

*Status: Point in time view as at 21/07/2008.*

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## SCHEDULES

### <sup>F1</sup>SCHEDULE A1

#### Textual Amendments

- F1** Sch. A1 omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 45**

### SCHEDULE 1

Section 3.

#### APPLICATION OF EXEMPT AMOUNT [<sup>F2</sup>AND REPORTING LIMITS] IN CASES INVOLVING SETTLED PROPERTY

#### Textual Amendments

- F2** Words in Sch. 1 heading inserted (with application in accordance with Sch. 28 para. 7 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 28 para. 2(1)**

- [<sup>F3</sup>A1 (1) In determining the exempt amount available to the trustees of a settlement in relation to a year of assessment—
- (a) a principal settlement and its sub-fund settlements shall be treated, for the purposes of paragraphs 1 and 2 below, as if no sub-fund elections had been made, and
  - (b) paragraph 3 below shall apply for the purposes of determining the exempt amount available to each member of the class consisting of a principal settlement and its sub-fund settlements.
- (2) The reference in sub-paragraph (1) above to a principal settlement and its sub-fund settlements means a principal settlement in respect of which one or more sub-fund elections are treated as having taken effect.]

#### Textual Amendments

- F3** Sch. 1 para. A1 inserted (with effect in accordance with Sch. 12 para. 45 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 44(1)**

- 1 (1) For any year of assessment during the whole or part of which settled property is held on trusts which secure that, during the lifetime of a mentally disabled person or a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate—

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- (a) not less than half of the property which is applied is applied for the benefit of that person, and
- (b) that person is entitled to not less than half of the income arising from the property, or no such income may be applied for the benefit of any other person,

[<sup>F4</sup>sections 3(1) to (5C) and 3A] shall apply to the trustees of the settlement as they apply to an individual[<sup>F5</sup>, but with the modifications specified in this paragraph].

- (2) The trusts on which settled property is held shall not be treated as falling outside sub-paragraph (1) above by reason only of the powers conferred on the trustees by section 32 of the <sup>M1</sup>Trustee Act 1925 or section 33 of the <sup>M2</sup>Trustee Act (Northern Ireland) 1958 (powers of advancement); and the reference in that sub-paragraph to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the <sup>M3</sup>Trustee Act 1925 (protective trusts), be construed as a reference to the period during which the income is held on trust for him.

[<sup>F6</sup>(2A) As they apply by virtue of sub-paragraph (1) above—

- (a) section 3(5A) has effect with the omission of paragraph (b), and
- (b) section 3(5B) has effect with the omission of the words “or (b)”.]

- (3) In relation to a settlement which is one of 2 or more qualifying settlements comprised in a group, this paragraph shall have effect as if for the references in [<sup>F7</sup>sections 3 and 3A(1)(a)] to the exempt amount for the year [<sup>F8</sup>(except the one in section 3(2))] there were substituted references to one-tenth of that exempt amount or, if it is more, to such amount as results from dividing the exempt amount for the year by the number of settlements in the group.

(4) For the purposes of sub-paragraph (3) above—

- (a) a qualifying settlement is any settlement (other than an excluded settlement) which is made on or after 10th March 1981 and to the trustees of which this paragraph applies for the year of assessment; and
- (b) all qualifying settlements in relation to which the same person is the settlor constitute a group.

- (5) If, in consequence of 2 or more persons being settlors in relation to it, a settlement is comprised in 2 or more groups comprising different numbers of settlements, sub-paragraph (3) above shall apply to it as if the number by which the exempt amount for the year is to be divided were the number of settlements in the largest group.

[<sup>F9</sup>(5A) In its application to the trustees of a settlement, section 3A(1) has effect with the substitution for the reference to section 8 of the Management Act of a reference to section 8A of that Act.]

(6) In this paragraph—

“mentally disabled person” means a person who by reason of mental disorder within the meaning of the <sup>M4</sup>Mental Health Act 1983 is incapable of administering his property or managing his affairs;

“attendance allowance” means an allowance under section 64 of the <sup>M5</sup>Social Security Contributions and Benefits Act 1992 or section 64 of the <sup>M6</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992;

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“disability living allowance” means a disability living allowance under section 71 of the <sup>M7</sup>Social Security Contributions and Benefits Act 1992 or section 71 of the <sup>M8</sup>Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

[<sup>F10</sup>“excluded settlement” has the same meaning] as in paragraph 2 below.

- (7) [<sup>F11</sup>An officer of the Board] may by notice require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this paragraph.

#### Textual Amendments

- F4** Words in Sch. 1 para. 1(1) substituted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 4\(2\)\(a\)](#)
- F5** Words in Sch. 1 para. 1(1) inserted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 4\(2\)\(b\), 8](#)
- F6** Sch. 1 para. 1(2A) inserted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 4\(3\), 8](#)
- F7** Words in Sch. 1 para. 1(3) substituted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 4\(4\)\(a\)](#)
- F8** Words in Sch. 1 para. 1(3) inserted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 4\(4\)\(b\), 8](#)
- F9** Sch. 1 para. 1(5A) inserted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 2\(2\)](#)
- F10** Words in Sch. 1 para. 1(6) substituted (with effect in accordance with Sch. 12 para. 28(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 28\(1\)](#)
- F11** Words in Sch. 1 para. 1(7) substituted (with effect in accordance with Sch. 28 para. 9 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 4\(5\)](#)

#### Marginal Citations

- M1** 1925 c. 19.
- M2** 1958 c. 23 (N.I.).
- M3** 1925 c. 19.
- M4** 1983 c. 20.
- M5** 1992 c. 6.
- M6** 1992 c. 9.
- M7** 1992 c. 4.
- M8** 1992 c. 7.

- 2 (1) For any year of assessment during the whole or part of which any property is settled property, not being a year of assessment for which paragraph 1(1) above applies, [<sup>F12</sup>sections 3(1) to (5C) and 3A] shall apply to the trustees of a settlement as they apply to an individual but with the following modifications.

- (2) In [<sup>F13</sup>section 3(1), (5A), (5B) and (5C)] [<sup>F14</sup>and section 3A(1)(a)] for “the exempt amount for the year” there shall be substituted “one-half of the exempt amount for the year”.

[<sup>F15</sup>(2A) As they apply by virtue of sub-paragraph (1) above—

- (a) section 3(5A) has effect with the omission of paragraph (b), and  
(b) section 3(5B) has effect with the omission of the words “or (b)”.]

<sup>F16</sup>(3) . . . . .

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- (4) In relation to a settlement which is one of 2 or more qualifying settlements comprised in a group, sub-paragraph (2) above shall have effect as if for the reference to one-half of the exempt amount for the year there were substituted a reference to one-tenth of that exempt amount or, if it is more, to such amount as results from dividing one-half of the exempt amount for the year by the number of settlements in the group.
- (5) For the purposes of sub-paragraph (4) above—
- (a) a qualifying settlement is any settlement (other than an excluded settlement) which is made after 6th June 1978 and to the trustees of which this paragraph applies for the year of assessment; and
  - (b) all qualifying settlements in relation to which the same person is the settlor constitute a group.
- (6) If, in consequence of 2 or more persons being settlors in relation to it, a settlement is comprised in 2 or more groups comprising different numbers of settlements, sub-paragraph (4) above shall apply to it as if the number by which one-half of the exempt amount for the year is to be divided were the number of settlements in the largest group.
- [<sup>F17</sup>(6A) In its application to the trustees of a settlement, section 3A(1) has effect with the substitution for the reference to section 8 of the Management Act of a reference to section 8A of that Act.]
- (7) In this paragraph <sup>F18</sup>... “excluded settlement” means—
- (a) any settlement the trustees of which are not for the whole or any part of the year of assessment <sup>F19</sup>... resident and ordinarily resident in the United Kingdom; and
  - (b) any settlement the property comprised in which—
    - (i) is held for charitable purposes only and cannot become applicable for other purposes; or
    - (ii) is held for the purposes of [<sup>F20</sup>a registered pension scheme, a superannuation fund to which section 615(3) of the Taxes Act applies or an occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) that is not a registered pension scheme].
- <sup>F21</sup>(8) .....
- (9) [<sup>F22</sup>An officer of the Board] may by notice require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this paragraph.

#### Textual Amendments

- F12** Words in Sch. 1 para. 2(1) substituted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 5\(2\)](#)
- F13** Words in Sch. 1 para. 2(2) substituted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 5\(3\)\(a\)](#), [8](#)
- F14** Words in Sch. 1 para. 2(2) inserted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 5\(3\)\(b\)](#)
- F15** Sch. 1 para. 2(2A) inserted (retrospectively) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 paras. 5\(4\)](#), [8](#)

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- F16** Sch. 1 para. 2(3) repealed (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 5\(5\)](#), [Sch. 43 Pt. 3\(7\)](#)
- F17** Sch. 1 para. 2(6A) inserted (with application in accordance with Sch. 28 para. 7 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 2\(3\)](#)
- F18** Words in Sch. 1 para. 2(7) repealed (with effect in accordance with Sch. 12 para. 28(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 28\(2\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F19** Words in Sch. 1 para. 2(7)(a) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 38, 41](#), [Sch. 26 Pt. 3\(15\)](#)
- F20** Words in Sch. 1 para. 2(7)(b)(ii) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 42\(2\)](#) (with [Sch. 36](#))
- F21** Sch. 1 para. 2(8) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 42\(3\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))
- F22** Words in Sch. 1 para. 2(9) substituted (with effect in accordance with Sch. 28 para. 9 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 28 para. 5\(6\)](#)

- [<sup>F23</sup> (1) The exempt amount available in relation to a year of assessment to the trustees of each settlement in the class consisting of a principal settlement and its sub-fund settlements shall be the exempt amount available to the trustees of the principal settlement in relation to the year, determined in accordance with paragraph 1 or 2 above as if no sub-fund elections had been made.
- (2) But if there are two or more non-excluded settlements in the class consisting of a principal settlement and its sub-fund settlements, the exempt amount available to the trustees of each settlement in the class in relation to the year shall be the amount specified in sub-paragraph (1) above divided by the number of non-excluded settlements in the class.
- (3) In this paragraph—  
“excluded settlement” has the meaning given by paragraph 2(7) above,  
and  
references to a settlement having sub-fund settlements, and similar expressions, are references to a settlement being the principal settlement in respect of which one or more sub-fund elections are treated as having taken effect.]

#### Textual Amendments

- F23** Sch. 1 para. 3 inserted (with effect in accordance with Sch. 12 para. 45 of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 44\(2\)](#)

## SCHEDULE 2

Section 35.

### ASSETS HELD ON 6TH APRIL 1965

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

- C1** Sch. 2 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 10](#)
- C2** Sch. 2 modified (19.9.1994) by [Coal industry Act 1994 \(c. 21\)](#), s. 68(4), [Sch. 4 para. 10](#) (with [Sch. 4 para. 14](#)); [S.I. 1994/2189](#), art. 2, Sch.

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- C3** Sch. 2 modified (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1), [Sch. 7 para. 5](#) (with [Sch. 7 para. 9\(1\)](#))

## PART I

### QUOTED SECURITIES

#### *Deemed acquisition at 6th April 1965 value*

- 1 (1) This paragraph applies—
- (a) to shares and securities which on 6th April 1965 had quoted market values on a recognised stock exchange, or which had such quoted market values at any time in the period of 6 years ending on 6th April 1965, and
  - (b) to rights of unit holders in any unit trust scheme the prices of which are published regularly by the managers of the scheme.
- (2) For the purposes of this Act it shall be assumed, wherever relevant, that any assets to which this paragraph applies were sold by the owner, and immediately reacquired by him, at their market value on 6th April 1965.
- <sup>F24</sup>(3) .....

#### Textual Amendments

- F24** Sch. 2 para. 1(3) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(2\)](#)

#### *Restriction of gain or loss by reference to actual cost*

- 2 (1) Subject to paragraph 4 below and section 109(4), paragraph 1(2) above shall not apply in relation to a disposal of assets—
- (a) if on the assumption in paragraph 1(2) a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if paragraph 1(2) did not apply, or
  - (b) if on the assumption in paragraph 1(2) a loss would so accrue and either a smaller loss or a gain would accrue if paragraph 1(2) did not apply,
- and accordingly the amount of the gain or loss accruing on the disposal shall be computed without regard to the preceding provisions of this Schedule except that in a case where this sub-paragraph would otherwise substitute a loss for a gain or a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.
- (2) For the purpose of—
- (a) identifying shares or securities held on 6th April 1965 with shares or securities previously acquired, and
  - (b) identifying the shares or securities held on that date with shares or securities subsequently disposed of, and distinguishing them from shares or securities acquired subsequently,

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so far as that identification is needed for the purposes of sub-paragraph (1) above, and so far as the shares or securities are of the same class, shares or securities acquired at a later time shall be deemed to be disposed of before shares or securities acquired at an earlier time.

(3) Sub-paragraph (2) above has effect subject to section 105.

3 (1) Where—

- (a) a disposal was made out of quoted securities before 20th March 1968, and
- (b) by virtue of paragraph 2 of Schedule 7 to the <sup>M9</sup>Finance Act 1965 some of the quoted securities out of which the disposal was made were acquired before 6th April 1965 and some later,

then in computing the gain accruing on any disposal of quoted securities the question of what remained undisposed of on the earlier disposal shall be decided on the footing that paragraph 2 of that Schedule did not apply as respects that earlier disposal.

(2) The rules of identification in paragraph 2(2) above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

#### Marginal Citations

**M9** 1965 c. 25.

#### *Election for pooling*

- 4 (1) This paragraph applies in relation to quoted securities as respects which an election under paragraphs 4 to 7 of Schedule 5 to the 1979 Act had not been made before the operative date, within the meaning of Part II of Schedule 13 to the <sup>M10</sup>Finance Act 1982, (so that they do not constitute a 1982 holding within the meaning of section 109), but does not apply in relation to relevant securities within the meaning of section 108.
- (2) If a person so elects, quoted securities covered by the election shall be excluded from paragraph 2 above, so that paragraph 1(2) above is not excluded by that paragraph as respects those securities, and sub-paragraphs (3) to (7) (which re-enact section 65 of the 1979 Act) apply.
- (3) Subject to section 105, any number of quoted securities of the same class held by one person in one capacity shall for the purposes of this Act be regarded as indistinguishable parts of a single asset (in this paragraph referred to as a holding) growing or diminishing on the occasions on which additional securities of the class in question are acquired, or some of the securities of the class in question are disposed of.
- (4) Without prejudice to the generality of sub-paragraph (3) above, a disposal of quoted securities in a holding, other than the disposal outright of the entire holding, is a disposal of part of an asset and the provisions of this Act relating to the computation of a gain accruing on a disposal of part of an asset shall apply accordingly.
- (5) Securities shall not be treated for the purposes of this paragraph as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange, but shall be treated in

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accordance with this paragraph notwithstanding that they are identified in some other way by the disposal or by the transfer or delivery giving effect to it.

<sup>F25</sup>(6) .....

(7) Nothing in this paragraph shall be taken as affecting the manner in which the market value of any asset is to be ascertained.

(8) An election made by any person under this paragraph shall be as respects all disposals made by [<sup>F26</sup>the person] at any time, including disposals made before the election but after 19th March 1968—

(a) of quoted securities of kinds other than fixed-interest securities and preference shares, or

(b) of fixed-interest securities and preference shares,

and references to the quoted securities covered by an election shall be construed accordingly.

Any person may make both of the elections.

(9) An election under this paragraph shall not cover quoted securities which the holder acquired on a disposal after 19th March 1968 in relation to which [<sup>F27</sup>section] 171(1) applies, but this paragraph shall apply to the quoted securities so held if the person who made the original disposal (that is to say <sup>F28</sup>... the other member of the group of companies) makes an election covering quoted securities of the kind in question.

For the purpose of identifying quoted securities disposed of by the holder with quoted securities acquired by [<sup>F29</sup>the holder] on a disposal in relation to which [<sup>F27</sup>section] 171(1) applies, so far as they are of the same class, quoted securities acquired at an earlier time shall be deemed to be disposed of before quoted securities acquired at a later time.

(10) For the avoidance of doubt it is hereby declared—

- (a) that where a person makes an election under this paragraph as respects quoted securities which [<sup>F30</sup>the person] holds in one capacity, that election does not cover quoted securities which [<sup>F30</sup>the person] holds in another capacity, and
- (b) that an election under this paragraph is irrevocable.

(11) An election under this paragraph shall be made by notice to [<sup>F31</sup>an officer of the Board given—

- <sup>F32</sup>(a) .....
- (b) <sup>F33</sup>... not later than the expiration of 2 years from the end of the accounting period in which the first relevant disposal is made; or
- (c) <sup>F34</sup>... within such further time as the Board may allow.]

(12) Subject to paragraph 5 below, in this paragraph the “first relevant disposal”, in relation to each of the elections referred to in sub-paragraph (8) of this paragraph, means the first disposal after 19th March 1968 by the person making the election of quoted securities of the kind covered by that election.

(13) 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 give effect to an election under this paragraph.



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### Textual Amendments

- F25** Sch. 2 para. 4(6) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(a\)](#)
- F26** Words in Sch. 2 para. 4(8) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(b\)](#)
- F27** Word in Sch. 2 para. 4(9) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(c\)\(i\)](#)
- F28** Words in Sch. 2 para. 4(9) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(c\)\(ii\)](#)
- F29** Words in Sch. 2 para. 4(9) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(c\)\(iii\)](#)
- F30** Words in Sch. 2 para. 4(10)(a) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(d\)](#)
- F31** Words in Sch. 2 para. 4(11) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 42\(2\)](#)
- F32** Sch. 2 para. 4(11)(a) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(e\)\(i\)](#)
- F33** Words in Sch. 2 para. 4(11)(b) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(e\)\(ii\)](#)
- F34** Words in Sch. 2 para. 4(11)(c) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(3\)\(e\)\(iii\)](#)

### Marginal Citations

- M10** [1982 c. 39](#).

### *Election by principal company of group*

- 5 (1) In the case of companies which at the relevant time are members of a group of companies—
- an election under paragraph 4 above by the company which at that time is the principal company of the group shall have effect also as an election by any other company which at that time is a member of the group, and
  - no election under that paragraph may be made by any other company which at that time is a member of the group.
- (2) In this paragraph “the relevant time”, in relation to a group of companies, and in relation to each of the elections referred to in paragraph 4(8) above, is the first occasion after 19th March 1968 when any company which is then a member of a group disposes of quoted securities of a kind covered by that election, and for the purposes of paragraph 4(11) above that occasion is, in relation to the group, “the first relevant disposal”.
- (3) This paragraph shall not apply in relation to quoted securities of either kind referred to in paragraph 4(8) above which are owned by a company which, in some period after 19th March 1968 and before the relevant time, was not a member of the group if in that period it had made an election under paragraph 4 above in relation to securities of that kind (or was treated by virtue of this paragraph, in relation to another group, as having done so), or had made a disposal of quoted securities of that kind and did not make an election within the time limited by paragraph 4(11) above.

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- (4) This paragraph shall apply notwithstanding that a company ceases to be a member of the group at any time after the relevant time.
- (5) In this paragraph “company” and “group” shall be construed in accordance with section 170(2) to (9).

*Pooling at value on 6th April 1965: exchange of securities etc.*

- 6 (1) Where a person who has made only one of the elections under paragraph 4 above disposes of quoted securities which, in accordance with Chapter II of Part IV, are to be regarded as being or forming part of a new holding, the election shall apply according to the nature of the quoted securities disposed of, notwithstanding that under that Chapter the new holding is to be regarded as the same asset as the original holding and that the election would apply differently to the original holding.
- (2) Where the election does not cover the disposal out of the new holding but does cover quoted securities of the kind comprised in the original holding, then in computing the gain accruing on the disposal out of the new holding (in accordance with paragraph 3 above) the question of what remained undisposed of on any disposal out of the original holding shall be decided on the footing that paragraph 3 above applied to that earlier disposal.
- (3) In the converse case (that is to say, where the election covers the disposal out of the new holding, but does not cover quoted securities of the kind comprised in the original holding) the question of how much of the new holding derives from quoted securities held on 6th April 1965 and how much derives from other quoted securities, shall be decided as it is decided for the purposes of paragraph 3 above.

*Underwriters*

- 7 No election under paragraph 4 above shall cover quoted securities comprised in any underwriter’s premiums trust fund, or premiums trust fund deposits, or personal reserves, being securities comprised in funds to which section 206 applies.

