprised in a pooled asset with any assets other than those which are taken to constitute that separate asset for the purposes of this sub-paragraph.
- (10) For the purpose of identifying the assets which are to be treated for the purposes of sub-paragraph (9) above as comprised in the post-entry element of the disposal, a company shall be taken to dispose of assets in the order in which it acquired them.
- (11) Paragraph 3(9) above shall apply for the purposes of sub-paragraph (9) above as it applies for the purposes of the application as mentioned in paragraph 3(9) above of the formula so mentioned; and paragraph 3(10) above shall apply for the purposes of this paragraph in relation to sub-paragraph (10) above as it applies for the purposes of paragraph 3 above in relation to sub-paragraph (7) of that paragraph.
- (12) In this paragraph references to an amount allowed as a deduction of relevant allowable expenditure are references to the amount falling to be so allowed in accordance with section 38(1)(a) and (b) and (so far as applicable) section 42, together with the indexed rises in the items comprised in that expenditure or, as the case may be, in the appropriate portions of those items.
- (13) In sub-paragraph (12) above “indexed rise” has the same meaning as it has by virtue of paragraph 2(9) above in relation to the application for the purposes of paragraph 3 above of the formula set out in paragraph 2(1) above.



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- (14) Nothing in this paragraph shall affect the operation of the rules contained in paragraph 3 above for determining, for any purposes other than those of sub-paragraph (7) above, how much of any pooled asset at any time consists of a part which is referable to pre-entry assets.

*Alternative calculation by reference to market value*

- 5 (1) Subject to paragraph 4(5) above and the following provisions of this paragraph, if—
- (a) an allowable loss accrues on the disposal by any company of any pre-entry asset; and
  - (b) that company makes an election for the purposes of this paragraph in relation to that loss,
- the pre-entry proportion of that loss (instead of being the amount determined under the preceding provisions of this Schedule) shall be whichever is the smaller of the amounts mentioned in sub-paragraph (2) below.
- (2) Those amounts are—
- (a) the amount of any loss which would have accrued if that asset had been disposed of at the relevant time at its market value at that time; and
  - (b) the amount of the loss accruing on the disposal mentioned in sub-paragraph (1)(a) above.
- (3) Where no loss would have accrued on the disposal assumed for the purposes of sub-paragraph (2)(a) above, the loss accruing on the disposal mentioned in sub-paragraph (1)(a) above shall be deemed not to have a pre-entry proportion.
- (4) Sub-paragraph (5) below shall apply where—
- (a) an election is made for the purposes of this paragraph in relation to any loss accruing on the disposal (“the real disposal”) of the whole or any part of a pooled asset; and
  - (b) the case is one in which (but for the election) paragraph 3 above would apply for determining the pre-entry proportion of a loss accruing on the real disposal.
- (5) In a case falling within sub-paragraph (4) above, this paragraph shall have effect as if the amount specified in sub-paragraph (2)(a) above were to be calculated—
- (a) on the basis that the disposal which is assumed to have taken place was a disposal of all the assets falling within sub-paragraph (6) below; and
  - (b) by apportioning any loss that would have accrued on that disposal between—
    - (i) such of the assets falling within paragraph (6) below as are assets to which the real disposal is treated as relating, and
    - (ii) the remainder of the assets so falling,according to the proportions of any pooled asset whose disposal is assumed which would have been, respectively, represented by assets mentioned in sub-paragraph (i) above and by assets mentioned in sub-paragraph (ii) above, and where assets falling within sub-paragraph (6) below have different relevant times there shall be assumed to have been a different disposal at each of those times.