*Interpretation of paragraphs 3 to 7*

- 8 (1) In paragraphs 3 to 7 above—  
“quoted securities” means assets to which paragraph 1 above applies,  
“fixed interest security” means any security as defined by section 132,  
“preference share” means any share the holder whereof has a right to a dividend at a fixed rate, but has no other right to share in the profits of the company.
- (2) If and so far as the question whether at any particular time a share was a preference share depends on the rate of dividends payable on or before 5th April 1973, the reference in the definition of “preference share” in sub-paragraph (1) above to a dividend at a fixed rate includes a dividend at a rate fluctuating in accordance with the standard rate of income tax.

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## PART II

### LAND REFLECTING DEVELOPMENT VALUE

- 9 (1) Subject to paragraph 17(2) of Schedule 11, this Part of this Schedule shall apply in relation to a disposal of an asset which is an interest in land situated in the United Kingdom—
- (a) if, but for this paragraph, the expenditure allowable as a deduction in computing the gain accruing on the disposal would include any expenditure incurred before 6th April 1965, and
  - (b) if the consideration for the asset acquired on the disposal exceeds the current use value of the asset at the time of the disposal, or if any material development of the land has been carried out after 17th December 1973 since the person making the disposal acquired the asset.
- (2) For the purposes of this Act, it shall be assumed that, in relation to the disposal and, if it is a part disposal, in relation to any subsequent disposal of the asset which is an interest in land situated in the United Kingdom, that asset was sold by the person making the disposal, and immediately reacquired by him, at its market value on 6th April 1965.
- (3) Sub-paragraph (2) above shall apply also in relation to any prior part disposal of the asset and, if tax has been charged, or relief allowed, by reference to that part disposal on a different footing, all such adjustments shall be made, whether by way of assessment or discharge or repayment of tax, as are required to give effect to the provisions of this sub-paragraph.
- (4) Sub-paragraph (2) above shall not apply in relation to a disposal of assets—
- (a) on the assumption in that sub-paragraph a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue (computed in accordance with the provisions of this Act) if it did not apply, or
  - (b) if on the assumption in sub-paragraph (2) a loss would so accrue and either a smaller loss or a gain would accrue if that sub-paragraph did not apply,
- and accordingly the amount of the gain or loss accruing on the disposal shall be computed without regard to the provisions of this Schedule except that in a case where this sub-paragraph would otherwise substitute a loss for a gain or a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.
- (5) For the purposes of this Part of this Schedule—
- (a) “interest in land” means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other’s ability to grant the estate, interest or right in question, except that it does not include the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land, or, in Scotland, the interest of a creditor in a charge or security of any kind over land; and
  - (b) “land” includes buildings.
- 10 (1) For the purposes of this Part of this Schedule, the current use value of an interest in land shall be ascertained in accordance with the following provisions of this Part,

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and in this Part the time as at which current use value is to be ascertained is referred to as “the relevant time”.

- (2) Subject to the following provisions of this Part of this Schedule, the current use value of an interest in land at the relevant time is the market value of that interest at that time calculated on the assumption that it was at that time, and would continue to be, unlawful to carry out any material development of the land other than any material development thereof which, being authorised by planning permission in force at that time, was begun before that time.

In relation to any material development which was begun before 18th December 1973 this sub-paragraph shall have effect with the omission of the words from “other than” to “before that time”.

- (3) In this paragraph “planning permission” has the same meaning as in the <sup>M11</sup>Town and Country Planning Act 1990, or, in Scotland, the <sup>M12</sup>Town and Country Planning (Scotland) Act 1972, or, in Northern Ireland, the <sup>M13</sup>Planning (Northern Ireland) Order 1991, and in determining for the purposes of this paragraph what material development of any land was authorised by planning permission at a time when there was in force in respect of the land planning permission granted on an outline application (that is to say, an application for planning permission subject to subsequent approval on any matters), any such development of the land which at that time—

- (a) was authorised by that permission without any requirement as to subsequent approval; or
- (b) not being so authorised, had been approved in the manner applicable to that planning permission,

but no other material development, shall for those purposes be taken to have been authorised by that permission at that time.

- (4) Where the value to be ascertained is the current use value of an interest in land which has been disposed of by way of a part disposal of an asset (“the relevant asset”) consisting of an interest in land, the current use value at the relevant time of the interest disposed of shall be the relevant fraction of the current use value of the relevant asset at that time, calculated on the same assumptions as to the lawfulness or otherwise of any material development as fall to be made under this Part in calculating the current use value at that time of the interest disposed of.
- (5) For the purposes of sub-paragraph (4) above “the relevant fraction” means that fraction of the sums mentioned in paragraph (6) below which under subsection (2) of section 42 is, or would but for subsection (4) of that section be, allowable as a deduction in computing the amount of the gain accruing on the part disposal.
- (6) The sums referred to in sub-paragraph (5) above are the sums which, if the entire relevant asset had been disposed of at the time of the part disposal, would be allowable by virtue of section 38(1)(a) and (b) as a deduction in computing the gain accruing on that disposal of the relevant asset.
- (7) Sub-paragraphs (4) to (6) above shall not apply—
- (a) in the case of a disposal of an interest in land by way of a part disposal if, on making the disposal, the person doing so no longer has any interest in the land which is subject to that interest; or
  - (b) in a case to which the following provisions of this paragraph apply.

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- (8) In computing any gain accruing to a person on a part disposal of an interest in land resulting under subsection (1) of section 22 from the receipt as mentioned in paragraph (a), (c) or (d) of that subsection of a capital sum, the current use value at the relevant time of the interest out of which the part disposal was made shall be taken to be what it would have been at that time if the circumstances which caused the capital sum to be received had not arisen.

#### Marginal Citations

- M11** 1990 c. 8.  
**M12** 1972 c. 52.  
**M13** S.I. 1991/1220 (N.I.11)

- 11 (1) The current use value of an interest in land which is either—
- (a) a freehold interest which is subject to a lease or an agreement for a lease, or
  - (b) an interest under a lease or agreement for a lease,
- shall be ascertained without regard to any premium required under the lease or agreement for a lease or any sublease, or otherwise under the terms subject to which the lease or sublease was or is to be granted, but with regard to all other rights under the lease or prospective lease (and, for the current use value of an interest under a lease subject to a sublease, under the sublease).
- (2) If under sub-paragraph (1) above an interest under a lease or agreement for a lease would have a negative value, the current use value of the interest shall be nil.
- (3) If a lease is granted out of any interest in land after 17th December 1973, then, in computing any gain accruing on any disposal of the reversion on the lease made while the lease subsists, the current use value of the reversion at any time after the grant of the lease shall not exceed what would have been at that time the current use value of the interest in the land of the person then owning the reversion if that interest had not been subject to the lease.
- (4) In the application of this paragraph to Scotland, “freehold” means the estate or interest of the proprietor of the dominium utile or, in the case of property other than feudal property, of the owner, and “reversion” means the interest of the landlord in property subject to a lease.
- 12 In computing any gain accruing to a person on a disposal of a lease which is a wasting asset, the current use value of the lease at the time of its acquisition by the person making the disposal shall be the fraction—
- of what its current use value at that time would be apart from this paragraph, where—
- A is equal to so much of the expenditure attributable to the lease under section 38(1)(a) and (b) as is not under paragraph 1 of Schedule 8 excluded therefrom for the purposes of the computation of the gain accruing on the disposal, and
  - B is equal to the whole of the expenditure which would be so attributable to the lease for those purposes apart from the said paragraph 1.
- 13 (1) In this Part of this Schedule, “material development”, in relation to any land, means the making of any change in the state, nature or use of the land, but the doing of any of the following things in the case of any land shall not be taken to involve material development of the land, that is to say—

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- (a) the carrying out of works for the maintenance, improvement, enlargement or other alteration of any building, so long as the cubic content of the original building is not exceeded by more than one-tenth;
- (b) the carrying out of works for the rebuilding, as often as occasion may require, of any building which was in existence at the relevant time, or of any building which was in existence in the period of 10 years immediately preceding the day on which that time falls but was destroyed or demolished before the relevant time, so long as (in either case) the cubic content of the original building is not exceeded by more than one-tenth;
- (c) the use of any land for the purposes of agriculture or forestry, the use for any of those purposes of any building occupied together with land so used, and the carrying out on any land so used of any building or other operations required for the purposes of that use;
- (d) the carrying out of operations on land for, or the use of land for, the display of an advertisement, announcement or direction of any kind;
- (e) the carrying out of operations for, or the use of the land for, car parking, provided that such use shall not exceed 3 years;
- (f) in the case of a building or other land which at the relevant time was used for a purpose falling within any class specified in sub-paragraph (4) below or which, being unoccupied at that time, was last used for any such purpose, the use of that building or land for any other purpose falling within the same class;
- (g) in the case of a building or other land which at the relevant time was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose at the relevant time or, as the case may be, one-tenth of the area of the land so used at that time;
- (h) in the case of land which at the relevant time was being temporarily used for a purpose other than the purpose for which it was normally used, the resumption of the use of the land for the last-mentioned purpose;
- (i) in the case of land which was unoccupied at the relevant time, the use of the land for the purpose for which it was last used before that time.

References in this paragraph to the cubic content of a building are references to that content as ascertained by external measurement.

- (2) For the purposes of sub-paragraph (1)(a) and (b)—
- (a) where 2 or more buildings are included in a single development the whole of that development may be regarded as a single building, and where 2 or more buildings result from the redevelopment of a single building the new buildings may together be regarded as a single building, but 2 or more buildings shall not be treated as included in a single development unless they are or were comprised in the same curtilage; and
  - (b) in determining whether or not the cubic content of the original building has been exceeded by more than one-tenth, the cubic content of the building after the carrying out of the works in question shall be treated as reduced by the amount (if any) by which so much of that cubic content as is attributable to one or more of the matters mentioned in sub-paragraph (3) below exceeds so much of the cubic content of the original building as was attributable to one or more of the matters so mentioned.

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- (3) The matters referred to in sub-paragraph (2)(b) are the following, that is to say—
- (a) means of escape in case of fire;
  - (b) car-parking or garage space;
  - (c) accommodation for plant providing heating, air-conditioning or similar facilities.
- (4) The classes of purposes mentioned in sub-paragraph (1)(f) are the following—
- Class A—Use as a dwelling-house or for the purpose of any activities which are wholly or mainly carried on otherwise than for profit, except use for a purpose falling within Class B, C or E.
- Class B—Use as an office or retail shop.
- Class C—Use as a hotel, boarding-house or guest-house, or as premises licensed for the sale of intoxicating liquors for consumption on the premises.
- Class D—Use for the purpose of any activities wholly or mainly carried on for profit, except—
- (a) use as a dwelling-house or for the purposes of agriculture or forestry; and
  - (b) use for a purpose falling within Class B, C or E.
- Class E—Use for any of the following purposes, namely—
- (a) the carrying on of any process for or incidental to any of the following purposes, namely—
    - (i) the making of any article or of any part of any article, or the production of any substance;
    - (ii) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolishing of any article; or
    - (iii) without prejudice to (i) or (ii) above, the getting, dressing or treatment of minerals,being a process carried on in the course of a trade or business other than agriculture or forestry, but excluding any process carried on at a dwelling-house or retail shop;
  - (b) storage purposes (whether or not involving use as a warehouse or repository) other than storage purposes ancillary to a purpose falling within Class B or C.
- 14 (1) For the purposes of this Part, material development shall be taken to be begun on the earliest date on which any specified operation comprised in the material development is begun.
- (2) In this paragraph “specified operation” means any of the following, that is to say—
- (a) any work of construction in the course of the erection of a building;
  - (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
  - (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in (b) above;
  - (d) any operation in the course of laying out or constructing a road or part of a road;
  - (e) any change in the use of any land.
- (3) Subject to sub-paragraph (4) below, material development shall for the purposes of this Part of this Schedule not be treated as carried out after a particular date if it was begun on or before that date.

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- (4) If, in the case of any land—
- (a) material development thereof was begun on or before 17th December 1973 but was not completed on or before that date, and
  - (b) the development was on that date to any extent not authorised by planning permission (within the meaning of paragraph 10(3) above) then in force,
- then, for the purposes of this Part of this Schedule, so much of the development carried out after that date as was not so authorised on that date shall be treated as begun on the earliest date after 17th December 1973 on which any specified operation comprised therein is begun, and shall accordingly be treated as material development of the land carried out after 17th December 1973.
- 15 In this Part of this Schedule, unless the context otherwise requires—
- “agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly;
- “article” means an article of any description;
- “building” includes part of a building and references to a building may include references to land occupied therewith and used for the same purposes;
- “forestry” includes afforestation;
- “minerals” includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working;
- “retail shop” includes any premises of a similar character where retail trade or business (including repair work) is carried on;
- “substance” means any natural or artificial substance or material, whether in solid or liquid form or in the form of a gas or vapour.

### PART III

#### OTHER ASSETS

*Apportionment by reference to straightline growth of gain or loss over period of ownership*

- 16 (1) This paragraph applies subject to Parts I and II of this Schedule.
- (2) On the disposal of assets by a person whose period of ownership began before 6th April 1965 only so much of any gain accruing on the disposal as is under this paragraph to be apportioned to the period beginning with 6th April 1965 shall be a chargeable gain.
- (3) Subject to the following provisions of this Schedule, the gain shall be assumed to have grown at a uniform rate from nothing at the beginning of the period of ownership to its full amount at the time of the disposal so that, calling the part of that period before 6th April 1965, P, and the time beginning with 6th April 1965 and ending with the time of the disposal T, the fraction of the gain which is a chargeable gain is—



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$$\frac{T}{P + T}.$$

- (4) If any of the expenditure which is allowable as a deduction in the computation of the gain is within section 38(1)(b)—
- the gain shall be attributed to the expenditure, if any, allowable under section 38(1)(a) as one item of expenditure, and to the respective items of expenditure under section 38(1)(b) in proportion to the respective amounts of those items of expenditure,
  - sub-paragraph (3) of this paragraph shall apply to the part of the gain attributed to the expenditure under section 38(1)(a),
  - each part of the gain attributed to the items of expenditure under section 38(1)(b) shall be assumed to have grown at a uniform rate from nothing at the time when the relevant item of expenditure was first reflected in the value of the asset to the full amount of that part of the gain at the time of the disposal,

so that, calling the respective proportions of the gain  $E(0)$ ,  $E(1)$ ,  $E(2)$  and so on (so that they add up to unity) and calling the respective periods from the times when the items under section 38(1)(b) were reflected in the value of the asset to 5th April 1965  $P(1)$ ,  $P(2)$  and so on, and employing also the abbreviations in sub-paragraph (3) above, the fraction of the gain which is a chargeable gain is—

$$E(0) \frac{T}{P + T} + E(1) \frac{T}{P(1) + T} + E(2) \frac{T}{P(2) + T} \text{ and so on.}$$

- (5) In a case within sub-paragraph (4) above where there is no initial expenditure (that is no expenditure under section 38(1)(a)) or that initial expenditure is, compared with any item of expenditure under section 38(1)(b), disproportionately small having regard to the value of the asset immediately before the subsequent item of expenditure was incurred, the part of the gain which is not attributable to the enhancement of the value of the asset due to any item of expenditure under section 38(1)(b) shall be deemed to be attributed to expenditure incurred at the beginning of the period of ownership and allowable under section 38(1)(a), and the part or parts of the gain attributable to expenditure under section 38(1)(b) shall be reduced accordingly.
- (6) The beginning of the period over which a gain, or part of a gain, is under sub-paragraphs (3) and (4) above to be treated as growing shall not be earlier than 6th April 1945, and this sub-paragraph shall have effect notwithstanding any provision in this Schedule or elsewhere in this Act.
- (7) If in pursuance of section 42 an asset's market value at a date before 6th April 1965 is to be ascertained, sub-paragraphs (3) to (5) above shall have effect as if that asset had been on that date sold by the owner, and immediately reacquired by him, at that market value.
- (8) If in pursuance of section 42 an asset's market value at a date on or after 6th April 1965 is to be ascertained sub-paragraphs (3) to (5) above shall have effect as if—
- the asset on that date had been sold by the owner, and immediately reacquired by him, at that market value, and

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- (b) accordingly, the computation of any gain on a subsequent disposal of that asset shall be computed—
- (i) by apportioning in accordance with this paragraph the gain or loss over a period ending on that date (the date of the part disposal), and
  - (ii) by bringing into account the entire gain or loss over the period from the date of the part disposal to the date of subsequent disposal.
- (9) For the purposes of this paragraph the period of ownership of an asset shall, where under section 43 account is to be taken of expenditure in respect of an asset from which the asset disposed of was derived, or where it would so apply if there were any relevant expenditure in respect of that other asset, include the period of ownership of that other asset.
- (10) If under this paragraph part only of a gain is a chargeable gain, the fraction in section 223(2) shall be applied to that part instead of to the whole of the gain.

*Election for valuation at 6th April 1965*

- 17 (1) If the person making a disposal so elects, paragraph 16 above shall not apply in relation to that disposal and it shall be assumed, both for the purposes of computing the gain accruing to that person on the disposal, and for all other purposes both in relation to that person and other persons, that the assets disposed of, and any assets of which account is to be taken in relation to the disposal under section 43, being assets which were in the ownership of that person on 6th April 1965, were on that date sold, and immediately reacquired, by him at their market value on 6th April 1965.
- (2) Sub-paragraph (1) above shall not apply in relation to a disposal of assets if on the assumption in that sub-paragraph a loss would accrue on that disposal to the person making the disposal and either a smaller loss or a gain would accrue if sub-paragraph (1) did not apply, but in a case where this sub-paragraph would otherwise substitute a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.
- The displacement of sub-paragraph (1) above by this sub-paragraph shall not be taken as bringing paragraph 16 above into operation.
- (3) An election under this paragraph shall be made by notice to [<sup>F35</sup>an officer of the Board given—
- <sup>F36</sup>(a) .....
  - (b) <sup>F37</sup>... within 2 years from the end of the accounting period in which the disposal is made; or
  - (c) <sup>F38</sup>... within such further time as the Board may by notice allow.]
- (4) For the avoidance of doubt it is hereby declared that an election under this paragraph is irrevocable.
- (5) An election may not be made under this paragraph as respects, or in relation to, an asset the market value of which at a date on or after 6th April 1965, and before the date of the disposal to which the election relates, is to be ascertained in pursuance of section 42.

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### Textual Amendments

- F35** Words in Sch. 2 para. 17(3) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 42\(3\)](#)
- F36** Sch. 2 para. 17(3)(a) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(4\)\(a\)](#)
- F37** Words in Sch. 2 para. 17(3)(b) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(4\)\(b\)](#)
- F38** Words in Sch. 2 para. 17(3)(c) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 64\(4\)\(c\)](#)

### *Unquoted shares, commodities etc.*

- 18 (1) This paragraph has effect as respects shares held by any person on 6th April 1965 other than quoted securities within the meaning of paragraph 8 above and shares as respects which an election is made under paragraph 17 above.
- (2) For the purpose of—
- identifying the shares so held on 6th April 1965 with shares previously acquired, and
  - identifying the shares so held on that date with shares subsequently disposed of, and distinguishing them from shares acquired subsequently,
- so far as the shares are of the same class, shares bought at a later time shall be deemed to have been disposed of before shares bought at an earlier time.
- (3) Sub-paragraph (2) above has effect subject to section 105.
- (4) Shares shall not be treated for the purposes of this paragraph as being of the same class unless if dealt with on a recognised stock exchange they would be so treated, but shall be treated in accordance with this paragraph notwithstanding that they are identified in a different way by a disposal or by the transfer or delivery giving effect to it.
- (5) This paragraph, without sub-paragraph (4), shall apply in relation to any assets, other than shares, which are of a nature to be dealt with without identifying the particular assets disposed of or acquired.

### *Reorganisation of share capital, conversion of securities etc.*

- 19 (1) For the purposes of this Act, it shall be assumed that any shares or securities held by a person on 6th April 1965 (identified in accordance with paragraph 18 above) which, in accordance with Chapter II of Part IV, are to be regarded as being or forming part of a new holding were sold and immediately reacquired by him on 6th April 1965 at their market value on that date.
- (2) If, at any time after 5th April 1965, a person comes to have, in accordance with Chapter II of Part IV, a new holding, paragraph 16(3) to (5) above shall have effect as if—
- the new holding had at that time been sold by the owner, and immediately reacquired by him, at its market value at that time, and
  - accordingly, the amount of any gain on a disposal of the new holding or any part of it shall be computed—

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- (i) by apportioning in accordance with paragraph 16 above the gain or loss over a period ending at that time, and
  - (ii) by bringing into account the entire gain or loss over the period from that time to the date of the disposal.
- (3) This paragraph shall not apply in relation to a reorganisation of a company's share capital if the new holding differs only from the original shares in being a different number, whether greater or less, of shares of the same class as the original shares.