(6) Assets fall within this sub-paragraph if—

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- (a) immediately before the time which is the relevant time in relation to those assets, they were comprised in a pooled asset which consisted of or included assets which fall to be treated for the purposes of paragraph 3 above as—
    - (i) comprised in the part of the pooled asset referable to pre-entry assets; and
    - (ii) disposed of on the real disposal;
  - (b) they were also comprised in such a pooled asset immediately after that time; and
  - (c) the pooled asset in which they were so comprised immediately after that time was held by a member of the relevant group.
- (7) Where—
- (a) an election is made under paragraph 4(6) above requiring the determination by reference to this paragraph of the alternative pre-entry loss accruing on the disposal of any assets comprised in a pooled asset, and
  - (b) in pursuance of that election any amount of the loss that would have accrued on an assumed disposal is apportioned in accordance with sub-paragraph (5) above to assets (“the relevant assets”) which—
    - (i) are treated for the purposes of that determination as assets to which the disposal related, but
    - (ii) otherwise continue after the disposal to be treated as incorporated in the part of that pooled asset which is referable to pre-entry assets,
 then, on any further application of this paragraph for the purpose of determining the pre-entry proportion of the loss accruing on a subsequent disposal of assets comprised in that pooled asset, that amount (without being apportioned elsewhere) shall be deducted from so much of the loss accruing on the same assumed disposal as, apart from the deduction, would be apportioned to the relevant assets on that further application of this paragraph.
- (8) An election under this paragraph with respect to any loss shall be made by the company in question by notice to the inspector given within—
- (a) the period of two years beginning with the end of the accounting period of that company in which the disposal is made on which the loss accrues; or
  - (b) such longer period as the Board may by notice allow.

*Restrictions on the deduction of pre-entry losses*

- 6 (1) In the calculation of the amount to be included in respect of chargeable gains in any company’s total profits for any accounting period—
- (a) if in that period there is any chargeable gain from which the whole or any part of any pre-entry loss accruing in that period is deductible in accordance with paragraph 7 below, the loss or, as the case may be, that part of it shall be deducted from that gain;
  - (b) if, after all such deductions as may be made under paragraph (a) above have been made, there is in that period any chargeable gain from which the whole or any part of any pre-entry loss carried forward from a previous accounting period is deductible in accordance with paragraph 7 below, the loss or, as the case may be, that part of it shall be deducted from that gain;
  - (c) the total chargeable gains (if any) remaining after the making of all such deductions as may be made under paragraph (a) or (b) above shall be subject

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- to deductions in accordance with section 8(1) in respect of any allowable losses that are not pre-entry losses; and
- (d) any pre-entry loss which has not been the subject of a deduction under paragraph (a) or (b) above (as well as any other losses falling to be carried forward under section 8(1)) shall be carried forward to the following accounting period of that company.
- (2) Subject to sub-paragraph (1) above, any question as to which or what part of any pre-entry loss has been deducted from any particular chargeable gain shall be decided—
- (a) where it falls to be decided in respect of the setting of losses against gains in any accounting period ending before 16th March 1993 as if—
- (i) pre-entry losses accruing in any such period had been set against chargeable gains before any other allowable losses accruing in that period were set against those gains;
- (ii) pre-entry losses carried forward to any such period had been set against chargeable gains before any other allowable losses carried forward to that period were set against those gains; and
- (iii) subject to sub-paragraphs (i) and (ii) above, the pre-entry losses carried forward to any accounting period ending on or after 16th March 1993 were identified with such losses as may be determined in accordance with such elections as may be made by the company to which they accrued;
- and
- (b) in any other case, in accordance with such elections as may be made by the company to which the loss accrued;
- and any question as to which or what part of any pre-entry loss has been carried forward from one accounting period to another shall be decided accordingly.
- (3) An election by any company under this paragraph shall be made by notice to the inspector given—
- (a) in the case of an election under sub-paragraph (2)(a)(iii) above, before the end of the period of two years beginning with the end of the accounting period of that company which was current on 16th March 1993; and
- (b) in the case of an election under sub-paragraph (2)(b) above, before the end of the period of two years beginning with the end of the accounting period of that company in which the gain in question accrued.
- (4) For the purposes of this Schedule where any matter falls to be determined under this paragraph by reference to an election but no election is made, it shall be assumed, so far as consistent with any elections that have been made—
- (a) that losses are set against gains in the order in which the losses accrued; and
- (b) that the gains against which they are set are also determined according to the order in which they accrued with losses being set against earlier gains before they are set against later ones.