## PART IV

### MISCELLANEOUS

#### *Capital allowances*

- 20 If under any provision in this Schedule it is to be assumed that any asset was on 6th April 1965 sold by the owner, and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by the owner in providing the asset, and so made for the year 1965-66 or for any subsequent year of assessment, as if it were made in respect of the expenditure which, on that assumption, was incurred by him in reacquiring the asset on 7th April 1965.

#### *Assets transferred to close companies*

- 21 (1) This paragraph has effect where—
- (a) at any time, including a time before 7th April 1965, any of the persons having control of a close company, or any person who is connected with a person having control of a close company, has transferred assets to the company, and
  - (b) paragraph 16 above applies in relation to a disposal by one of the persons having control of the company of shares or securities in the company, or in relation to a disposal by a person having, up to the time of disposal, a substantial holding of shares or securities in the company, being in either case a disposal after the transfer of the assets.
- (2) So far as the gain accruing to the said person on the disposal of the shares is attributable to a profit on the assets so transferred, the period over which the gain is to be treated under paragraph 16 above as growing at a uniform rate shall begin with the time when the assets were transferred to the company, and accordingly a part of a gain attributable to a profit on assets transferred on or after 6th April 1965 shall all be a chargeable gain.
- (3) This paragraph shall not apply where a loss, and not a gain, accrues on the disposal.

#### *[<sup>F39</sup>Spouses and civil partners]*

#### Textual Amendments

- F39** Words in Sch. 2 para. 22 cross-heading substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **124(b)(ii)**

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F40 22 .....

#### Textual Amendments

**F40** Sch. 2 para. 22 omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 64(5)**

#### *Compensation and insurance money*

23 Where section 23(4)(a) applies to exclude a gain which, in consequence of this Schedule, is not all chargeable gain, the amount of the reduction to be made under section 23(4)(b) shall be the amount of the chargeable gain and not the whole amount of the gain; and in section 23(5)(b) for the reference to the amount by which the gain is reduced under section 23(5)(a) there shall be substituted a reference to the amount by which the chargeable gain is proportionately reduced under section 23(5)(a).

### SCHEDULE 3

Section 35.

#### ASSETS HELD ON 31ST MARCH 1982

#### *Previous no gain/no loss disposals*

- 1 (1) [F41For the purposes of corporation tax, where—]
- (a) a person makes a disposal, not being a no gain/no loss disposal, of an asset which [F42the person] acquired after 31st March 1982, and
  - (b) the disposal by which [F42the person] acquired the asset and any previous disposal of the asset after 31st March 1982 was a no gain/no loss disposal, [F42the person] shall be treated for the purposes of section 35 as having held the asset on 31st March 1982.
- (2) For the purposes of this paragraph a no gain/no loss disposal is one on which by virtue of any of the [F43no gain/no loss provisions] neither a gain nor a loss accrues to the person making the disposal.

#### Textual Amendments

**F41** Words in Sch. 3 para. 1(1) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 65(2)(a)(i)**

**F42** Words in Sch. 3 para. 1(1) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 65(2)(a)(ii)**

**F43** Words in Sch. 3 para. 1(2) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 2 para. 65(2)(b)**

- 2 (1) Sub-paragraph (2) below applies where a person makes a disposal of an asset acquired by him on or after 6th April 1988 in circumstances in which section F44 ... 171 applied.
- (2) Where this sub-paragraph applies—

*Status: Point in time view as at 21/07/2008.*

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- (a) an election under section 35(5) by the person making the disposal shall not cover the disposal, but
  - (b) the making of such an election by the person from whom the asset was acquired shall cause the disposal to fall outside subsection (3) of that section (so that subsection (2) of that section is not excluded by it) whether or not the person making the disposal makes such an election.
- (3) Where the person from whom the asset was acquired by the person making the disposal himself acquired it on or after 6th April 1988 in circumstances in which section <sup>F45</sup>... 171 applied, an election made by him shall not have the effect described in sub-paragraph (2)(b) above but an election made by—
- (a) the last person by whom the asset was acquired after 5th April 1988 otherwise than in such circumstances, or
  - (b) if there is no such person, the person who held the asset on 5th April 1988, shall have that effect.

#### Textual Amendments

- F44** Words in Sch. 3 para. 2(1) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 65\(3\)](#)
- F45** Words in Sch. 3 para. 2(3) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 65\(3\)](#)

#### *Capital allowances*

- 3 If under section 35 it is to be assumed that any asset was on 31st March 1982 sold by the person making the disposal and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by him in providing the asset as if it were made in respect of expenditure which, on that assumption, was incurred by him in reacquiring the asset on 31st March 1982.

#### *Part disposals etc.*

- 4 (1) Where, in relation to a disposal to which section 35(2) applies, section 42 has effect by reason of an earlier disposal made after 31st March 1982 and before 6th April 1988, the sums to be apportioned under section 42 shall for the purposes of the later disposal be ascertained on the assumption stated in section 35(2).
- (2) In any case where—
- (a) subsection (2) of section 35 applies in relation to the disposal of an asset,
  - (b) if that subsection did not apply, section 23(2), 122(4), 133(4) or 244 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,
- the amount allowable as a deduction on the disposal shall be reduced by the amount which would be disallowed if section 35(2) did not apply.

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*Assets derived from other assets*

- 5 Section 35 shall have effect with the necessary modifications in relation to a disposal of an asset which on 31st March 1982 was not itself held by the person making the disposal, if its value is derived from another asset of which account is to be taken in relation to the disposal under section 43.

*Apportionment of pre-1965 gains and losses*

- 6 In a case where because of paragraph 16 of Schedule 2 only part of a gain or loss is a chargeable gain or allowable loss, section 35(3)(a) and (b) shall have effect as if the amount of the gain or loss that would accrue if subsection (2) did not apply were equal to that part.

*Elections under section section 35(5): excluded disposals*

- 7 (1) An election under section 35(5) shall not cover disposals such as are specified in sub-paragraph (2) below.
- (2) The disposals mentioned in sub-paragraph (1) above are disposals of, or of an interest in—
- (a) plant or machinery,
  - (b) an asset which the person making the disposal has at any time held for the purposes of or in connection with—
    - (i) a trade consisting of the working of a source of mineral deposits, or
    - (ii) where a trade involves (but does not consist of) such working, the part of the trade which involves such working, or
  - (c) a licence under [F<sup>46</sup>Part I of the Petroleum Act 1998] or the M<sup>14</sup>Petroleum (Production) Act (Northern Ireland) 1964; or
  - (d) shares which, on 31st March 1982, were unquoted and derived their value, or the greater part of their value, directly or indirectly from oil exploration or exploitation assets situated in the United Kingdom or a designated area or from such assets and oil exploration or exploitation rights taken together; but a disposal does not fall within paragraph (a) or (b) above unless a capital allowance in respect of any expenditure attributable to the asset has been made to the person making the disposal or would have been made to him had he made a claim.
- (3) For the purposes of sub-paragraph (2)(d) above,—
- (a) “shares” includes stock and any security, as defined in section 254(1) of the Taxes Act; and
  - (b) shares (as so defined) were unquoted on 31st March 1982 if, on that date, they were neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market;
- but nothing in this paragraph affects the operation, in relation to such unquoted shares, of sections 126 to 130.
- (4) In sub-paragraph (2)(d) above—
- “designated area” means an area designated by Order in Council under section 1(7) of the M<sup>15</sup>Continental Shelf Act 1964;
  - “oil exploration or exploitation assets” shall be construed in accordance with sub-paragraphs (5) and (6) below; and

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“oil exploration or exploitation rights” means rights to assets to be produced by oil exploration or exploitation activities (as defined in sub-paragraph (6) below) or to interests in or to the benefit of such assets.

(5) For the purposes of sub-paragraph (2)(d) above an asset is an oil exploration or exploitation asset if either—

- (a) it is not a mobile asset and is being or has at some time been used in connection with oil exploration or exploitation activities carried on in the United Kingdom or a designated area; or
- (b) it is a mobile asset which has at some time been used in connection with oil exploration or exploitation activities so carried on and is dedicated to an oil field in which the company whose shares are disposed of by the disposal, or a person connected with that company, is or has been a participant;

and, subject to sub-paragraph (6) below, expressions used in paragraphs (a) and (b) above have the same meaning as if those paragraphs were included in Part I of the <sup>M16</sup>Oil Taxation Act 1975.

(6) In the preceding provisions of this paragraph “oil exploration or exploitation activities” means activities carried on in connection with—

- (a) the exploration of land (including the seabed and subsoil) in the United Kingdom or a designated area, as defined in sub-paragraph (4) above, with a view to searching for or winning oil; or
- (b) the exploitation of oil found in any such land;

and in this sub-paragraph “oil” has the same meaning as in Part I of the <sup>M17</sup>Oil Taxation Act 1975.

(7) Where the person making the disposal acquired the asset on a no gain/no loss disposal, the references in sub-paragraph (2) above to that person are references to the person making the disposal, the person who last acquired the asset otherwise than on a no gain/no loss disposal or any person who subsequently acquired the asset on such a disposal.

(8) In this paragraph—

- (a) “source of mineral deposits” shall be construed in accordance with [<sup>F47</sup>section 394 of the Capital Allowances Act], and
- (b) references to a no gain/no loss disposal shall be construed in accordance with paragraph 1 above.

#### Textual Amendments

**F46** Words in Sch. 3 para. 7(2)(c) substituted (15.2.1999) by [Petroleum Act 1998 \(c. 17\), s. 52\(4\), Sch. 4 para. 32\(4\)](#) (with [Sch. 3](#)); [S.I. 1999/161](#), art. 2(1)

**F47** Words in Sch. 3 para. 7(8) substituted (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 81](#)

#### Marginal Citations

**M14** [1964 c. 28 \(N.I.\)](#).

**M15** [1964 c. 29](#).

**M16** [1975 c. 22](#).

**M17** [1975 c. 22](#).



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*Elections under section 35(5): groups of companies*

- 8 (1) A company may not make an election under section 35(5) at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant time.
- (2) Subject to sub-paragraph (3) below, an election under section 35(5) by a company which is the principal company of a group shall have effect also as an election by any other company which at the relevant time is a member of the group.
- (3) Sub-paragraph (2) above shall not apply in relation to a company which, in some period after 5th April 1988 and before the relevant time, is not a member of the group if—
- (a) during that period the company makes a disposal to which section 35 applies, and
  - (b) the period during which an election under subsection (5) of that section could be made expires without such an election having been made.
- (4) Sub-paragraph (2) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant time except where—
- (a) the company is an outgoing company in relation to the group, and
  - (b) the election relating to the group is made after the company ceases to be a member of the group.
- (5) In relation to a company which is the principal company of a group the reference in section 35(6) to the first relevant disposal is a reference to the first disposal to which that section applies by a company which is—
- (a) a member of the group but not an outgoing company in relation to the group, or
  - (b) an incoming company in relation to the group.
- 9 (1) In paragraph 8 above “the relevant time”, in relation to a group of companies, is—
- (a) the first time when any company which is then a member of the group, and is not an outgoing company in relation to the group, makes a disposal to which section 35 applies,
  - (b) the time immediately following the first occasion when a company which is an incoming company in relation to the group becomes a member of the group,
  - (c) the time when an election is made by the principal company,
- whichever is earliest.
- (2) In paragraph 8 above and this paragraph—
- “incoming company”, in relation to a group of companies, means a company which—
- (a) makes its first disposal to which section 35 applies at a time when it is not a member of the group, and
  - (b) becomes a member of the group before the end of the period during which an election under section 35(5) could be made in relation to it and at a time when no such election has been made, and
- “outgoing company”, in relation to a group of companies, means a company which ceases to be a member of the group before the end of

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the period during which an election under section 35(5) could be made in relation to it and at a time when no such election has been made.

- (3) Section 170 shall have effect for the purposes of paragraph 8 above and this paragraph as for those of sections 170 to 181.

## SCHEDULE 4

Section 36.

### DEFERRED CHARGES ON GAINS BEFORE 31ST MARCH 1982

#### *F<sup>48</sup> Application of Schedule*

#### **Textual Amendments**

**F48** Sch. 4 para. A1 and cross-heading inserted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 74\(2\)](#)

A1 This Schedule applies only for the purposes of corporation tax.]

#### *Reduction of deduction or gain*

- 1 Where this Schedule applies—
- (a) in a case within paragraph 2 below, the amount of the deduction referred to in that paragraph, and
  - (b) in a case within paragraph 3 or 4 below, the amount of the gain referred to in that paragraph,
- shall be one half of what it would be apart from this Schedule.

#### *Charges rolled-over or held-over*

- 2 (1) Subject to sub-paragraphs (2) to (4) below, this Schedule applies on a disposal, not being a no gain/no loss disposal, of an asset if—
- (a) the person making the disposal acquired the asset after 31st March 1982,
  - (b) a deduction falls to be made by virtue of any of the enactments specified in sub-paragraph (5) below from the expenditure which is allowable in computing the amount of any gain accruing on the disposal, and
  - (c) the deduction is attributable (whether directly or indirectly and whether in whole or in part) to a chargeable gain accruing on the disposal before 6th April 1988 of an asset acquired before 31st March 1982 by the person making that disposal.
- (2) This Schedule does not apply where, by reason of the previous operation of this Schedule, the amount of the deduction is less than it otherwise would be.
- (3) This Schedule does not apply if the amount of the deduction would have been less had relief by virtue of a previous application of this Schedule been duly claimed.
- (4) Where—
- (a) the asset was acquired on or after 19th March 1991,
  - (b) the deduction is partly attributable to a claim by virtue of section 154(4), and

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(c) the claim applies to the asset,  
this Schedule does not apply by virtue of this paragraph.

(5) The enactments referred to in sub-paragraph (1) above are sections 23(4) and (5), 152<sup>F49</sup> ... and 247<sup>F50</sup> ... .

#### Textual Amendments

- F49** Words in Sch. 4 para. 2(5) omitted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 74(3)(a)**
- F50** Words in Sch. 4 para. 2(5) omitted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 74(3)(b)**

- 3 (1) This paragraph applies where this Schedule would have applied on a disposal but for paragraph 2(4) above.
- (2) This Schedule applies on the disposal if paragraph 4 below would have applied had—
- (a) section 154(2) continued to apply to the gain carried forward as a result of the claim by virtue of section 154(4), and
  - (b) the time of the disposal been the time when that gain was treated as accruing by virtue of section 154(2).

#### *Postponed charges*

- 4 (1) Subject to sub-paragraphs (3) to (5) below, this Schedule applies where—
- (a) a gain is treated as accruing by virtue of any of the enactments specified in sub-paragraph (2) below, and
  - (b) that gain is attributable (whether directly or indirectly and whether in whole or in part) to the disposal before 6th April 1988 of an asset acquired before 31st March 1982 by the person making that disposal.
- (2) The enactments referred to in sub-paragraph (1) above are sections 116(10) and (11), 134, 140, 154(2),<sup>F51</sup> ...<sup>F52</sup> ... and 248(3).
- <sup>F53</sup>(3) .....
- (4) Where a gain is treated as accruing in consequence of an event, this Schedule does not apply if—
- (a) the gain is attributable (whether directly or indirectly and whether in whole or part) to the disposal of an asset on or after 6th April 1988, or
  - (b) the amount of the gain would have been less had relief by virtue of a previous application of this Schedule been duly claimed.
- (5) None of sections 134, 140(4), 154(2) and 248(3) 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.

#### Textual Amendments

- F51** Words in Sch. 4 para. 4(2) omitted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 74(4)**
- F52** Words in Sch. 4 para. 4(2) repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 40 Pt. II(12)**

*Status: Point in time view as at 21/07/2008.*

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**F53** Sch. 4 para. 4(3) repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. II\(12\)](#)

*Previous no gain/no loss disposals*

- 5       Where—
- (a) a person makes a disposal of an asset which he acquired on or after 31st March 1982, and
- (b) the disposal by which he acquired the asset and any previous disposal of the asset on or after 31st March 1982 was a no gain/no loss disposal,
- he shall be treated for the purposes of paragraphs 2(1)(c) and 4(1)(b) above as having acquired the asset before 31st March 1982.
- 6       (1) Sub-paragraph (2) below applies where—
- (a) a person makes a disposal of an asset which he acquired on or after 31st March 1982,
- (b) the disposal by which he acquired the asset was a no gain/no loss disposal, and
- (c) a deduction falling to be made as mentioned in paragraph (b) of sub-paragraph (1) of paragraph 2 above which was attributable as mentioned in paragraph (c) of that sub-paragraph was made—
- (i) on that disposal, or
- (ii) where one or more earlier no gain/no loss disposals of the asset have been made on or after 31st March 1982 and since the last disposal of the asset which was not a no gain/no loss disposal, on any such earlier disposal.
- (2) Where this sub-paragraph applies the deduction shall be treated for the purposes of paragraph 2 above as falling to be made on the disposal mentioned in sub-paragraph (1)(a) above and not on the no gain/no loss disposal.
- 7       For the purposes of this Schedule a no gain/no loss disposal is one on which by virtue of any of the [<sup>F54</sup>no gain/no loss provisions] neither a gain nor a loss accrues to the person making the disposal.

**Textual Amendments**

**F54** Words in Sch. 4 para. 7 substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 66](#)

*Assets derived from other assets*

- 8       The references in paragraphs 2(1)(c) and 4(1)(b) above to the disposal of an asset acquired by a person before 31st March 1982 include references to the disposal of an asset which was not acquired by the person before that date if its value is derived from another asset which was so acquired and of which account is to be taken in relation to the disposal under section 43.

*Claims*

- 9       (1) No relief shall be given under this Schedule unless a claim is made—
- <sup>F55</sup>(a) .....

*Status: Point in time view as at 21/07/2008.*

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(b) <sup>F56</sup> ... within the period of 2 years beginning at the end of the <sup>F57</sup> ... accounting period in which the disposal in question is made, or the gain in question is treated as accruing,

<sup>F58</sup>(c) .....

or within such longer period <sup>F59</sup> ... as the Board may by notice allow.

(2) A claim under sub-paragraph (1) above shall be supported by such particulars as the inspector may require for the purpose of establishing entitlement to relief under this Schedule and the amount of relief due.

#### Textual Amendments

- F55** Sch. 4 para. 9(1)(a) repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), **Sch. 40 Pt. II(12)**
- F56** Words in Sch. 4 para. 9(1)(b) omitted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 74(5)(a)**
- F57** Words in Sch. 4 para. 9(1)(b) repealed (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **Sch. 21 para. 43(a)(ii)**, **Sch. 41 Pt. V(11)**
- F58** Sch. 4 para. 9(1)(c) omitted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 74(5)(b)**
- F59** Words in Sch. 4 para. 9(1) omitted (with effect in accordance with Sch. 2 para. 76 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 74(5)(c)**

## [<sup>F60</sup>SCHEDULE 4ZA

### SUB-FUND SETTLEMENTS

#### Textual Amendments

- F60** Sch. 4ZA inserted (with effect in accordance with Sch. 12 para. 6(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 6(2)**

#### *Making a sub-fund election*

- 1 The trustees of a settlement (the “principal settlement”) may elect that a fund or other specified portion of the settled property (the “sub-fund”) be treated, unless the context otherwise requires, as a separate settlement (the “sub-fund settlement”) for the purposes of this Act, and the election shall have effect.
- 2 (1) An election under paragraph 1 (a “sub-fund election”) must specify the date on which it is to be treated as having taken effect, which must not be later than the date on which it is made.
- (2) The election shall be treated as having taken effect—
- (a) at the beginning of the specified date, or
  - (b) if there is a deemed disposal of an asset by the trustees of the principal settlement under section 71(1) (by virtue of paragraph 19) or section 80(2) (by virtue of paragraph 18(2)), on the specified date immediately after the deemed disposal.

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- 3 Trustees may make a sub-fund election only if—
- (a) Conditions 1 to 4 are satisfied when the election is made, and
  - (b) Conditions 2 to 4 were satisfied throughout the period beginning with the time when the election is to be treated as having taken effect and ending immediately before the election is made.
- 4 Condition 1 is that the principal settlement is not itself a sub-fund settlement.
- 5 Condition 2 is that the sub-fund is not the whole of the property comprised in the principal settlement.
- 6 Condition 3 is that, if the sub-fund election had taken effect, the sub-fund settlement would not consist of or include an interest in an asset any other interest in which would be comprised in the principal settlement.
- 7 For the purpose of Condition 3—
- (a) [F61section 104(1)] shall not have effect, and
  - (b) “interest”, in relation to any asset, means an interest as a co-owner of the asset (whether the asset is owned jointly or in common and whether or not the interests of the co-owners are equal).

#### Textual Amendments

**F61** Words in [Sch. 4ZA para. 7](#) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 67](#)

- 8 Condition 4 is that, if the sub-fund election had taken effect, no person would be a beneficiary under both the sub-fund settlement and the principal settlement.
- 9 (1) For the purpose of Condition 4 a person is a beneficiary under a settlement—
- (a) if—
    - (i) any property which is or may at any time be comprised in the settlement, or
    - (ii) any derived property,
 is, or will or may become, payable to him or applicable for his benefit in any circumstances whatsoever, or
  - (b) if he enjoys a benefit deriving directly or indirectly from—
    - (i) any property which is comprised in the settlement, or
    - (ii) any derived property.
- (2) But for the purpose of Condition 4 a person is not to be regarded as a beneficiary under a settlement if property comprised in the settlement, or any derived property, will or may become payable to him or applicable for his benefit by reason only of—
- (a) his marrying, or entering into a civil partnership with, a beneficiary under the settlement,
  - (b) the death of a beneficiary under the settlement,
  - (c) the exercise by the trustees of the settlement of—
    - (i) a power conferred by section 32 of the Trustee Act 1925 (c. 19) or section 33 of the Trustee Act (Northern Ireland) 1958 (c. 23 (N.I.)) (powers of advancement),

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- (ii) a power conferred by the law of a jurisdiction other than England and Wales or Northern Ireland which makes provision similar to the provisions specified in sub-paragraph (i), or
    - (iii) a power of advancement which is conferred by the instrument creating the principal settlement, or by another instrument made in accordance with the terms of the principal settlement, and which is subject to the same restrictions as those specified in section 32(1)(a) and (c) of the Trustee Act 1925, or
  - (d) the failure or determination of trusts of the kind described in section 33 of the Trustee Act 1925 (protective trusts).
- (3) In this paragraph “derived property”, in relation to any property, means—
- (a) income from that property,
  - (b) property directly or indirectly representing—
    - (i) proceeds of that property, or
    - (ii) proceeds of income from that property, or
  - (c) income from property which is derived property by virtue of paragraph (b).

*Sub-fund elections: procedure*

- 10 A sub-fund election must be made—
- (a) by notice to an officer of Revenue and Customs, and
  - (b) in such form as the Commissioners for Her Majesty's Revenue and Customs may require.
- 11 A sub-fund election may not be made after the second 31st January after the year of assessment in which the date on which the election is to be treated as having taken effect falls.
- 12 A sub-fund election must contain—
- (a) a declaration by each trustee of the principal settlement that he consents to the election,
  - (b) a statement by the trustees of the principal settlement that the requirement in paragraph 3 is satisfied,
  - (c) such information as the Commissioners for Her Majesty's Revenue and Customs may require in relation to the principal settlement (which may, in particular, include information relating to the trustees, the trusts, property which is or has been comprised in the settlement, the settlors or the beneficiaries),
  - (d) a declaration by the trustees of the principal settlement that the information given in the election is correct, to the best of their knowledge and belief, and
  - (e) such other declarations as the Commissioners for Her Majesty's Revenue and Customs may require.
- 13 A sub-fund election may not be revoked.

*Power to make enquiries*

- 14 Where a sub-fund election has been made, an officer of Revenue and Customs may by notice require a person specified in paragraph 16 to supply information for the purposes of determining whether paragraph 3 was satisfied.

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- 15        The notice shall specify a period of not less than 60 days within which the information must be supplied.
- 16        (1) The persons mentioned in paragraph 14 are—
- (a) a person who is or has been a trustee of a relevant settlement;
  - (b) a person who is or has been a beneficiary under a relevant settlement;
  - (c) a person who is or has been a settlor in relation to a relevant settlement.
- (2) For the purposes of sub-paragraph (1) a settlement is a relevant settlement if it is—
- (a) the sub-fund settlement, or
  - (b) the principal settlement.

*Consequences of a sub-fund election*

- 17        The sub-fund settlement shall be treated, for the purposes of this Act, as having been created at the time when the sub-fund election is treated as having taken effect.
- 18        (1) Each trustee of the trusts on which the property comprised in the sub-fund settlement is held shall be treated as a trustee of the sub-fund settlement for the purposes of this Act.
- (2) A person who is a trustee of the sub-fund settlement shall be treated for the purposes of this Act, from the time when the election is treated as having taken effect, as having ceased to be a trustee of the principal settlement unless he is also a trustee of trusts on which property comprised in the principal settlement is held.
- (3) A person who is a trustee of the principal settlement shall not be treated for the purposes of this Act as a trustee of the sub-fund settlement unless he is also a trustee of trusts on which property comprised in the sub-fund settlement is held.
- 19        The trustees of the sub-fund settlement shall be treated for the purposes of this Act as having become absolutely entitled, at the time when the sub-fund election is treated as having taken effect, to the property comprised in that settlement as against the trustees of the principal settlement.
- 20        (1) A deemed disposal by the trustees of the principal settlement of an asset under section 71(1) (by virtue of paragraph 19) or section 80(2) (by virtue of paragraph 18(2)) shall be treated as having been made at the beginning of the date on which the sub-fund election is treated as having taken effect.
- (2) If the trustees of the sub-fund settlement have acquired an asset of which the trustees of the principal settlement are deemed to have disposed under section 71(1) (by virtue of paragraph 19), they shall be deemed to have acquired it at the time when the election is treated as having taken effect.
- (3) The trustees of the principal settlement shall not be treated as having disposed of an asset under section 80(2) by virtue of paragraph 18(2) if they are treated as having disposed of the same asset under section 71(1) by virtue of paragraph 19.
- 21        If the trustees of the sub-fund settlement are treated by virtue of paragraph 19 as having become absolutely entitled to money expressed in sterling, for the purposes of this Act—
- (a) the trustees of the principal settlement shall be treated as having disposed of the money at the beginning of the day on which the sub-fund election is treated as having taken effect, and



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- (b) the trustees of the sub-fund settlement shall be treated as having acquired the money at the time when the election is treated as having taken effect.
- 22 (1) If the trustees of the principal settlement are deemed to have disposed of an asset under section 71(1) (by virtue of paragraph 19), the trustees of the principal settlement shall be treated for the purposes of sections 90 and 94 as having transferred the asset to the trustees of the sub-fund settlement.
- (2) Sub-paragraph (1) also applies where the trustees of the principal settlement would be deemed to have disposed of money expressed in sterling under subsection (1) of section 71 if in that subsection—
- (a) the reference to “assets” were a reference to “property”, and
- (b) for “their” there were substituted “ its ”.]

## [<sup>F62</sup>SCHEDULE 4A

### DISPOSAL OF INTEREST IN SETTLED PROPERTY: DEEMED DISPOSAL OF UNDERLYING ASSETS

#### Textual Amendments

- F62** Sch. 4A inserted (with application in accordance with s. 91(3) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 91(2), [Sch. 24](#)

#### *Circumstances in which this Schedule applies*

- 1 This Schedule applies where there is a disposal of an interest in settled property for consideration.

#### *Meaning of “interest in settled property”*

- 2 (1) For the purposes of this Schedule an “interest in settled property” means any interest created by or arising under a settlement.
- (2) This includes any right to, or in connection with, the enjoyment of a benefit—
- (a) created by or arising directly under a settlement, or
- (b) arising as a result of the exercise of a discretion or power—
- (i) by the trustees of a settlement, or
- (ii) by any person in relation to settled property.

#### *Meaning of “for consideration”*

- 3 (1) For the purposes of this Schedule a disposal is “for consideration” if consideration is given or received by any person for, or otherwise in connection with, any transaction by virtue of which the disposal is effected.
- (2) In determining for the purposes of this Schedule whether a disposal is for consideration there shall be disregarded any consideration consisting of another interest under the same settlement that has not previously been disposed of by any person for consideration.

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- (3) In this Schedule “consideration” means actual consideration, as opposed to consideration deemed to be given by any provision of this Act.

*Deemed disposal of underlying assets*

- 4 (1) Where this Schedule applies and the following conditions are met—
- (a) the condition as to UK residence of the trustees (see paragraph 5),
  - (b) the condition as to UK residence of the settlor (see paragraph 6), and
  - (c) the condition as to settlor interest in the settlement (see paragraph 7),
- the trustees of the settlement are treated for all purposes of this Act as disposing of and immediately reacquiring the relevant underlying assets.

This is referred to below in this Schedule as the “deemed disposal”.

- (2) In paragraphs 5, 6 and 7 “the relevant year of assessment” means the year of assessment in which the disposal of the interest in settled property is made.
- (3) The deemed disposal is treated as taking place when the disposal of the interest in settled property is made.

This is subject to paragraph 13(3)(a) where the beginning of the disposal and its effective completion fall in different years of assessment.

*Condition as to UK residence of trustees*

- 5 (1) The condition as to UK residence of the trustees is that the trustees of the settlement were [<sup>F63</sup>resident and ordinarily resident in the United Kingdom during any part of the year].
- (2) For this purpose the trustees shall not be regarded as [<sup>F64</sup>resident and ordinarily resident in the United Kingdom] at any time when they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (3) This paragraph has effect subject to paragraph 13(3)(b) where the beginning of the disposal and its effective completion fall in different years of assessment.

**Textual Amendments**

**F63** Words in Sch. 4A para. 5(1) substituted (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 39, 41](#)

**F64** Words in Sch. 4A para. 5(2) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(e\)](#)

*Condition as to UK residence of settlor*

- 6 (1) The condition as to UK residence of the settlor is that in the relevant year of assessment, or any of the previous five years of assessment, a person who is a settlor in relation to the settlement either—
- (a) was resident in the United Kingdom during the whole or part of the year, or
  - (b) was ordinarily resident in the United Kingdom during the year.

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- (2) Sub-paragraph (1) has effect subject to paragraph 13(3)(c) where the beginning of the disposal and its effective completion fall in different years of assessment.
- (3) No account shall be taken for the purposes of this paragraph of any year of assessment before the year 1999-00.

*Condition as to settlor interest in the settlement*

- 7 (1) The condition as to settlor interest in the settlement is that at any time in the relevant period the settlement—
  - (a) was a settlor-interested settlement, or
  - (b) comprised property derived, directly or indirectly, from a settlement that at any time in that period was a settlor-interested settlement.
- (2) The relevant period for this purpose is the period—
  - (a) beginning two years before the beginning of the relevant year of assessment, and
  - (b) ending with the date of the disposal of the interest in settled property.

This is subject to paragraph 13(3)(d) where the beginning of the disposal and its effective completion fall in different years of assessment.

- (3) The relevant period shall not be treated as beginning before 6th April 1999.

If the rule in sub-paragraph (2) (or, where relevant, that in paragraph 13(3)(d)) would produce that result, the relevant period shall be treated as beginning on that date.

- (4) For the purposes of this paragraph a “settlor-interested settlement” means a settlement in which a person who is a settlor in relation to the settlement has an interest or had an interest at any time in the relevant period.

The provisions of section [F65]169F(2) to (6)] apply to determine for the purposes of this paragraph whether a settlor has (or had) an interest in the settlement.

- (5) The condition as to settlor interest in the settlement is treated as not met in a year of assessment—
  - (a) where the settlor dies during the year, <sup>F66</sup> ...
  - (b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—
    - (i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse [F67] or civil partner], or
    - (ii) the fact that a benefit is enjoyed by his spouse [F67] or civil partner], where the spouse [F67] or civil partner] dies, or the settlor and the spouse [F67] or civil partner] cease to be married [F68] or to be civil partners of each other], during the year [F69], or
  - (c) in a case where the settlor is regarded as having an interest in a settlement by reason only of—
    - (i) the fact that property is, or will or may become, payable to or applicable for the benefit of a dependent child of his, or
    - (ii) the fact that a benefit is enjoyed by such a child,

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where the settlor ceases during the year to have (and does not in that year subsequently come to have) any dependent child in relation to whom section [F70 169F(3A)(a) or (b)] applies.]

#### Textual Amendments

- F65** Words in Sch. 4A para. 7(4) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 7\(2\)\(a\)](#)
- F66** Word in Sch. 4A para. 7(5)(a) repealed (with effect in accordance with Sch. 12 para. 5(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 5\(1\)\(a\)](#), [Sch. 26 Pt. 3\(15\)](#)
- F67** Words in Sch. 4A para. 7(5)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [125\(a\)](#)
- F68** Words in Sch. 4A para. 7(5)(b) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), [125\(b\)](#)
- F69** Sch. 4A para. 7(5)(c) and preceding word inserted (with effect in accordance with Sch. 12 para. 5(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 5\(1\)\(b\)](#)
- F70** Words in Sch. 4A para. 7(5)(c) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 7\(2\)\(b\)](#)

#### *The relevant underlying assets*

- 8 (1) Where the interest disposed of is a right in relation to a specific fund or other defined part of the settled property, the deemed disposal is of the whole or part of each of the assets comprised in that fund or part.
- In any other case the deemed disposal is of the whole or part of each of the assets comprised in the settled property.
- (2) Where the interest disposed of is an interest in a specific fraction or amount of the income or capital of—
- (a) the settled property, or
  - (b) a specific fund or other defined part of the settled property,
- the deemed disposal is of a corresponding part of each of the assets comprised in the settled property or, as the case may be, each of the assets comprised in that fund or part.
- In any other case the deemed disposal is of the whole of each of the assets so comprised.
- (3) Sub-paragraphs (1) and (2) have effect subject to paragraph 13(4)(a) where the identity of the underlying assets changes during the period between the beginning of the disposal and its effective completion.
- (4) Where part only of an asset is comprised in a specific fund or other defined part of the settled property, that part of the asset shall be treated for the purposes of this Schedule as if it were a separate asset.

#### *Character of deemed disposal*

- 9 (1) The deemed disposal shall be taken—
- (a) to be for a consideration equal to the whole or, as the case may be, a corresponding part of the market value of each of the assets concerned, and

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(b) to be a disposal under a bargain at arm's length.

(2) Sub-paragraph (1)(a) shall be read with paragraph 13(4)(b) where the value of the assets changes during the period between the beginning of the disposal and its effective completion.

*Avoidance of double-counting*

10 (1) The provisions of this paragraph have effect to prevent there being both a deemed disposal under this Schedule in relation to the disposal of an interest in settled property and a chargeable disposal of the interest itself.

A “chargeable disposal” means one in relation to which section 76(1) does not apply.

(2) If there would be a chargeable gain on the disposal of the interest in the settlement, then—

(a) if—

(i) the chargeable gain on the disposal of the interest would be greater than the net chargeable gain on the deemed disposal, or

(ii) there would be no net chargeable gain on the deemed disposal,

the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no chargeable gain is treated as accruing on the disposal of the interest in the settlement.

(3) If there would be an allowable loss on the disposal of the interest in the settlement, then—

(a) if there would be a greater net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no allowable loss is treated as accruing on the disposal of the interest in the settlement.

(4) If there would be neither a chargeable gain nor an allowable loss on the disposal of the interest in the settlement, then—

(a) if there would be a net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply.

(5) For the purposes of this paragraph—

(a) there is a net chargeable gain on a deemed disposal if the aggregate of the chargeable gains accruing to the trustees in respect of the assets involved exceeds the aggregate of the allowable losses so accruing; and

(b) there is a net allowable loss on a deemed disposal if the aggregate of the allowable losses accruing to the trustees in respect of the assets involved exceeds the aggregate of the chargeable gains so accruing.

*Recovery of tax from person disposing of interest*

11 (1) This paragraph applies where chargeable gains accrue to the trustees on the deemed disposal and—

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- (a) tax becomes chargeable on and is paid by the trustees in respect of those gains, or
  - (b) a person who is a settlor in relation to the settlement recovers from the trustees under section 78 an amount of tax in respect of those gains.
- (2) The trustees are entitled to recover the amount of the tax referred to in subparagraph (1)(a) or (b) from the person who disposed of the interest in the settlement.
- (3) For this purpose the trustees may require an inspector to give that person a certificate specifying—
- (a) the amount of the gains in question, and
  - (b) the amount of tax that has been paid.

Any such certificate shall be conclusive evidence of the facts stated in it.

#### *Meaning of “settlor”*

- 12 The provisions of [<sup>F71</sup>paragraphs 7 and 8(1), (3), (6) and (7) of Schedule 5] (meaning of “settlor”) apply for the purposes of this Schedule as they apply for the purposes of [<sup>F72</sup>section 86].

#### **Textual Amendments**

- F71** Words in Sch. 4A para. 12 substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 7\(3\)\(a\)](#)
- F72** Words in Sch. 4A para. 12 substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 7\(3\)\(b\)](#)

#### *Cases where there is a period between the beginning of the disposal and its effective completion*

- 13 (1) This paragraph applies in a case where there is a period between the beginning of the disposal of an interest in settled property and the effective completion of the disposal.
- (2) For the purposes of this Schedule—
- (a) the beginning of the disposal is—
    - (i) in the case of a disposal involving the exercise of an option, when the option is granted, and
    - (ii) in any other case of a disposal under a contract, when the contract is entered into; and
  - (b) the effective completion of the disposal means the point at which the person acquiring the interest becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the disposal.
- (3) Where this paragraph applies and the beginning of the disposal and its effective completion fall in different years of assessment—
- (a) the deemed disposal is treated as taking place in the year of assessment in which the disposal is effectively completed;
  - (b) the condition in paragraph 5 (condition as to residence of trustees) is treated as met if it is met in relation to either of those years of assessment or any intervening year;

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- (c) the condition in paragraph 6 (condition as to residence of settlor) is treated as met if it is met in relation to either or both of those years of assessment or any intervening year; and
  - (d) the relevant period for the purposes of paragraph 7 (condition as to settlor interest) is the period—
    - (i) beginning two years before the beginning of the first of those years of assessment, and
    - (ii) ending with the effective completion of the disposal.
- (4) If the identity or value of the underlying assets changes during the period between the beginning of the disposal and its effective completion, the following provisions apply—
- (a) an asset is treated as comprised in the settled property and, where relevant, in any specific fund or other defined part of the settled property to which the deemed disposal relates if it is so comprised at any time in that period;
  - (b) the market value of any asset for the purposes of the deemed disposal is taken to be its highest market value at any time during that period.
- (5) The provisions in sub-paragraph (4) do not apply to an asset if during that period it is disposed of by the trustees under a bargain at arm's length and is not reacquired.

*Exception: maintenance funds for historic buildings*

- 14 If the trustees of a settlement have elected that [<sup>F73</sup>508 of ITA 2007 (trustees' election in respect of income arising from heritage maintenance property)] shall have effect in the case of a settlement or part of a settlement in relation to a year of assessment, this Schedule does not apply in relation to the settlement or part for that year.]

**Textual Amendments**

**F73** Words in Sch. 4A para. 14 substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 344](#) (with [Sch. 2](#))

[<sup>F74</sup>SCHEDULE 4B

TRANSFERS OF VALUE BY TRUSTEES LINKED WITH TRUSTEE BORROWING

**Textual Amendments**

**F74** Sch. 4B inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 92\(2\), Sch. 25](#)

*General scheme of this Schedule*

- 1 (1) This Schedule applies where trustees of a settlement—
- (a) make a transfer of value (see paragraph 2) in a year of assessment in which the settlement is within section <sup>F75</sup>... 86 or 87 (see paragraph 3), and

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- (b) in accordance with this Schedule the transfer of value is treated as linked with trustee borrowing (see paragraphs 4 to 9).
- (2) Where this Schedule applies the trustees are treated as disposing of and immediately reacquiring the whole or a proportion of each of the chargeable assets that continue to form part of the settled property (see paragraphs 10 to 13).

#### **Textual Amendments**

**F75** Word in Sch. 4B para. 1(1) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 8\(2\)](#)

#### *Transfers of value*

- 2 (1) For the purposes of this Schedule trustees of a settlement make a transfer of value if they—
- (a) lend money or any other asset to any person,
  - (b) transfer an asset to any person and receive either no consideration or a consideration whose amount or value is less than the market value of the asset transferred, or
  - (c) issue a security of any description to any person and receive either no consideration or a consideration whose amount or value is less than the value of the security.
- (2) References in this Schedule to “the material time”, in relation to a transfer of value, are to the time when the loan is made, the transfer is effectively completed or the security is issued.
- The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.
- (3) In the case of a loan, the amount of value transferred is taken to be the market value of the asset.
- (4) In the case of a transfer, the amount of value transferred is taken to be—
- (a) if any part of the value of the asset is attributable to trustee borrowing, the market value of the asset;
  - (b) if no part of the value of the asset is attributable to trustee borrowing, the market value of the asset reduced by the amount or value of any consideration received for it.
- Paragraph 12 below explains what is meant by the value of an asset being attributable to trustee borrowing.
- (5) In the case of the issue of a security, the amount of value transferred shall be taken to be the value of the security reduced by the amount or value of any consideration received by the trustees for it.
- (6) References in this paragraph to the value of an asset are to its value immediately before the material time, unless the asset does not exist before that time in which case its value immediately after that time shall be taken.