*Gains from which pre-entry losses are to be deductible*

- 7 (1) A pre-entry loss that accrued to a company before it became a member of the relevant group shall be deductible from a chargeable gain accruing to that company if the gain is one accruing—

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- (a) on a disposal made by that company before the date on which it became a member of the relevant group (“the entry date”);
  - (b) on the disposal of an asset which was held by that company immediately before the entry date; or
  - (c) on the disposal of any asset which—
    - (i) was acquired by that company on or after the entry date from a person who was not a member of the relevant group at the time of the acquisition; and
    - (ii) since its acquisition from that person has not been used or held for any purposes other than those of a trade which was being carried on by that company at the time immediately before the entry date and which continued to be carried on by that company until the disposal.
- (2) The pre-entry proportion of an allowable loss accruing to any company on the disposal of a pre-entry asset shall be deductible from a chargeable gain accruing to that company if—
- (a) the gain is one accruing on a disposal made, before the date on which it became a member of the relevant group, by that company and that company is the one (“the initial company”) by reference to which the asset on the disposal of which the loss accrues is a pre-entry asset;
  - (b) the pre-entry asset and the asset on the disposal of which the gain accrues were each held by the same company at a time immediately before it became a member of the relevant group; or
  - (c) the gain is one accruing on the disposal of an asset which—
    - (i) was acquired by the initial company (whether before or after it became a member of the relevant group) from a person who, at the time of the acquisition, was not a member of that group; and
    - (ii) since its acquisition from that person has not been used or held for any purposes other than those of a trade which was being carried on, immediately before it became a member of the relevant group, by the initial company and which continued to be carried on by the initial company until the disposal.
- (3) Where two or more companies become members of the relevant group at the same time and those companies were all members of the same group of companies immediately before they became members of the relevant group, then, without prejudice to paragraph 9 below—
- (a) an asset shall be treated for the purposes of sub-paragraph (1)(b) above as held, immediately before it became a member of the relevant group, by the company to which the pre-entry loss in question accrued if that company is one of those companies and the asset was in fact so held by another of those companies;
  - (b) two or more assets shall be treated for the purposes of sub-paragraph (2)(b) above as assets held by the same company immediately before it became a member of the relevant group wherever they would be so treated if all those companies were treated as a single company; and
  - (c) the acquisition of an asset shall be treated for the purposes of sub-paragraphs (1)(c) and (2)(c) above as an acquisition by the company to which the pre-entry loss in question accrued if that company is one of those companies and the asset was in fact acquired (whether before or after they became members of the relevant group) by another of those companies.

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(4) Paragraph 1(4) above shall apply for determining for the purposes of this paragraph whether an asset on the disposal of which a chargeable gain accrues was held at the time when a company became a member of the relevant group as it applies for determining whether that asset is a pre-entry asset in relation to that group by reference to that company.

(5) Subject to sub-paragraph (6) below, where a gain accrues on the disposal of the whole or any part of—

- (a) any asset treated as a single asset but comprising assets only some of which were held at the time mentioned in paragraph (b) of sub-paragraph (1) or (2) above, or
- (b) an asset which is treated as held at that time by virtue of a provision requiring an asset which was not held at that time to be treated as the same as an asset which was so held,

a pre-entry loss shall be deductible by virtue of paragraph (b) of sub-paragraph (1) or (2) above from the amount of that gain to the extent only of such proportion of that gain as is attributable to assets held at that time or, as the case may be, represents the gain that would have accrued on the asset so held.

(6) Where—

- (a) a chargeable gain accrues by virtue of subsection (10) of section 116 on the disposal of a qualifying corporate bond,
- (b) that bond was not held as required by paragraph (b) of sub-paragraph (1) or (2) above at the time mentioned in that paragraph, and
- (c) the whole or any part of the asset which is the old asset for the purposes of that section was so held,

the question whether that gain is one accruing on the disposal of an asset the whole or any part of which was held by a particular company at that time shall be determined for the purposes of this paragraph as if the bond were deemed to have been so held to the same extent as the old asset.