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### Settlements within section <sup>F76</sup>... 86 or 87

#### Textual Amendments

**F76** Word in Sch. 4B para. 3 cross-heading omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 8(3)**

3 (1) This paragraph explains what is meant in this Schedule by a settlement being “within section <sup>F77</sup>... 86 or 87” in a year of assessment.

<sup>F78</sup>(2) .....

- (3) A settlement is “within section 86” in a year of assessment if, assuming—
- (a) that there were chargeable gains accruing to the trustees by virtue of disposals of any of the settled property originating from the settlor, and
  - (b) that the other elements of the condition in subsection (1)(e) of that section were met,
- chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 86.

- [<sup>F79</sup>(4) A settlement is “within section 87” for a tax year if—
- (a) section 87 applies to the settlement for that year, or
  - (b) chargeable gains would be treated under section 89(2) as accruing in that year to a beneficiary who received a capital payment from the trustees of the settlement in that year.

(5) The reference in subsection (4)(b) to chargeable gains treated as accruing includes offshore income gains treated as arising.]

#### Textual Amendments

**F77** Word in Sch. 4B para. 3(1) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 8(3)(a)**

**F78** Sch. 4B para. 3(2) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 8(3)(b)**

**F79** Sch. 4B para. 3(4)(5) substituted for Sch. 4B para. 3(4) (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 130** (with [Sch. 7 para. 155](#))

### Trustee borrowing

- 4 (1) For the purposes of this Schedule trustees of a settlement are treated as borrowing if—
- (a) money or any other asset is lent to them, or
  - (b) an asset is transferred to them and in connection with the transfer the trustees assume a contractual obligation (whether absolute or conditional) to restore or transfer to any person that or any other asset.

In the following provisions of this Schedule “loan obligation” includes any such obligation as is mentioned in paragraph (b).

*Status: Point in time view as at 21/07/2008.*

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- (2) The amount borrowed (the “proceeds” of the borrowing) is taken to be—
- (a) in the case of a loan, the market value of the asset;
  - (b) in the case of a transfer, the market value of the asset reduced by the amount or value of any consideration received for it.
- (3) References in this paragraph to the market value of an asset are to its market value immediately before the loan is made, or the transfer is effectively completed, unless the asset does not exist before that time in which case its market value immediately after that time shall be taken.

The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

*Transfer of value linked with trustee borrowing*

- 5 (1) For the purposes of this Schedule a transfer of value by trustees is treated as linked with trustee borrowing if at the material time there is outstanding trustee borrowing.
- (2) For the purposes of this Schedule there is outstanding trustee borrowing at any time to the extent that—
- (a) any loan obligation is outstanding, and
  - (b) there are proceeds of trustee borrowing that have not been either—
    - (i) applied for normal trust purposes, or
    - (ii) taken into account under this Schedule in relation to an earlier transfer of value.
- (3) An amount of trustee borrowing is “taken into account” under this Schedule in relation to a transfer of value if the transfer of value is in accordance with this Schedule treated as linked with trustee borrowing.

The amount so taken into account is—

- (a) the amount of the value transferred by that transfer of value, or
- (b) if less, the amount of outstanding trustee borrowing at the material time in relation to that transfer of value.

*Application of proceeds of borrowing for normal trust purposes*

- 6 (1) For the purposes of this Schedule the proceeds of trustee borrowing are applied for normal trust purposes in the following circumstances, and not otherwise.
- (2) They are applied for normal trust purposes if they are applied by the trustees in making a payment in respect of an ordinary trust asset and the following conditions are met—
- (a) the payment is made under a transaction at arm’s length or is not more than the payment that would be made if the transaction were at arm’s length;
  - (b) the asset forms part of the settled property immediately after the material time or, if it does not do so, the alternative condition in paragraph 8 below is met; and
  - (c) the sum paid is (or but for section 17 or 39 would be) allowable under section 38 as a deduction in computing a gain accruing to the trustees on a disposal of the asset.

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- (3) They are applied for normal trust purposes if—
  - (a) they are applied by the trustees in wholly or partly discharging a loan obligation of the trustees, and
  - (b) the whole of the proceeds of the borrowing connected with that obligation (or all but an insignificant amount) have been applied by the trustees for normal trust purposes.
- (4) They are applied for normal trust purposes if they are applied by the trustees in making payments to meet bona fide current expenses incurred by them in administering the settlement or any of the settled property.

*Ordinary trust assets*

- 7 (1) The following are “ordinary trust assets” for the purposes of this Schedule—
  - (a) shares or securities;
  - (b) tangible property, whether movable or immovable, or a lease of such property;
  - (c) property not within paragraph (a) or (b) which is used for the purposes of a trade, profession or vocation carried on—
    - (i) by the trustees, or
    - (ii) by a beneficiary who has an interest in possession in the settled property;
  - (d) any right in or over, or any interest in, property of a description within paragraph (b) or (c).
- (2) In sub-paragraph (1)(a) “securities” has the same meaning as in section 132.

*The alternative condition for assets no longer part of the settled property*

- 8 (1) The alternative condition referred to in paragraph 6(2)(b) in relation to an asset which no longer forms part of the settled property is that—
  - (a) the asset is treated as having been disposed of by virtue of section 24(1), or
  - (b) one or more ordinary trust assets which taken together directly or indirectly represent the asset—
    - (i) form part of the settled property immediately after the material time, or
    - (ii) are treated as having been disposed of by virtue of section 24(1).
- (2) Where there has been a part disposal of the asset, the condition in paragraph 6(2)(b) and the provisions of sub-paragraph (1) above may be applied in any combination in relation to the subject matter of the part disposal and what remains.
- (3) References in this paragraph to an asset include part of an asset.

*Normal trust purposes: power to make provision by regulations*

- 9 (1) The Treasury may make provision by regulations as to the circumstances in which the proceeds of trustee borrowing are to be treated for the purposes of this Schedule as applied for normal trust purposes.
- (2) The regulations may—
  - (a) add to, amend or repeal any of the provisions of paragraphs 6 to 8 above,

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- (b) make different provision for different cases, and
- (c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

*Deemed disposal of remaining chargeable assets*

- 10 (1) Where in accordance with this Schedule a transfer of value by trustees is treated as linked with trustee borrowing, the trustees are treated for all purposes of this Act—
- (a) as having at the material time disposed of, and
  - (b) as having immediately reacquired,
- the whole or a proportion (see paragraph 11) of each of the chargeable assets that form part of the settled property immediately after the material time (“the remaining chargeable assets”).
- (2) The deemed disposal and reacquisition shall be taken—
- (a) to be for a consideration equal to the whole or, as the case may be, a proportion of the market value of each of those assets, and
  - (b) to be under a bargain at arm’s length.
- (3) For the purposes of sub-paragraph (1) an asset is a chargeable asset if a gain on a disposal of the asset by the trustees at the material time would be a chargeable gain.

*Whether deemed disposal is of whole or a proportion of the assets*

- 11 (1) This paragraph provides for determining whether the deemed disposal and reacquisition is of the whole or a proportion of each of the remaining chargeable assets.
- (2) If the amount of value transferred—
- (a) is less than the amount of outstanding trustee borrowing, and
  - (b) is also less than the effective value of the remaining chargeable assets,
- the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:
- $$\text{VTEV}$$
- where—
- VT is the amount of value transferred, and
  - EV is the effective value of the remaining chargeable assets.
- (3) If the amount of value transferred—
- (a) is not less than the amount of outstanding trustee borrowing, but
  - (b) is less than the effective value of the remaining chargeable assets,
- the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:
- $$\text{TBEV}$$
- where—
- TB is the amount of outstanding trustee borrowing, and
  - EV is the effective value of the remaining chargeable assets.

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- (4) In any other case the deemed disposal and reacquisition is of the whole of each of the remaining chargeable assets.
- (5) For the purposes of this paragraph the effective value of the remaining chargeable assets means the aggregate market value of those assets reduced by so much of that value as is attributable to trustee borrowing.
- (6) References in this paragraph to amounts or values, except in relation to the amount of value transferred, are to amounts or values immediately after the material time.

*Value attributable to trustee borrowing*

- 12 (1) For the purposes of this Schedule the value of an asset is attributable to trustee borrowing to the extent determined in accordance with the following rules.
  - (2) Where the asset itself has been borrowed by trustees, the value of the asset is attributable to trustee borrowing to the extent that the proceeds of that borrowing have not been applied for normal trust purposes.

This is in addition to any extent to which the value of the asset may be attributable to trustee borrowing by virtue of sub-paragraph (3).
  - (3) The value of any asset is attributable to trustee borrowing to the extent that—
    - (a) the trustees have applied the proceeds of trustee borrowing in acquiring or enhancing the value of the asset, or
    - (b) the asset represents directly or indirectly an asset whose value was attributable to the trustees having so applied the proceeds of trustee borrowing.
  - (4) For the purposes of this paragraph an amount is applied by the trustees in acquiring or enhancing the value of an asset if it is applied wholly and exclusively by them—
    - (a) as consideration in money or money's worth for the acquisition of the asset,
    - (b) for the purpose of enhancing the value of the asset in a way that is reflected in the state or nature of the asset,
    - (c) in establishing, preserving or defending their title to, or to a right over, the asset, or
    - (d) where the asset is a holding of shares or securities that is treated as a single asset, by way of consideration in money or money's worth for additional shares or securities forming part of the same holding.
  - (5) Trustees are treated as applying the proceeds of borrowing as mentioned in sub-paragraph (4) if and to the extent that at the time the expenditure is incurred there is outstanding trustee borrowing.
  - (6) In sub-paragraph (4)(d) "securities" has the same meaning as in section 132.

*Assets and transfers*

- 13 (1) In this Schedule any reference to an asset includes money expressed in sterling.

References to the value or market value of such an asset are to its amount.
- (2) Subject to sub-paragraph (3), references in this Schedule to the transfer of an asset include anything that is or is treated as a disposal of the asset for the purposes of

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this Act, or would be if sub-paragraph (1) above applied generally for the purposes of this Act.

- (3) References in this Schedule to a transfer of an asset do not include a transfer of an asset that is created by the part disposal of another asset.]

## [<sup>F80</sup>SCHEDULE 4C

### TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

#### Textual Amendments

**F80** Sch. 4C inserted (with effect in accordance with s. 92(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), s. 92(4), [Sch. 26 Pt. 1](#)

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

**C4** Sch. 4C modified (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 paras. 152-155](#)

**C5** Sch. 4C applied (with modifications) by [Income and Corporation Taxes Act 1988 \(c. 1\)](#), s. 762(3) (as substituted (with effect in accordance with [Sch. 7 para. 98](#) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 93\(3\)](#))

## [<sup>F81</sup>Introduction

#### Textual Amendments

**F81** Sch. 4C para. 1 and cross-heading substituted for Sch. 4C paras. 1, 2 (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 29 para. 2](#) (with s. 163(4)-(6))

- 1 (1) This Schedule applies where the trustees of a settlement (“the transferor settlement”) make a transfer of value to which Schedule 4B applies (“the original transfer”).
- [<sup>F82</sup>(2) The transferor settlement is regarded for the purposes of this Schedule as having a “Schedule 4C pool”.
- (3) The Schedule 4C pool contains the section 2(2) amounts for the settlement that are outstanding at the end of the tax year in which the original transfer is made (see paragraph 1A).
- (3A) The section 2(2) amount for that tax year is increased by—
- (a) the amount of Schedule 4B trust gains accruing by virtue of the original transfer (see paragraphs 3 to 7), and
  - (b) the total amount of any further Schedule 4B trust gains accruing by virtue of any further transfers of value to which that Schedule applies that are made by the trustees in that tax year.]
- (4) Paragraphs 8 to 9 provide for the attribution of gains in a settlement’s Schedule 4C pool.

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- (5) References in this Schedule to a transfer to which Schedule 4B applies include any such transfer, whether or not any chargeable gain or allowable loss accrues under that Schedule by virtue of the transfer.]

#### Textual Amendments

- F82** Sch. 4C para. 1(2)-(3A) substituted for Sch. 4C para. 1(2)(3) (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 132](#) (with [Sch. 7 para. 155](#))

#### *[<sup>F83</sup> Outstanding section 2(2) amounts*

#### Textual Amendments

- F83** Sch. 4C para. 1A and cross-heading inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 133](#) (with [Sch. 7 para. 155](#))

- 1A (1) The following steps are to be taken for the purpose of calculating the section 2(2) amounts for a settlement that are outstanding at the end of a tax year (“the relevant tax year”).

##### *Step 1*

Find the section 2(2) amount for the settlement for the relevant tax year and earlier tax years, as reduced under section 87A as it applies for the relevant tax year and earlier tax years.

##### *Step 2*

This Step applies if, by virtue of the matching of the section 2(2) amount for the settlement for a tax year (“the applicable year”) with a capital payment, chargeable gains are treated under section 87 or 89(2) as accruing in the relevant tax year to a beneficiary who is not chargeable to tax for that year.

Increase the section 2(2) amount for the applicable year (found under Step 1) by the amount of the chargeable gains.

- (2) For the purposes of Step 1 of sub-paragraph (1) take into account the effect of section 90 in relation to any transfer of settled property from or to the trustees of the settlement made in or before the relevant tax year.
- (3) For the purposes of this Schedule a beneficiary is “chargeable to tax” for a tax year if the beneficiary is resident or ordinarily resident in the United Kingdom in that year.]

#### *Computation of Schedule 4B trust gains*

- 3 (1) This paragraph explains what is meant for the purposes of this Schedule by “Schedule 4B trust gains”.
- (2) The Schedule 4B trust gains are computed in relation to each transfer of value to which that Schedule applies.
- (3) In relation to a transfer of value the amount of the Schedule 4B trust gains for the purposes of this Schedule is given by—

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where—

CA is the chargeable amount computed under paragraph 4 or 5 below,  
 SG is the amount of any gains attributed to the settlor that fall to be deducted under paragraph 6 below, and  
 AL is the amount of any allowable losses that may be deducted under paragraph 7 below.

*Chargeable amount: non-resident settlement*

- 4 (1) If the transfer of value is made in a year of assessment during which the trustees of the transferor settlement are [<sup>F84</sup>at no time resident and ordinarily resident in the United Kingdom] the chargeable amount is computed under this paragraph.
- (2) Where this paragraph applies the chargeable amount is the amount on which the trustees would have been chargeable to tax under section 2(2) by virtue of Schedule 4B if they had been [<sup>F85</sup>resident and ordinarily resident in the United Kingdom] in the year [<sup>F86</sup>(and had made the disposals which Schedule 4B treats them as having made)].

**Textual Amendments**

- F84** Words in Sch. 4C para. 4(1) substituted (with effect in accordance with Sch. 12 para. 36(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 36\(1\)\(2\)\(b\), 41](#)
- F85** Words in Sch. 4C para. 4(2) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(f\)](#)
- F86** Words in Sch. 4C para. 4(2) inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 134](#) (with [Sch. 7 para. 155](#))

*Chargeable amount: dual resident settlement*

- 5 (1) If the transfer of value is made in a year of assessment where—
- (a) the trustees of the transferor settlement are [<sup>F87</sup>resident and ordinarily resident in the United Kingdom during any part of the year], and
- (b) at any time of [<sup>F88</sup>such residence and ordinary residence] they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,
- the chargeable amount is computed under this paragraph.
- (2) Where this paragraph applies the chargeable amount is the lesser of—
- (a) the amount on which the trustees would be chargeable to tax under section 2(2) by virtue of Schedule 4B on the assumption that the double taxation relief arrangements did not apply [<sup>F89</sup>(and the disposals which Schedule 4B treats them as having made were made)], and
- (b) the amount on which the trustees would be so chargeable to tax by virtue of disposals of protected assets.
- (3) For this purpose “protected assets” has the meaning given by section 88(4).



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#### Textual Amendments

- F87** Words in Sch. 4C para. 5(1) substituted (with effect in accordance with Sch. 12 para. 35(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 35\(1\)\(a\)\(2\)\(c\)](#), 41
- F88** Words in Sch. 4C para. 5(1) substituted (with effect in accordance with Sch. 12 para. 35(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 paras. 35\(1\)\(b\)\(2\)\(c\)](#), 41
- F89** Words in Sch. 4C para. 5(2)(a) inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 135](#) (with [Sch. 7 para. 155](#))

#### *Gains attributed to settlor*

- 6 (1) For the purposes of this Schedule the chargeable amount in relation to a transfer of value shall be reduced by [<sup>F90</sup>the amount of any chargeable gains] arising by virtue of that transfer of value that—
- are by virtue of section 86(4) treated as accruing to the settlor, or
  - where section 10A applies, are treated by virtue of that section (as it has effect subject to paragraph 12 below) as accruing to the settlor in the year of return.

<sup>F91</sup>(1A) . . . . .

- (2) In determining for the purposes of sub-paragraph (1)(a) the amount of chargeable gains arising by virtue of a transfer of value that are treated as accruing to the settlor, there shall be disregarded any losses which arise otherwise than by virtue of Schedule 4B.

<sup>F92</sup>(3) . . . . .

#### Textual Amendments

- F90** Words in Sch. 4C para. 6(1) substituted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 47\(2\)](#)
- F91** Sch. 4C para. 6(1A) omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 47\(3\)](#)
- F92** Sch. 4C para. 6(3) omitted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 9](#)

#### *Reduction for allowable losses*

- 7 (1) An allowable loss arising under Schedule 4B in relation to a transfer of value by the trustees of a settlement may be taken into account in accordance with this paragraph to reduce for the purposes of this Schedule the chargeable amount in relation to another transfer of value by those trustees.
- (2) Any such allowable loss goes first to reduce chargeable amounts arising from other transfers of value made in the same year of assessment.

If there is more than one chargeable amount and the aggregate amount of the allowable losses is less than the aggregate of the chargeable amounts, each of the chargeable amounts is reduced proportionately.

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- (3) If in any year of assessment the aggregate amount of the allowable losses exceeds the aggregate of the chargeable amounts, the excess shall be carried forward to the next year of assessment and treated for the purposes of this paragraph as if it were an allowable loss arising in relation to a transfer of value made in that year.
- (4) Any reduction of a chargeable amount under this paragraph is made after any deduction under paragraph 6.

*F93* .....

**Textual Amendments**

**F93** Sch. 4C para. 7A cross-heading omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 136](#) (with [Sch. 7 para. 155](#))

*F94*7A .....

**Textual Amendments**

**F94** Sch. 4C para. 7A omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 136](#) (with [Sch. 7 para. 155](#))

*[<sup>F95</sup>Gains to be brought into pool on subsequent transfer of value*

**Textual Amendments**

**F95** Sch. 4C paras. 7A, 7B and cross-headings inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 29 para. 3](#) (with s. 163(4)-(6))

- [<sup>F96</sup>7B* (1) This paragraph applies if the trustees of the transferor settlement make a further transfer of value to which Schedule 4B applies in a tax year (“the year of the transfer”) after the tax year mentioned in paragraph 1(3).
- (2) If the settlement has a Schedule 4C pool at the beginning of the year of the transfer—
- (a) the section 2(2) amounts in the Schedule 4C pool are increased by the section 2(2) amounts for the settlement that are outstanding at the end of the year of the transfer, and
  - (b) the section 2(2) amount in the pool for the year of transfer is increased (or further increased) by the amount of Schedule 4B trust gains accruing by virtue of the further transfer.
- (3) If the settlement does not have a Schedule 4C pool at the beginning of the year of the transfer, this Schedule applies in relation to the further transfer as it applied in relation to the original transfer.
- (4) For the purposes of this paragraph a settlement has a Schedule 4C pool until the end of the tax year in which all section 2(2) amounts in the pool have been reduced to nil.]]

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#### Textual Amendments

- F96** Sch. 4C para. 7B substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 137** (with Sch. 7 para. 155)

#### *[<sup>F97</sup> Attribution of Schedule 4C gains to beneficiaries*

#### Textual Amendments

- F97** Sch. 4C paras. 8, 8A-8C, 9 and cross-headings substituted for Sch. 4C paras. 8, 9 (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 29 para. 4(1)** (with s. 163(4)-(6))

- [<sup>F98</sup>** (1) Chargeable gains are treated as accruing in a tax year (“the relevant tax year”) to a beneficiary who has received a capital payment from the trustees of a relevant settlement in the relevant tax year or any earlier tax year if all or part of the capital payment is matched (under section 87A as it applies for the relevant tax year) with the section 2(2) amount in the Schedule 4C pool for the relevant tax year or any earlier tax year.
- (2) The amount of chargeable gains treated as accruing is equal to—
- (a) the amount of the capital payment, or
  - (b) if only part of the capital payment is matched, the amount of that part.
- (3) Section 87A applies for a tax year for the purposes of matching capital payments received from the trustees of a relevant settlement with section 2(2) amounts in the Schedule 4C pool as if—
- (a) references to section 2(2) amounts were to section 2(2) amounts in the Schedule 4C pool,
  - (b) references to a capital payment received from the trustees by a beneficiary were to a capital payment received from the trustees of a relevant settlement by a beneficiary who is chargeable to tax for that year, and
  - (c) for section 87A(3)(b) there were substituted—
    - “(b) all section 2(2) amounts in the Schedule 4C pool have been reduced to nil.”
- (4) Section 87A applies for a tax year by virtue of this paragraph before it applies for that year otherwise than by virtue of this paragraph; but this is subject to subparagraph (5).
- (5) If section 87A applies for a tax year by virtue of section 762(3) of the Taxes Act (offshore income gains), it applies for that year by virtue of that provision before it applies for that year by virtue of this paragraph.]]

#### Textual Amendments

- F98** Sch. 4C para. 8 substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 138** (with Sch. 7 paras. 148151(2)155)

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*[<sup>F97</sup>Relevant settlements*

- 8A (1) This paragraph specifies what settlements are relevant settlements in relation to a Schedule 4C pool.
- (2) The transferor and transferee settlements in relation to the original transfer of value are relevant settlements.
- (3) If the trustees of any settlement that is a relevant settlement in relation to a Schedule 4C pool—
  - (a) make a transfer of value to which Schedule 4B applies, or
  - (b) make a transfer of settled property to which section 90 applies,
 any settlement that is a transferee settlement in relation to that transfer is also a relevant settlement in relation to that pool.
- (4) If the trustees of a settlement that is a relevant settlement in relation to a Schedule 4C pool make a transfer of value to which Schedule 4B applies, any other settlement that is a relevant settlement in relation to that pool is also a relevant settlement in relation to the Schedule 4C pool arising from the further transfer.]

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

C6 Sch. 4C para. 8A applied (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 126\(4\)](#)

*[<sup>F99</sup>Attribution of gains: remittance basis*

**Textual Amendments**

**F99** Sch. 4C para. 8AA and cross-heading inserted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 139](#) (with [Sch. 7 para. 155](#))

8AA Section 87B (remittance basis) applies in relation to chargeable gains treated under paragraph 8 as accruing as it applies in relation to chargeable gains treated under section 87 as accruing.]

*F100* .....

**Textual Amendments**

**F100** Sch. 4C para. 8B cross-heading omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 140](#) (with [Sch. 7 para. 155](#))

<sup>F101</sup>8B .....

**Textual Amendments**

**F101** Sch. 4C para. 8B omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 140](#) (with [Sch. 7 para. 155](#))

*Status: Point in time view as at 21/07/2008.*

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*[<sup>F97</sup> Attribution of gains: Schedule 4C pool gains and other gains*

<sup>F102</sup>8C .....]

**Textual Amendments**

**F102** Sch. 4C para. 8C omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 140** (with Sch. 7 para. 155)

*[<sup>F103</sup> Attribution of gains: disregard of certain capital payments*

**Textual Amendments**

**F103** Sch. 4C para. 9 and cross-heading substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 141** (with Sch. 7 paras. 149155)

- 9
- (1) For the purposes of paragraph 8 (and section 87A as it applies for the purposes of that paragraph), no account is to be taken of a capital payment to which any of sub-paragraphs (2) to (4) applies (or a part of a capital payment to which sub-paragraph (4) applies).
  - (2) This sub-paragraph applies to a capital payment received before the tax year preceding the tax year in which the original transfer is made.
  - (3) This sub-paragraph applies to a capital payment that—
    - (a) is received by a beneficiary of a settlement from the trustees in a tax year during the whole of which the trustees—
      - (i) are resident and ordinarily resident in the United Kingdom, and
      - (ii) are not Treaty non-resident,
    - (b) was made before any transfer of value to which Schedule 4B applies was made, and
    - (c) was not made in anticipation of the making of any such transfer of value or of chargeable gains accruing under that Schedule.
  - (4) This sub-paragraph applies to a capital payment if (and to the extent that) it is received (or treated as received) in a tax year from the trustees by a company that—
    - (a) is not resident in the United Kingdom in that year, and
    - (b) would be a close company if it were resident in the United Kingdom,(and is not treated under any of subsections (3) to (5) of section 96 as received by another person).]

*Residence of trustees from whom capital payment received*

- 10
- (1) Subject to [<sup>F104</sup> paragraph 9(3)], it is immaterial for the purposes of paragraph 8 that the trustees [<sup>F105</sup> of any relevant settlement] are or have at any time been [<sup>F106</sup> resident and ordinarily resident in the United Kingdom].

<sup>F107</sup>(2) .....

<sup>F108</sup>(3) .....

*Status: Point in time view as at 21/07/2008.*

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#### **Textual Amendments**

- F104** Words in Sch. 4C para. 10(1) substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 142(a)** (with Sch. 7 para. 155)
- F105** Words in Sch. 4C para. 10(1) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), **Sch. 29 para. 6(1)** (with s. 163(4)-(6))
- F106** Words in Sch. 4C para. 10(1) substituted (with effect in accordance with Sch. 12 para. 34(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 12 para. 34(1)(2)(f)**
- F107** Sch. 4C para. 10(2) omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 142(b)** (with Sch. 7 para. 155)
- F108** Sch. 4C para. 10(3) omitted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 142(b)** (with Sch. 7 para. 155)

#### *Taper relief*

**F109**<sup>11</sup> .....

#### **Textual Amendments**

- F109** Sch. 4C para. 11 omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 2 para. 48**

#### *Attribution of gains to settlor in section 10A cases*

- 12<sup>[F110]</sup>(1) This paragraph applies if—
- (a) by virtue of section 10A, an amount of chargeable gains within section 86(1)(e) that accrued in an intervening year to the trustees of a settlement would be treated as accruing to a person (“the settlor”) in the year of return, and
  - (b) after paragraph 8 has applied for the year of return, the section 2(2) amount for the intervening year that is in the Schedule 4C pool for the settlement is less than the amount mentioned in paragraph (a).
- (2) The amount of chargeable gains treated as mentioned in sub-paragraph (1)(a) as accruing to the settlor in the year of return is limited to the section 2(2) amount referred to in sub-paragraph (1)(b).]
- (4) Where the property comprised in the transferor settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment taken into account for the purposes of paragraph 8 above as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account in computing the amount charged to beneficiaries.
- (5) Expressions used in this paragraph and section 10A have the same meanings in this paragraph as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in sub-paragraph (4) above to property originating from the settlor as it applies for the purposes of that Schedule.

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#### Textual Amendments

**F110** Sch. 4C para. 12(1)(2) substituted for Sch. 4C para. 12(1)-(3) (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 143(2)** (with [Sch. 7 para. 155](#))

### *[<sup>F111</sup> Attribution of gains to beneficiaries in section 10A cases*

#### Textual Amendments

**F111** Sch. 4C para. 12A and cross-heading inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), **Sch. 29 para. 4(2)** (with [s. 163\(4\)-\(6\)](#))

- 12A (1) This paragraph applies where by virtue of section 10A an amount of gains would (apart from this Schedule) be treated under section 87 as accruing to a person (“the beneficiary”) in the year of return by virtue of a capital payment made to him in an intervening year.
- (2) Where this paragraph applies, a capital payment equal to so much of that capital payment as exceeds the amount otherwise charged shall be deemed for the purposes of this Schedule to be made to the beneficiary in the year of return.
- (3) The “amount otherwise charged” means the total of any chargeable gains attributed to the beneficiary under section [<sup>F112</sup>87(2)] or 89(2) by virtue of the capital payment.
- (4) For the purposes of paragraph 13(5)(b) a deemed capital payment under this paragraph shall be treated as made when the actual capital payment mentioned in sub-paragraph (1) above was made.
- (5) Expressions used in this paragraph and section 10A have the same meanings in this paragraph as in that section.]

#### Textual Amendments

**F112** Word in Sch. 4C para. 12A(3) substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), **Sch. 7 para. 144** (with [Sch. 7 para. 155](#))

### *Increase in tax payable under this Schedule*

- 13 [<sup>F113</sup>(1) This paragraph applies if—
- (a) chargeable gains are treated under paragraph 8 as accruing to a beneficiary by virtue of the matching (under section 87A) of all or part of a capital payment with the section 2(2) amount for a tax year (“the relevant tax year”), and
- (b) the beneficiary is charged to tax by virtue of the matching.
- (1A) Where part of a capital payment is matched, references in sub-paragraphs (2) and (3) to the capital payment are to the part matched.]
- (2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under sub-paragraph (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.

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- (3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this paragraph) carried interest for the chargeable period at the specified rate.

The “specified rate” means the rate for the time being specified in section 91(3).

- (4) The chargeable period is the period which—
- (a) begins with the later of the 2 days specified in sub-paragraph (5) below, and
  - (b) ends with 30th November in the year of assessment following that in which the capital payment is made.
- (5) The 2 days are—
- (a) 1st December in the [<sup>F114</sup>tax year immediately after the relevant tax year,] and
  - (b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.

#### Textual Amendments

**F113** Sch. 4C para. 13(1)(1A) substituted for Sch. 4C para. 13(1) (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 145\(2\)](#) (with [Sch. 7 para. 155](#))

**F114** Words in Sch. 4C para. 13(5)(a) substituted (with effect in accordance with Sch. 7 para. 147 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 145\(3\)](#) (with [Sch. 7 para. 155](#))

#### *[<sup>F115</sup>Effect of settlement ceasing to exist after transfer of value*

#### Textual Amendments

**F115** Sch. 4C para. 13A and cross-heading inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 29 para. 6\(4\)](#) (with [s. 163\(4\)-\(6\)](#))

- 13A Where a settlement ceases to exist after the trustees have made a transfer of value to which Schedule 4B applies, this Schedule has effect as if a year of assessment had ended immediately before the settlement ceased to exist.]

#### *Interpretation*

- 14 (1) In this Schedule—
- (a) “transfer of value” has the same meaning as in Schedule 4B; and
  - (b) references to the time at which a transfer of value was made are to the time which is the material time for the purposes of that Schedule.
- (2) In this Schedule, in relation to a transfer of value—
- (a) references to the transferor settlement are to the settlement the trustees of which made the transfer of value; and
  - (b) references to a transferee settlement are to any settlement of which the settled property includes property representing, directly or indirectly, the proceeds of the transfer of value.
- (3) References in this Schedule to beneficiaries of a settlement include—



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- (a) persons who have ceased to be beneficiaries by the time the chargeable gains accrue, and
- (b) persons who were beneficiaries of the settlement before it ceased to exist, but who were beneficiaries of the settlement at a time in a previous year of assessment when a capital payment was made to them.]

## SCHEDULE 5

Section 86.

ATTRIBUTION OF GAINS TO SETTLORS WITH INTEREST  
IN NON-RESIDENT OR DUAL RESIDENT SETTLEMENT

*Construction of section 86(1)(e)*

- 1 (1) In construing section 86(1)(e) as regards a particular year of assessment, the effect of [F116section 3] shall be ignored.
- (2) In construing section 86(1)(e) as regards a particular year of assessment—
- (a) any deductions provided for by section 2(2) shall be made in respect of disposals of any of the settled property originating from the settlor, and
  - (b) section 16(3) shall be assumed not to prevent losses accruing to trustees in one year of assessment from being allowed as a deduction from chargeable gains accruing in a later year of assessment (so far as not previously set against gains).
- (3) In a case where—
- (a) the trustees [F117are participators in a company in respect of property which originates] from the settlor, and
  - (b) under section 13 gains or losses would be treated as accruing to the trustees in a particular year of assessment by virtue of [F118so much of their interest as participators as arises from that property] if the assumption as to residence specified in section 86(3) were made,
- the gains or losses shall be taken into account in construing section 86(1)(e) as regards that year as if they had accrued by virtue of disposals of settled property originating from the settlor.
- [F119Subsections (12) and (13) of section 13 shall apply for the purposes of this sub-paragraph as they apply for the purposes of that section.]
- (4) Where, as regards a particular year of assessment, there would be an amount under section 86(1)(e) (apart from this sub-paragraph) and the trustees fall within section 86(2)(b), the following rules shall apply—
- (a) assume that the references in section 86(1)(e) and sub-paragraphs (2)(a) and (3) above to settled property originating from the settlor were to such of it as constitutes protected assets;
  - (b) assume that the reference in sub-paragraph (3)(a) above to shares originating from the settlor were to such of them as constitute protected assets;
  - (c) find the amount (if any) which would be arrived at under section 86(1)(e) on those assumptions;

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- (d) if no amount is so found there shall be deemed to be no amount for the purposes of section 86(1)(e);
  - (e) if an amount is found under paragraph (c) above it must be compared with the amount arrived at under section 86(1)(e) apart from this sub-paragraph. and the smaller of the 2 shall be taken to be the amount arrived at under section 86(1)(e).
- (5) Sub-paragraphs (2) to (4) above shall have effect subject to sub-paragraphs (6) and (7) below.
- (6) The following rules shall apply in construing section 86(1)(e) as regards a particular year of assessment (“the year concerned”) in a case where the trustees fall within section 86(2)(a)—
- (a) if the conditions mentioned in section 86(1) are not fulfilled as regards the settlement in any year of assessment falling before the year concerned, no deductions shall be made in respect of losses accruing before the year concerned;
  - (b) if the conditions mentioned in section 86(1) are fulfilled as regards the settlement in any year or years of assessment falling before the year concerned, no deductions shall be made in respect of losses accruing before that year (or the first of those years) so falling,
- but nothing in the preceding provisions of this sub-paragraph shall prevent deductions being made in respect of losses accruing in a year of assessment in which the conditions mentioned in section 86(1)(a) to (d) and (f) are fulfilled as regards the settlement.
- (7) In construing section 86(1)(e) as regards a particular year of assessment and in relation to a settlement created before 19th March 1991, no account shall be taken of disposals made before 19th March 1991 (whether for the purpose of arriving at gains or for the purpose of arriving at losses).
- (8) For the purposes of sub-paragraph (4) above assets are protected assets if—
- (a) they are of a description specified in the arrangements mentioned in section 86(2)(b), and
  - (b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.
- (9) For the purposes of sub-paragraph (8) above—
- (a) the assumption as to residence specified in section 86(3) shall be ignored;
  - (b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;
  - (c) if different assets are identified by reference to different relevant times, all of them are protected assets.

#### **Textual Amendments**

**F116** Words in Sch. 5 para. 1(1) substituted (with effect in accordance with Sch. 2 para. 22 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 10](#)

**F117** Words in Sch. 5 para. 1(3)(a) substituted (with application in accordance with s. 174(11) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 174\(10\)\(a\)](#)

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- 2 (1) For the purposes of section 86(1)(d) a settlor has an interest in a settlement if—
- (a) any relevant property which is or may at any time be comprised in the settlement is, or will or may become, applicable for the benefit of or payable to a defined person in any circumstances whatever,
  - (b) any relevant income which arises or may arise under the settlement is, or will or may become, applicable for the benefit of or payable to a defined person in any circumstances whatever, or
  - (c) any defined person enjoys a benefit directly or indirectly from any relevant property which is comprised in the settlement or any relevant income arising under the settlement;
- but this sub-paragraph is subject to sub-paragraphs (4) to (6) <sup>F120</sup>and paragraph 2A] below.
- (2) For the purposes of sub-paragraph (1) above—
- (a) relevant property is property originating from the settlor,
  - (b) relevant income is income originating from the settlor.
- (3) For the purposes of sub-paragraph (1) above each of the following is a defined person—
- (a) the settlor,
  - (b) the settlor's spouse <sup>F121</sup>or civil partner];
  - (c) any child of the settlor or of the settlor's spouse <sup>F121</sup>or civil partner];
  - (d) the spouse <sup>F121</sup>or civil partner] of any such child;
  - <sup>F122</sup>(da) any grandchild of the settlor or of the settlor's spouse <sup>F121</sup>or civil partner];
  - (db) the spouse <sup>F121</sup>or civil partner] of any such grandchild;]
  - (e) a company controlled by a person or persons falling within paragraphs (a) to <sup>F123</sup>(db)] above;
  - (f) a company associated with a company falling within paragraph (e) above.
- (4) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above at any time when none of the property concerned can become applicable or payable as mentioned in that paragraph except in the event of—
- (a) the bankruptcy of some person who is or may become beneficially entitled to the property,
  - (b) any assignment of or charge on the property being made or given by some such person,
  - <sup>F124</sup>(c) in the case of a marriage settlement or civil partnership settlement, the death of both parties to the marriage or civil partnership and of all or any of the children of the family of the parties to the marriage or civil partnership, or]
  - (d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to the property on attaining that age.

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- [<sup>F125</sup>(4A) In sub-paragraph (4) “child of the family”, in relation to parties to a marriage or civil partner, means a child of one or both of them.]
- (5) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above at any time when some person is alive and under the age of 25 if during that person’s life none of the property concerned can become applicable or payable as mentioned in that paragraph except in the event of that person becoming bankrupt or assigning or charging his interest in the property concerned.
- (6) Sub-paragraphs (4) and (5) above apply for the purposes of paragraph (b) of sub-paragraph (1) above as they apply for the purposes of paragraph (a), reading “ income ” for “property”.
- [<sup>F126</sup>(7) In this paragraph—  
“child” includes a stepchild; and  
“grandchild” means a child of a child.]
- (8) For the purposes of sub-paragraph (3) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (9) For the purposes of sub-paragraph (3) above the question whether a company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (10) In sub-paragraphs (8) and (9) “participator” has the meaning given by section 417(1) of the Taxes Act.

#### **Textual Amendments**

- F120** Words in Sch. 5 para. 2(1) inserted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 22 para. 2\(1\)](#)
- F121** Words in Sch. 5 para. 2(3) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 126\(2\)\(a\)](#)
- F122** Sch. 5 para. 2(3)(da)(db) inserted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 131\(1\)\(a\)](#)
- F123** Word in Sch. 5 para. 2(3)(e) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 131\(1\)\(b\)](#)
- F124** Sch. 5 para. 2(4)(c) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 126\(2\)\(b\)](#)
- F125** Sch. 5 para. 2(4A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\), regs. 1\(1\), 126\(2\)\(c\)](#)
- F126** Sch. 5 para. 2(7) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 131\(2\)](#)

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### <sup>F127</sup>Settlements created before 17th March 1998

#### Textual Amendments

**F127** Sch. 5 para. 2A and cross-heading inserted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 22 para. 2(2)**

- 2A (1) In determining for the purposes of section 86(1)(d) whether the settlor has an interest at any time during any year of assessment in a settlement created before 17th March 1998, paragraphs (da) and (db) of paragraph 2(3) above, and the reference to those paragraphs in paragraph 2(3)(e), shall be disregarded unless—
- (a) that year is a year in which one of the four conditions set out in the following provisions of this paragraph becomes fulfilled as regards the settlement; or
  - (b) one of those conditions became fulfilled as regards that settlement in any previous year of assessment ending on or after 5th April 1998.
- (2) The first condition is (subject to sub-paragraph (3) below) that on or after 17th March 1998 property or income is provided directly or indirectly for the purposes of the settlement—
- (a) otherwise than under a transaction entered into at arm's length, and
  - (b) otherwise than in pursuance of a liability incurred by any person before that date.
- (3) For the purposes of the first condition, where the settlement's expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards meeting those expenses shall be ignored if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement's income for the year.
- (4) The second condition is that—
- (a) the trustees become on or after 17th March 1998 neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 17th March 1998 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (5) The third condition is that on or after 17th March 1998 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.
- (6) The fourth condition is that—
- (a) on or after 17th March 1998 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and
  - (b) the person concerned is not one who (looking only at the terms of the settlement immediately before 17th March 1998) would be capable of enjoying a benefit from the settlement on or after that date.
- (7) Each of the following persons falls within this sub-paragraph—
- (a) any grandchild of the settlor or of the settlor's spouse [<sup>F128</sup>or civil partner];
  - (b) the spouse [<sup>F128</sup>or civil partner] of any such grandchild;

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- (c) a company controlled by a person or persons falling within paragraph (a) or (b) above;
  - (d) a company controlled by any such person or persons together with any person or persons (not so falling) each of whom is for the purposes of paragraph 2(1) above a defined person in relation to the settlement;
  - (e) a company associated with a company falling within paragraph (c) or (d) above.
- (8) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (9) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (10) In this paragraph—  
     'child' includes a step-child;  
     'grandchild' means a child of a child;  
     'participator' has the meaning given by section 417(1) of the Taxes Act.]