#### *Change of a company's nature*

8 (1) If—

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

the trade carried on before that change, or which has become small or negligible, shall be disregarded for the purposes of paragraph 7(1)(c) and (2)(c) above in relation to any time before the company became a member of the group in question.

(2) In sub-paragraph (1) above the reference to a major change in the nature or conduct of a trade includes a reference to—

- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or
- (b) a major change in customers, markets or outlets of the trade;

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and this paragraph shall apply even if the change is the result of a gradual process which began outside the period of three years mentioned in sub-paragraph (1)(a) above.

- (3) Where the operation of this paragraph depends on circumstances or events at a time after the company becomes a member of any group of companies (but not more than three years after), an assessment to give effect to this paragraph shall not be out of time if made within six years from that time or the latest such time.

*Identification of “the relevant group” and application of Schedule to every connected group*

- 9 (1) This paragraph shall apply where there is more than one group of companies which would be the relevant group in relation to any company.
- (2) Where any loss has accrued on the disposal by any company of any asset, this Schedule shall not apply by reference to any group of companies in relation to any loss accruing on that disposal unless—
- (a) that group is a group in relation to which that loss is a pre-entry loss by virtue of paragraph 1(2)(a) above or, if there is more than one such group, the one of which that company most recently became a member;
  - (b) that group, in a case where there is no group falling within paragraph (a) above, is either—
    - (i) the group of which that company is a member at the time of the disposal, or
    - (ii) if it is not a member of a group of companies at that time, the group of which that company was last a member before that time;
  - (c) that group, in a case where there is a group falling within paragraph (a) above, is a group of which that company was a member at any time in the accounting period of that company in which it became a member of the group falling within that paragraph;
  - (d) that group is a group the principal company of which is or has been, or has been under the control of—
    - (i) the company by which the disposal is made, or
    - (ii) another company which is or has been a member of a group by reference to which this Schedule applies in relation to the loss in question by virtue of paragraph (a), (b) or (c) above;
- or
- (e) that group is a group of which either—
    - (i) the principal company of a group by reference to which this Schedule so applies, or
    - (ii) a company which has had that principal company under its control, is or has been a member;

and sub-paragraphs (3) to (5) below shall apply in the case of any loss accruing on the disposal of any asset where, by virtue of this sub-paragraph, there are two or more groups (“connected groups”) by reference to which this Schedule applies.

- (3) This Schedule shall apply separately in relation to each of the connected groups (so far as they are not groups in relation to which the loss is a pre-entry loss by virtue of paragraph 1(2)(a) above) for the purpose of—
- (a) determining whether the loss on the disposal of any asset is a loss on the disposal of a pre-entry asset; and

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- (b) calculating the pre-entry proportion of that loss.
- (4) Subject to sub-paragraph (5) below, paragraph 6 above shall have effect—
- (a) as if the pre-entry proportion of any loss accruing on the disposal of an asset which is a pre-entry asset in the case of more than one of the connected groups were the largest pre-entry proportion of that loss calculated in accordance with sub-paragraph (3) above; and
  - (b) so that, where the loss accruing on the disposal of any asset is a pre-entry loss by virtue of paragraph 1(2)(a) above in the case of any of the connected groups, that loss shall be the pre-entry loss for the purposes of paragraph 6 above, and not any amount which is the pre-entry proportion of that loss in relation to any of the other groups.
- (5) Where, on the separate application of this Schedule in the case of each of the groups by reference to which this Schedule applies, there is, in the case of the disposal of any asset, a pre-entry loss by reference to each of two or more of the connected groups, no amount in respect of the loss accruing on the disposal shall be deductible under paragraph 7 above from any chargeable gain if any of the connected groups is a group in the case of which, on separate applications of that paragraph in relation to each group, the amount deductible from that gain in respect of that loss is nil.
- (6) Notwithstanding that the principal company of one group (“the first group”) has become a member of another (“the second group”), those two groups shall not by virtue of section 170(10) be treated for the purposes of this paragraph as the same group if the principal company of the first group was under the control, immediately before it became a member of the second group, of a company which at that time was already a member of the second group.
- (7) Where, in the case of the disposal of any asset—
- (a) two or more groups which but for sub-paragraph (6) above would be treated as the same group are treated as separate groups by virtue of that sub-paragraph; and
  - (b) one of those groups is a group of which either—
    - (i) the principal company of a group by reference to which this Schedule applies by virtue of sub-paragraph (2)(a), (b) or (c) above in relation to any loss accruing on the disposal, or
    - (ii) a company which has had that principal company under its control, is or has been a member,
- this paragraph shall have effect as if that principal company had been a member of each of the groups mentioned in paragraph (a) above.

*Appropriations to stock in trade*

- 10 Where, but for an election under subsection (3) of section 161, there would be deemed to have been a disposal at any time by any company of any asset—
- (a) the amount by which the market value of the asset may be treated as increased in pursuance of that election shall not include the amount of any pre-entry loss that would have accrued on that disposal; and
  - (b) this Schedule shall have effect as if the pre-entry loss of the last mentioned amount had accrued to that company at that time.

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### *Continuity provisions*

- 11 (1) This paragraph applies where provision has been made by or under any enactment (“the transfer legislation”) for the transfer of property, rights and liabilities to any person from—
- (a) a body established by or under any enactment for the purpose, in the exercise of statutory functions, of carrying on any undertaking or industrial or other activity in the public sector or of exercising any other statutory functions;
  - (b) a subsidiary of such a body; or
  - (c) a company wholly owned by the Crown.
- (2) A loss shall not be a pre-entry loss for the purposes of this Schedule in relation to any company to whom a transfer has been made by or under the transfer legislation if that loss—
- (a) accrued to the person from whom the transfer has been made; and
  - (b) falls to be treated, in accordance with any enactment made in relation to transfers by or under that legislation, as a loss accruing to that company.
- (3) For the purposes of this Schedule where a company became a member of the relevant group by virtue of the transfer by or under the transfer legislation of any shares in or other securities of that company or any other company—
- (a) a loss that accrued to that company before it so became a member of that group shall not be a pre-entry loss in relation to that group; and
  - (b) no asset held by that company when it so became a member of that group shall by virtue of that fact be a pre-entry asset.
- (4) For the purposes of this paragraph a company shall be regarded as wholly owned by the Crown if it is—
- (a) a company limited by shares in which there are no issued shares held otherwise than by, or by a nominee of, the Treasury, a Minister of the Crown, a Northern Ireland department or another company wholly owned by the Crown; or
  - (b) a company limited by guarantee of which no person other than the Treasury, a Minister of the Crown or a Northern Ireland department, or a nominee of the Treasury, a Minister of the Crown or a Northern Ireland department, is a member.
- (5) In this paragraph—
- “enactment” includes any provision of any Northern Ireland legislation, within the meaning of section 24 of the <sup>M1</sup>Interpretation Act 1978; and
- “statutory functions” means functions under any enactment, under any subordinate legislation, within the meaning of the Interpretation Act 1978, or under any statutory rules, within the meaning of the <sup>M2</sup>Statutory Rules (Northern Ireland) Order 1979.

#### **Marginal Citations**

**M1** 1978 c. 30.

**M2** S.I. 1979/1573 (N.I. 13).



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*Companies changing groups on certain transfers of shares etc.*

12 For the purposes of this Schedule, and without prejudice to paragraph 11 above, where—

- (a) a company which is a member of a group of companies becomes at any time a member of another group of companies as the result of a disposal of shares in or other securities of that company or any other company; and
- (b) that disposal is one on which, by virtue of any enactment specified in section 35(3)(d), neither a gain nor a loss would accrue,

this Schedule shall have effect in relation to the losses that accrued to that company before that time and the assets held by that company at that time as if any time when it was a member of the first group were included in the period during which it is treated as having been a member of the second group.]

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