#### **Textual Amendments**

**F128** Words in Sch. 5 para. 2A(7) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **126(3)**

#### *Exceptions from section 86*

- 3           Section 86 does not apply if the settlor dies in the year.
- 4           (1) This paragraph applies where for the purposes of section 86(1)(d) the settlor has no interest in the settlement at any time in the year except for one of the following reasons, namely, that—
- (a) property is, or will or may become, applicable for the benefit of or payable to one of the persons falling within paragraph 2(3)(b) to <sup>F129</sup>(db) above,
  - (b) income is, or will or may become, applicable for the benefit of or payable to one of those persons, or
  - (c) one of those persons enjoys a benefit from property or income.
- (2) This paragraph also applies where sub-paragraph (1) above is fulfilled by virtue of 2 or all of paragraphs (a) to (c) being satisfied by reference to the same person.
- (3) Where this paragraph applies, section 86 does not apply if the person concerned dies in the year.
- (4) In a case where—
- (a) this paragraph applies, and

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(b) the person concerned falls within paragraph 2(3)(b)<sup>F130</sup>, (d) or (db)] above, section 86 does not apply if during the year the person concerned ceases to be married to<sup>F131</sup>, or a civil partner of,] the settlor<sup>F132</sup>, child or grandchild] concerned (as the case may be).

**Textual Amendments**

- F129** Word in Sch. 5 para. 4(1)(a) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 22 para. 3\(1\)](#)
- F130** Words in Sch. 5 para. 4(4)(b) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 22 para. 3\(2\)\(a\)](#)
- F131** Words in Sch. 5 para. 4(4) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [126\(4\)](#)
- F132** Words in Sch. 5 para. 4(4) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 22 para. 3\(2\)\(b\)](#)

- 5 (1) This paragraph applies where for the purposes of section 86(1)(d) the settlor has no interest in the settlement at any time in the year except for the reason that there are 2 or more persons, each of whom—
- falls within paragraph 2(3)(b) to <sup>F133</sup>(db)] above, and
  - stands to gain for the reason stated in sub-paragraph (2) below.
- (2) The reason is that—
- property is, or will or may become, applicable for his benefit or payable to him,
  - income is, or will or may become, applicable for his benefit or payable to him,
  - he enjoys a benefit from property or income, or
  - 2 or all of paragraphs (a) to (c) above apply in his case.
- (3) Where this paragraph applies, section 86 does not apply if each of the persons concerned dies in the year.

**Textual Amendments**

- F133** Word in Sch. 5 para. 5(1)(a) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 22 para. 3\(1\)](#)

*Right of recovery*

- 6 (1) This paragraph applies where any tax becomes chargeable on, and is paid by, a person in respect of gains treated as accruing to him in a year under section 86(4).
- (2) The person shall be entitled to recover the amount of the tax from any person who is a trustee of the settlement.
- (3) For the purposes of recovering that amount, the person shall also be entitled to require an inspector to give him a certificate specifying—
- the amount of the gains concerned, and
  - the amount of tax paid,
- and any such certificate shall be conclusive evidence of the facts stated in it.

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*Meaning of “settlor”*

- 7 For the purposes of section 86 and this Schedule, a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.

*Meaning of “originating”*

- 8 (1) References in section 86 and this Schedule to property originating from a person are references to—
- (a) property provided by that person;
  - (b) property representing property falling within paragraph (a) above;
  - (c) so much of any property representing both property falling within paragraph (a) above and other property as, on a just apportionment, can be taken to represent property so falling.
- (2) References in this Schedule to income originating from a person are references to—
- (a) income from property originating from that person;
  - (b) income provided by that person.
- (3) Where a person who is a settlor in relation to a settlement makes reciprocal arrangements with another person for the provision of property or income, for the purposes of this paragraph—
- (a) property or income provided by the other person in pursuance of the arrangements shall be treated as provided by the settlor, but
  - (b) property or income provided by the settlor in pursuance of the arrangements shall be treated as provided by the other person (and not by the settlor).
- (4) For the purposes of this paragraph—
- (a) where property is provided by a qualifying company controlled by one person alone at the time it is provided, that person shall be taken to provide it;
  - (b) where property is provided by a qualifying company controlled by 2 or more persons (taking each one separately) at the time it is provided, those persons shall be taken to provide the property and each one shall be taken to provide an equal share of it;
  - (c) where property is provided by a qualifying company controlled by 2 or more persons (taking them together) at the time it is provided, the persons who are participators in the company at the time it is provided shall be taken to provide it and each one shall be taken to provide so much of it as is attributed to him on the basis of a just apportionment;
- but where a person would be taken to provide less than one-twentieth of any property by virtue of paragraph (c) above and apart from this provision, he shall not be taken to provide any of it by virtue of that paragraph.
- (5) For the purposes of sub-paragraph (4) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.
- (6) For the purposes of this paragraph references to property representing other property include references to property representing accumulated income from that other property.



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- (7) For the purposes of this paragraph property or income is provided by a person if it is provided directly or indirectly by the person.
- (8) For the purposes of this paragraph the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (9) In this paragraph “participator” has the meaning given by section 417(1) of the Taxes Act.

<sup>F134</sup>(10) . . . . .

**Textual Amendments**

**F134** Sch. 5 para. 8(10) repealed (with effect in accordance with Sch. 41 Pt. 5(30) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(30)**

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

**C7** Sch. 5 para. 8 applied (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 23 para. 6(6)**

*Qualifying settlements, and commencement*

- 9 (1) A settlement created on or after 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—
  - (a) the year of assessment in which it is created, and
  - (b) subsequent years of assessment.

- <sup>F135</sup>(1A) Subject to sub-paragraph (1B) below, a settlement created before 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—
  - (a) the year 1999-00, and
  - (b) subsequent years of assessment.

- (1B) Where a settlement created before 19th March 1991 is a protected settlement immediately after the beginning of 6th April 1999, that settlement shall be treated as a qualifying settlement for the purposes of section 86 and this Schedule in a year of assessment mentioned in sub-paragraph (1A)(a) or (b) above only if—
  - (a) any of the five conditions set out in subsections (3) to (6A) below becomes fulfilled as regards the settlement in that year; or
  - (b) any of those five conditions became so fulfilled in any previous year of assessment ending after 19th March 1991.]

<sup>F136</sup>(2) . . . . .

- (3) The first condition is that on or after 19th March 1991 property or income is provided directly or indirectly for the purposes of the settlement—
  - (a) otherwise than under a transaction entered into at arm’s length, and
  - (b) otherwise than in pursuance of a liability incurred by any person before that date;

but if the settlement’s expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards

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meeting those expenses shall be ignored for the purposes of this condition if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement’s income for the year.

- (4) The second condition is that—
  - (a) the trustees become on or after 19th March 1991 neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 19th March 1991 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (5) The third condition is that on or after 19th March 1991 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.
- (6) The fourth condition is that—
  - (a) on or after 19th March 1991 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and
  - (b) the person concerned is not one who (looking only at the terms of the settlement immediately before 19th March 1991) would be capable of enjoying a benefit from the settlement on or after that date.

[<sup>F137</sup>(6A) The fifth condition is that the settlement ceases to be a protected settlement at any time on or after 6th April 1999.]

- (7) Each of the following persons falls within this sub-paragraph—
  - (a) a settlor;
  - (b) the spouse [<sup>F138</sup>or civil partner] of a settlor;
  - (c) any child of a settlor or of a settlor’s spouse [<sup>F138</sup>or civil partner];
  - (d) the spouse [<sup>F138</sup>or civil partner] of any such child;
  - [<sup>F139</sup>(da) any grandchild of a settlor or of a settlor’s spouse [<sup>F138</sup>or civil partner];
  - (db) the spouse [<sup>F138</sup>or civil partner] of any such grandchild;]
  - (e) a company controlled by a person or persons falling within paragraphs (a) to [<sup>F140</sup>(db)] above;
  - (f) a company associated with a company falling within paragraph (e) above.

<sup>F141</sup>(8) . . . . .

- (9) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.
- (10) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

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[<sup>F142</sup>(10A) Subject to sub-paragraph (10B) below, a settlement is a protected settlement at any time in a year of assessment if at that time the beneficiaries of that settlement are confined to persons falling within some or all of the following descriptions, that is to say—

- (a) children of a settlor or of a spouse [<sup>F143</sup>or civil partner] of a settlor who are under the age of eighteen at that time or who were under that age at the end of the immediately preceding year of assessment;
- (b) unborn children of a settlor, of a spouse [<sup>F143</sup>or civil partner] of a settlor, or of a future spouse [<sup>F143</sup>or civil partner] of a settlor;
- (c) future spouses [<sup>F144</sup>or civil partners] of any children or future children of a settlor, a spouse [<sup>F143</sup>or civil partner] of a settlor or any future spouse [<sup>F143</sup>or civil partner] of a settlor;
- (d) a future spouse [<sup>F143</sup>or civil partner] of a settlor;
- (e) persons outside the defined categories.

(10B) For the purposes of sub-paragraph (10A) above a person is outside the defined categories at any time if, and only if, there is no settlor by reference to whom he is at that time a defined person in relation to the settlement for the purposes of paragraph 2(1) above.

(10C) For the purposes of sub-paragraph (10A) above a person is a beneficiary of a settlement if—

- (a) there are any circumstances whatever in which relevant property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;
- (b) there are any circumstances whatever in which relevant income which arises or may arise under the settlement is or will or may become applicable for his benefit or payable to him;
- (c) he enjoys a benefit directly or indirectly from any relevant property comprised in the settlement or any relevant income arising under the settlement.

(10D) In sub-paragraph (10C) above—

“relevant property” means property originating from a settlor; and  
“relevant income” means income originating from a settlor.]

[<sup>F145</sup>(11) In this paragraph—

- “child” includes a step-child;
- “grandchild” means a child of a child;
- “participator” has the meaning given by section 417(1) of the Taxes Act.]

#### Textual Amendments

**F135** Sch. 5 para. 9(1A)(1B) inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 132\(1\)](#)

**F136** Sch. 5 para. 9(2) repealed (for the purpose of determining whether any settlement is a qualifying settlement in the year 1999-00 or any subsequent year of assessment) by [Finance Act 1998 \(c. 36\), s. 132\(2\)](#), [Sch. 27 Pt. III\(30\)](#)

**F137** Sch. 5 para. 9(6A) inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 132\(3\)](#)

**F138** Words in Sch. 5 para. 9(7) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\), 126\(5\)\(a\)](#)

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- F139** Sch. 5 para. 9(7)(da)(db) inserted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 22 para. 4(1)(a)** (with [Sch. 22 para. 4\(3\)](#))
- F140** Word in Sch. 5 para. 9(7)(e) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 22 para. 4(1)(b)** (with [Sch. 22 para. 4\(3\)](#))
- F141** Sch. 5 para. 9(8) repealed (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 27 Pt. III(30)**
- F142** Sch. 5 para. 9(10A)-(10D) inserted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), **s. 132(4)**
- F143** Words in Sch. 5 para. 9(10A) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **126(5)(b)(i)**
- F144** Words in Sch. 5 para. 9(10A)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **126(5)(b)(ii)**
- F145** Sch. 5 para. 9(11) substituted (with effect in accordance with s. 131(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 22 para. 4(2)**

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

- C8** Sch. 5 para. 9(10A)(a) applied (with modifications) (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), **Sch. 23 para. 6(3)**

*Information*

- 10 An inspector may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within such time as he may direct (which must not be less than 28 days beginning with the day the notice is given) such particulars as he thinks necessary for the purposes of section 86 and this Schedule and specifies in the notice.

**F146**<sub>11</sub> .....

**Textual Amendments**

- F146** Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 97(4), **Sch. 26 Pt. V(10)**

**F146**<sub>12</sub> .....

**Textual Amendments**

- F146** Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 97(4), **Sch. 26 Pt. V(10)**

**F146**<sub>13</sub> .....

**Textual Amendments**

- F146** Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 97(4), **Sch. 26 Pt. V(10)**

**F146**<sub>14</sub> .....

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#### Textual Amendments

**F146** Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 97(4), [Sch. 26 Pt. V\(10\)](#)

## [<sup>F147</sup>SCHEDULE 5A

Section 98A.

### SETTLEMENTS WITH FOREIGN ELEMENT: INFORMATION

#### Textual Amendments

**F147** Sch. 5A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. 97(3)

- 1 In this Schedule “the commencement day” means the day on which the Finance Act 1994 was passed.
- 2 (1) This paragraph applies if—
  - (a) a settlement was created before [<sup>F148</sup>17th March 1998],
  - (b) on or after the commencement day a person transfers property to the trustees otherwise than under a transaction entered into at arm’s length and otherwise than in pursuance of a liability incurred by any person before that day,
  - (c) the trustees are [<sup>F149</sup>neither resident nor ordinarily resident in the United Kingdom] at the time the property is transferred, and
  - (d) the transferor knows, or has reason to believe, that the trustees are not so [<sup>F150</sup>resident and ordinarily resident].
- (2) Before the expiry of the period of twelve months beginning with the relevant day, the transferor shall deliver to the Board a return which—
  - (a) identifies the settlement, and
  - (b) specifies the property transferred, the day on which the transfer was made, and the consideration (if any) for the transfer.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the day on which the transfer is made.

#### Textual Amendments

**F148** Words in Sch. 5A para. 2(1)(a) substituted (with effect in accordance with s. 131(4) of, Sch. 22 para. 5(2) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 22 para. 5\(1\)](#)

**F149** Words in Sch. 5A para. 2(1)(c) substituted (with effect in accordance with Sch. 12 para. 30(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), Sch. 12 para. 30(1)(2)(c)

**F150** Words in Sch. 5A para. 2(1)(d) substituted (with effect in accordance with Sch. 12 para. 30(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 30\(3\)](#)

- 3 (1) This paragraph applies if a settlement is created on or after the commencement day, and at the time it is created—
  - (a) the trustees are [<sup>F151</sup>neither resident nor ordinarily resident in the United Kingdom], or

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- (b) the trustees are [<sup>F152</sup>resident and ordinarily resident in the United Kingdom] but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who—
- (a) is a settlor in relation to the settlement at the time it is created, and
  - (b) at that time fulfils the condition mentioned in sub-paragraph (3) below,
- shall, before the expiry of the period of three months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.
- (3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
- (4) The particulars are—
- (a) the day on which the settlement was created;
  - (b) the name and address of the person delivering the return;
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the settlement is created.

#### Textual Amendments

**F151** Words in Sch. 5A para. 3(1)(a) substituted (with effect in accordance with Sch. 12 para. 30(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 30\(1\)\(2\)\(c\)](#)

**F152** Words in Sch. 5A para. 3(1)(b) substituted (with effect in accordance with Sch. 12 para. 34(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(g\)](#)

- 4 (1) This paragraph applies if a settlement is created on or after 19th March 1991, and at the time it is created—
- (a) the trustees are [<sup>F153</sup>neither resident nor ordinarily resident in the United Kingdom], or
  - (b) the trustees are [<sup>F154</sup>resident and ordinarily resident in the United Kingdom] but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who—
- (a) is a settlor in relation to the settlement at the time it is created,
  - (b) at that time does not fulfil the condition mentioned in sub-paragraph (3) below, and
  - (c) first fulfils that condition at a time falling on or after the commencement day,
- shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.
- (3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.
- (4) The particulars are—
- (a) the day on which the settlement was created;

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- (b) the name and address of the person delivering the return;
- (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the person first fulfils the condition as mentioned in paragraph (c) of that sub-paragraph.

#### Textual Amendments

**F153** Words in Sch. 5A para. 4(1)(a) substituted (with effect in accordance with Sch. 12 para. 30(6) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 30\(1\)\(2\)\(c\)](#)

**F154** Words in Sch. 5A para. 4(1)(b) substituted (with effect in accordance with Sch. 12 para. 34(4) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 12 para. 34\(1\)\(2\)\(g\)](#)

- 5 (1) This paragraph applies if—
- (a) the trustees of a settlement become at any time (the relevant time) on or after the commencement day neither resident nor ordinarily resident in the United Kingdom, or
  - (b) the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the relevant time) on or after the commencement day trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.
- (2) Any person who was a trustee of the settlement immediately before the relevant time shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying—
- (a) the day on which the settlement was created,
  - (b) the name and address of each person who is a settlor in relation to the settlement immediately before the delivery of the return, and
  - (c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the day when the relevant time falls.
- 6 (1) Nothing in paragraph 2, 3, 4 or 5 above shall require information to be contained in the return concerned to the extent that—
- (a) before the expiry of the period concerned the information has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
  - (b) after the expiry of the period concerned the information falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.
- (2) Nothing in paragraph 2, 3, 4 or 5 above shall require a return to be delivered if—
- (a) before the expiry of the period concerned all the information concerned has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or
  - (b) after the expiry of the period concerned all the information concerned falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.]

*Status: Point in time view as at 21/07/2008.*

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## [<sup>F155</sup>SCHEDULE 5AA

### MEANING OF “SCHEME OF RECONSTRUCTION”

#### Textual Amendments

**F155** Sch. 5AA inserted (with effect in accordance with Sch. 9 paras. 7, 8 of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 9 para. 3](#)

#### *Introductory*

- 1 In section 136 “scheme of reconstruction” means a scheme of merger, division or other restructuring that meets the first and second, and either the third or the fourth, of the following conditions.

#### *First condition: issue of ordinary share capital*

- 2 The first condition is that the scheme involves the issue of ordinary share capital of a company (“the successor company”) or of more than one company (“the successor companies”)—

- (a) to holders of ordinary share capital of another company (“the original company”) or, where there are different classes of ordinary share capital of that company, to holders of one or more classes of ordinary share capital of that company (the classes “involved in the scheme of reconstruction”), or
- (b) to holders of ordinary share capital of more than one other company (“the original companies”) or, where there are different classes of ordinary share capital of one or more of the original company or companies, to holders of ordinary share capital of any of those companies or of one or more classes of ordinary share capital of any of those companies (the classes “involved in the scheme of reconstruction”),

and does not involve the issue of ordinary share capital of the successor company, or (as the case may be) any of the successor companies, to anyone else.

#### *Second condition: equal entitlement to new shares*

- 3 (1) The second condition is that under the scheme the entitlement of any person to acquire ordinary share capital of the successor company or companies by virtue of holding relevant shares, or relevant shares of any class, is the same as that of any other person holding such shares or shares of that class.
- (2) For this purpose “relevant shares” means shares comprised—
- (a) where there is one original company, in the ordinary share capital of that company or, as the case may be, in the ordinary share capital of that company of a class involved in the scheme of reconstruction;
  - (b) where there is more than one original company, in the ordinary share capital of any of those companies or, as the case may be, in the ordinary share capital of any of those companies of a class involved in the scheme of reconstruction.



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*Third condition: continuity of business*

- 4 (1) The third condition is that the effect of the restructuring is—
- (a) where there is one original company, that the business or substantially the whole of the business carried on by the company is carried on—
    - (i) by a successor company which is not the original company, or
    - (ii) by two or more successor companies (which may include the original company);
  - (b) where there is more than one original company, that all or part of the business or businesses carried on by one or more of the original companies is carried on by a different company, and the whole or substantially the whole of the businesses carried on by the original companies are carried on—
    - (i) where there is one successor company, by that company (which may be one of the original companies), or
    - (ii) where there are two or more successor companies, by those companies (which may be the same as the original companies or include any of those companies).

(2) The reference in sub-paragraph (1)(a)(ii) or (b)(ii) to the whole or substantially the whole of a business, or businesses, being carried on by two or more companies includes the case where the activities of those companies taken together embrace the whole or substantially the whole of the business, or businesses, in question.

(3) For the purposes of this paragraph a business carried on by a company that is under the control of another company is treated as carried on by the controlling company as well as by the controlled company.

Section 840 of the Taxes Act (meaning of “control”) applies for the purposes of this sub-paragraph.

(4) For the purposes of this paragraph the holding and management of assets that are retained by the original company, or any of the original companies, for the purpose of making a capital distribution in respect of shares in the company shall be disregarded.

In this sub-paragraph “capital distribution” has the same meaning as in section 122.

*Fourth condition: compromise or arrangement with members*

- 5 The fourth condition is that—
- (a) the scheme is carried out in pursuance of a compromise or arrangement—
    - [<sup>F156</sup>(i) to which Part 26 of the Companies Act 2006 (arrangements and reconstructions) applies,]
    - (ii) under any corresponding provision of the law of a country or territory outside the United Kingdom, and
  - (b) no part of the business of the original company, or of any of the original companies, is transferred under the scheme to any other person.

**Textual Amendments**

**F156** Sch. 5AA para. 5(a)(i) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), 17 (with art. 4)

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*Preliminary reorganisation of share capital to be disregarded*

- 6 Where a reorganisation of the share capital of the original company, or of any of the original companies, is carried out for the purposes of the scheme of reconstruction, the provisions of the first and second conditions apply in relation to the position after the reorganisation.

*Subsequent issue of shares or debentures to be disregarded*

- 7 An issue of shares in or debentures of the successor company, or any of the successor companies, after the latest date on which any ordinary share capital of the successor company, or any of them, is issued—
- (a) in consideration of the transfer of any business, or part of a business, under the scheme, or
  - (b) in pursuance of the compromise or arrangement mentioned in paragraph 5(a),
- shall be disregarded for the purposes of the first and second conditions.

*Interpretation*

- 8 (1) In this Schedule “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act and also includes—
- (a) in relation to a unit trust scheme, any rights that are treated by section 99(1) (b) of this Act (application of Act to unit trust schemes) as shares in a company, and
  - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (2) Any reference in this Schedule to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.]

[<sup>F157</sup>SCHEDULE 5B

ENTERPRISE INVESTMENT SCHEME: RE-INVESTMENT

**Textual Amendments**

**F157** Sch. 5B inserted (with effect in accordance with Sch. 13 para. 4(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 13 para. 4\(3\)](#)

*Application of Schedule*

- 1 (1) This Schedule applies where—
- (a) there would (apart from paragraph 2(2)(a) below) be a chargeable gain (“the original gain”) accruing to an individual (“the investor”) at any time (“the accrual time”) on or after 29th November 1994;
  - (b) the gain is one accruing either on the disposal by the investor of any asset or in accordance with [<sup>F158</sup>section 164F or 164FA,][<sup>F159</sup>section 169N,] paragraphs 4 and 5 below or paragraphs 4 and 5 of Schedule 5C;

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- (c) the investor makes a qualifying investment; and
  - (d) the investor is resident or ordinarily resident in the United Kingdom at the accrual time and the time when he makes the qualifying investment and is not, in relation to the qualifying investment, a person to whom sub-paragraph (4) below applies.
- [<sup>F160</sup>(2) The investor makes a qualifying investment for the purposes of this Schedule if—
- (a) eligible shares in a company for which he has subscribed <sup>F161</sup>... are issued to him at a qualifying time and, where that time is before the accrual time, the shares are still held by the investor at the accrual time,
  - [<sup>F162</sup>(aza) he subscribed for the shares (other than any of them which are bonus shares) wholly in cash,]
  - (b) the company is a qualifying company in relation to the shares,
  - (c) at the time when they are issued the shares [<sup>F163</sup>(other than any of them which are bonus shares) are fully paid up],
  - (d) the shares are subscribed for, and issued, for bona fide commercial purposes and not as part of arrangements the main purpose or one of the main purposes of which is the avoidance of tax,
  - [<sup>F164</sup>(da) the total amount of relevant investments made in the company in the year ending with the date the shares are issued does not exceed £2 million,]
  - (e) the requirements of section 289(1A) of the Taxes Act [<sup>F165</sup>(read with section 289(1B) to (1E) of that Act)] [<sup>F166</sup>, or the requirements of section 183 of ITA 2007,] are satisfied in relation to the company,
  - (f) [<sup>F167</sup>the shares (other than any of them which are bonus shares)] are issued in order to raise money for the purpose of a qualifying business activity, and
  - [<sup>F168</sup>[<sup>F169</sup>(g) at least 80 per cent. of the money raised by the issue of—
    - (i) the shares, and
    - (ii) all other eligible shares (if any) in the company of the same class which are issued on the same day,is employed wholly for the purpose of that activity not later than the time mentioned in section 289(3) of the Taxes Act [<sup>F170</sup>or section 175(3) of ITA 2007], and]
  - (h) all of the money so raised is employed wholly for that purpose not later than 12 months after that time,]
- and for the purposes of this Schedule, the [<sup>F171</sup>conditions in paragraphs (g) and (h) above do] not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.
- (3) In sub-paragraph (2) above “a qualifying time”, in relation to any shares subscribed for by the investor, means—
    - (a) any time in the period beginning one year before and ending three years after the accrual time, or
    - (b) any such time before the beginning of that period or after it ends as the Board may by notice allow.]
  - (4) This sub-paragraph applies to the investor in relation to a qualifying investment if—
    - (a) though resident or ordinarily resident in the United Kingdom at the time when he makes the investment, he is regarded for the purposes of any double

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taxation relief arrangements as resident in a territory outside the United Kingdom, and

- (b) were section 150A to be disregarded, the arrangements would have the effect that he would not be liable in the United Kingdom to tax on a gain arising on a disposal, immediately after their acquisition, of the shares acquired in making that investment.

[ Shares are not fully paid up for the purposes of sub-paragraph (2)(c) above if there is<sup>F172</sup>(5) any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.]

[ Section 173A(3) and (4) of ITA 2007 (meaning of “relevant investment”) apply for<sup>F173</sup>(6) the purposes of sub-paragraph (2)(da).

- (7) In sub-paragraph (2)(da), the reference to relevant investments made in the company includes relevant investments made in a company that is, or has at any time in the year mentioned there been, a subsidiary of the company (whether or not it was such a subsidiary when the investment was made).]

#### Textual Amendments

- F158** Words in Sch. 5B para. 1(1)(b) inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 27\(1\)](#)
- F159** Words in Sch. 5B para. 1(1)(b) inserted (with effect in accordance with Sch. 3 para. 5 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 3 para. 4](#)
- F160** Sch. 5B para. 1(2)(3) substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 27\(2\)](#)
- F161** Words in Sch. 5B para. 1(2)(a) repealed (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(1\)\(a\)](#), [Sch. 42 Pt. 2\(13\)](#)
- F162** Sch. 5B para. 1(2)(aza) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(1\)\(b\)](#)
- F163** Words in Sch. 5B para. 1(2)(c) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(1\)\(c\)](#)
- F164** Sch. 5B para. 1(2)(da) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 7\(2\)\(a\)](#)
- F165** Words in Sch. 5B para. 1(2)(e) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(1\)\(d\)](#)
- F166** Words in Sch. 5B para. 1(2)(e) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(2\)\(a\)](#) (with Sch. 2)
- F167** Words in Sch. 5B para. 1(2)(f) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(1\)\(e\)](#)
- F168** Sch. 5B para. 1(2)(g)(h) substituted for Sch. 5B para. 1(2)(g) (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 26\(a\)](#) (with Sch. 3)
- F169** Sch. 5B para. 1(2)(g) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(1\)\(f\)](#)
- F170** Words in Sch. 5B para. 1(2)(g) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(2\)\(b\)](#) (with Sch. 2)
- F171** Words in Sch. 5B para. 1(2) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 26\(b\)](#) (with Sch. 3)
- F172** Sch. 5B para. 1(5) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 13\(2\)](#)
- F173** Sch. 5B para. 1(6)(7) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 7\(2\)\(b\)](#)

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### *[<sup>F174</sup>Failure of conditions of application*

#### **Textual Amendments**

**F174** Sch. 5B para. 1A and cross-heading inserted (with effect in accordance with s. 74(3) of the amending Act) by **Finance Act 1998 (c. 36), Sch. 13 para. 28**

- 1A (1) If the condition in sub-paragraph (2)(b) [<sup>F175</sup>or (2)(da)] of paragraph 1 above is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares [<sup>F176</sup>mentioned in sub-paragraph (2)(a) of that paragraph] shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.
- (2) If the condition in sub-paragraph (2)(e) of that paragraph is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares [<sup>F177</sup>mentioned in sub-paragraph (2)(a) of that paragraph] shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.
- (3) If the condition in sub-paragraph (2)(f) of that paragraph is not satisfied in relation to [<sup>F178</sup>the shares mentioned in sub-paragraph (2)(a) of that paragraph,] the shares shall be treated for the purposes of this Schedule as never having been eligible shares.
- (4) If the condition in sub-paragraph (2)(g) [<sup>F179</sup>or (h)] of that paragraph is not satisfied in relation to [<sup>F180</sup>the issue of eligible shares, the shares mentioned in sub-paragraph (2) (a) of that paragraph] shall be treated for the purposes of this Schedule—
- (a) if the claim under this Schedule is made after the time mentioned in [<sup>F181</sup>sub-paragraph (4A) below], as never having been eligible shares; and
- (b) if that claim is made before that time, as ceasing to be eligible shares at that time.
- [ The time referred to in sub-paragraph (4) above is—
- <sup>F182</sup>(4A) (a) in a case relating to the condition in sub-paragraph (2)(g) of paragraph 1 above, the time mentioned in section 289(3) of the Taxes Act [<sup>F183</sup>or section 175(3) of ITA 2007], and
- (b) in a case relating to the condition in sub-paragraph (2)(h) of that paragraph, the time 12 months after that time.]
- (5) None of the preceding sub-paragraphs applies unless—
- (a) the company has given notice under paragraph 16(2) or (4) below [<sup>F184</sup>, section 310(2) of the Taxes Act or section 241(3) of ITA 2007]; or
- (b) an inspector has given notice to the company stating that, by reason of the matter mentioned in that sub-paragraph, the shares [<sup>F185</sup>mentioned in paragraph 1(2)(a) above] should, in his opinion, be treated for the purposes of this Schedule as never having been or, as the case may be, as ceasing to be eligible shares.
- (6) The giving of notice by an inspector under sub-paragraph (5) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.
- (7) Where any issue has been determined on an appeal brought by virtue of section 307(1B) of the Taxes Act [<sup>F186</sup>or section 236(1) of ITA 2007] (appeal against notice that relief was not due), the determination shall be conclusive for the purposes

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of any appeal brought by virtue of sub-paragraph (6) above on which that issue arises.]

#### Textual Amendments

- F175** Words in Sch. 5B para. 1A(1) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 para. 7\(3\)](#)
- F176** Words in Sch. 5B para. 1A(1) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 14\(a\)](#)
- F177** Words in Sch. 5B para. 1A(2) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 14\(b\)](#)
- F178** Words in Sch. 5B para. 1A(3) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 14\(c\)](#)
- F179** Words in Sch. 5B para. 1A(4) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 27\(1\)\(a\)](#) (with [Sch. 3](#))
- F180** Words in Sch. 5B para. 1A(4) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 14\(d\)](#)
- F181** Words in Sch. 5B para. 1A(4)(a) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 27\(1\)\(b\)](#) (with [Sch. 3](#))
- F182** Sch. 5B para. 1A(4A) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 27\(2\)](#) (with [Sch. 3](#))
- F183** Words in Sch. 5B para. 1A(4A)(a) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(3\)\(a\)](#) (with [Sch. 2](#))
- F184** Words in Sch. 5B para. 1A(5)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(3\)\(b\)](#) (with [Sch. 2](#))
- F185** Words in Sch. 5B para. 1A(5)(b) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 14\(e\)](#)
- F186** Words in Sch. 5B para. 1A(7) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(3\)\(c\)](#) (with [Sch. 2](#))

#### *Postponement of original gain*

- 2 (1) On the making of a claim by the investor for the purposes of this Schedule, so much of the investor's unused qualifying expenditure on [<sup>F187</sup>the relevant shares] as—
- (a) is specified in the claim, and
  - (b) does not exceed so much of the original gain as is unmatched,
- shall be set against a corresponding amount of the original gain.
- (2) Where an amount of qualifying expenditure on [<sup>F188</sup>the relevant shares] is set under this Schedule against the whole or part of the original gain—
- (a) so much of that gain as is equal to that amount shall be treated as not having accrued at the accrual time; but
  - (b) paragraphs 4 and 5 below shall apply for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of [<sup>F189</sup>the relevant shares].
- (3) For the purposes of this Schedule—
- [<sup>F190</sup>(a) the investor's qualifying expenditure on [<sup>F188</sup>the relevant shares] is the amount subscribed by him for the shares; and]
  - (b) that expenditure is unused to the extent that it has not already been set under this Schedule against the whole or any part of a chargeable gain.

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- (4) For the purposes of this paragraph the original gain is unmatched, in relation to any qualifying expenditure on [<sup>F191</sup>the relevant shares], to the extent that it has not had any other expenditure set against it under this Schedule <sup>F192</sup>... .

#### Textual Amendments

- F187** Words in Sch. 5B para. 2(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 8 para. 4\(a\)](#)
- F188** Words in Sch. 5B para. 2(2)(3) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 8 para. 4\(b\)](#)
- F189** Words in Sch. 5B para. 2(2)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 8 para. 4\(c\)](#)
- F190** Sch. 5B para. 2(3)(a) substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 29](#)
- F191** Words in Sch. 5B para. 2(4) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 8 para. 4\(a\)](#)
- F192** Words in Sch. 5B para. 2(4) repealed (with effect in accordance with Sch. 19 para. 7 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 19 para. 6\(2\)](#), [Sch. 42 Pt. 2\(13\)](#)

#### Chargeable events

- 3 (1) Subject to the following provisions of this paragraph, there is for the purposes of this Schedule a chargeable event in relation to [<sup>F193</sup>any of the relevant shares] if, after the making of the qualifying investment—
- (a) the investor disposes of those shares otherwise than by way of a disposal within marriage [<sup>F194</sup>or civil partnership];
  - (b) those shares are disposed of, otherwise than by way of a disposal to the investor, by a person who acquired them on a disposal made by the investor within marriage [<sup>F194</sup>or civil partnership];
  - (c) the investor becomes a non-resident while holding those shares and [<sup>F195</sup>before the termination date relating to those shares];
  - (d) a person who acquired those shares on a disposal within marriage [<sup>F194</sup>or civil partnership] becomes a non-resident while holding those shares and [<sup>F195</sup>before the termination date relating to those shares]; [<sup>F196</sup>or
  - (e) those shares cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.]

<sup>F197</sup>(2) .....

- (3) For the purposes of this Schedule there shall not be a chargeable event by virtue of sub-paragraph (1)(c) or (d) above in relation to any shares if—
- (a) the reason why the person in question becomes a non-resident is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and
  - (b) he again becomes resident or ordinarily resident in the United Kingdom within the period of three years from the time when he became a non-resident, without having meanwhile disposed of any of those shares;

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and accordingly no assessment shall be made by virtue of sub-paragraph (1)(c) or (d) above before the end of that period in a case where the condition in paragraph (a) above is satisfied and the condition in paragraph (b) above may be satisfied.

(4) For the purposes of sub-paragraph (3) above a person shall be taken to have disposed of any shares if and only if there has been such a disposal as would have been a chargeable event in relation to those shares if the person making the disposal had been resident in the United Kingdom.

(5) Where in any case—

- (a) the investor or a person who has acquired [<sup>F198</sup>any of the relevant shares] on a disposal within marriage [<sup>F194</sup>or civil partnership] dies, and
- (b) an event occurs at or after the time of the death which (apart from this sub-paragraph) would be a chargeable event in relation to [<sup>F198</sup>any of the relevant shares] held by the deceased immediately before his death,

that event shall not be a chargeable event in relation to the shares so held.

[ Any reference in the following provisions of this Schedule to a chargeable event <sup>F199</sup>(6) falling within a particular paragraph of sub-paragraph (1) above is a reference to a chargeable event arising for the purposes of this Schedule by virtue of that paragraph.]

#### Textual Amendments

- F193** Words in Sch. 5B para. 3(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 4(d)**
- F194** Words in Sch. 5B para. 3 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), [regs. 1\(1\)](#), **127**
- F195** Words in Sch. 5B para. 3(1)(c)(d) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 29** (with [Sch. 3](#))
- F196** Sch. 5B para. 3(1)(e) and preceding word substituted for Sch. 5B para. 3(1)(e)(f) (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 30(1)(b)**
- F197** Sch. 5B para. 3(2) repealed (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 30\(2\)](#), **Sch. 27 Pt. III(14)**
- F198** Words in Sch. 5B para. 3(5)(a)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 4(d)**
- F199** Sch. 5B para. 3(6) inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 30(3)**

#### *Gain accruing on chargeable event*

- 4 (1) On the occurrence of a chargeable event in relation to [<sup>F200</sup>any of the relevant shares] in relation to which there has not been a previous chargeable event—
- (a) a chargeable gain shall be treated as accruing at the time of the event; and
  - [<sup>F201</sup>(b) the amount of the gain shall be equal to so much of the deferred gain as is attributable to the shares in relation to which the chargeable event occurs.]
- [<sup>F202</sup>(2) Any question for the purposes of capital gains tax as to whether any shares to which a disposal (including a disposal within marriage [<sup>F203</sup>or civil partnership]) relates are shares to which deferral relief is attributable shall be determined in accordance with sub-paragraphs (3) and (4) below.



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- (3) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (4) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated as disposed of in the following order, namely—
- (a) first any to which neither deferral relief nor relief under Chapter III of Part VII of the Taxes Act [<sup>F204</sup>or Part 5 of ITA 2007] is attributable;
  - (b) next any to which deferral relief, but not relief under that Chapter [<sup>F204</sup>or that Part], is attributable;
  - (c) next any to which relief under that Chapter [<sup>F204</sup>or that Part], but not deferral relief, is attributable; and
  - (d) finally any to which both deferral relief and relief under that Chapter [<sup>F204</sup>or that Part] are attributable.
- (4A) The following, namely—
- (a) any shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act [<sup>F205</sup>or Part 5 of ITA 2007], is attributable and which were disposed of to an individual by a disposal within marriage [<sup>F203</sup>or civil partnership], and
  - (b) any shares to which relief under that Chapter [<sup>F205</sup>or that Part] is attributable and which were transferred to an individual as mentioned in section 304 of [<sup>F206</sup>the Taxes Act or section 245 of ITA 2007],
- shall be treated for the purposes of sub-paragraphs (3) and (4) above as acquired by him on the day on which they were issued.
- (4B) Chapter I of Part IV of this Act has effect subject to sub-paragraphs (2) to (4A) above.
- (4C) Sections 104, 105 and 106A shall not apply to shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act [<sup>F207</sup>or Part 5 of ITA 2007], is attributable.]
- (5) Where at the time of a chargeable event [<sup>F208</sup>any of the relevant shares] are treated for the purposes of this Act as represented by assets which consist of or include assets other than those shares—
- <sup>F209</sup>(a) so much of the deferred gain as is attributable to those shares shall be treated, in determining for the purposes of this paragraph the amount of the deferred gain to be treated as attributable to each of those assets, as apportioned in such manner as may be just and reasonable between those assets; and]
  - (b) as between different assets treated as representing [<sup>F210</sup>the same shares], [<sup>F211</sup>sub-paragraphs (3) to (4A) above] shall apply with the necessary modifications in relation to those assets as they would apply in relation to the shares.
- [ In order to determine, for the purposes of this paragraph, the amount of the deferred
- <sup>F212</sup>(6) gain attributable to any shares, a proportionate part of the amount of the gain shall be attributed to each of the relevant shares held, immediately before the occurrence of the chargeable event in question, by the investor or a person who has acquired any of the relevant shares from the investor on a disposal within marriage [<sup>F203</sup>or civil partnership].

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- (7) In this paragraph “the deferred gain” means—
- (a) the amount of the original gain against which expenditure has been set under this Schedule, less
  - (b) the amount of any gain treated as accruing under this paragraph previously as a result of a disposal of any of the relevant shares.]

#### Textual Amendments

- F200** Words in Sch. 5B para. 4(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 4(e)**
- F201** Sch. 5B para. 4(1)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 2(1)**
- F202** Sch. 5B para. 4(2)-(4C) substituted for Sch. 5B para. 4(2)-(4) (with effect in accordance with Sch. 13 para. 31(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 31(1)**
- F203** Words in Sch. 5B para. 4 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **127**
- F204** Words in Sch. 5B para. 4(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(4)(a)** (with Sch. 2)
- F205** Words in Sch. 5B para. 4(4A) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(4)(b)** (with Sch. 2)
- F206** Words in Sch. 5B para. 4(4A)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(4)(b)** (with Sch. 2)
- F207** Words in Sch. 5B para. 4(4C) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(4)(c)** (with Sch. 2)
- F208** Words in Sch. 5B para. 4(5) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 4(e)**
- F209** Sch. 5B para. 4(5)(a) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 2(2)**
- F210** Words in Sch. 5B para. 4(5)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 4(f)**
- F211** Words in Sch. 5B para. 4(5)(b) substituted (with effect in accordance with Sch. 13 para. 31(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **Sch. 13 para. 31(2)**
- F212** Sch. 5B para. 4(6)(7) inserted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 2(3)**

#### *Person to whom gain accrues*

- 5 (1) The chargeable gain which accrues, in accordance with paragraph 4 above, on the occurrence in relation to [<sup>F213</sup>any of the relevant shares] of a chargeable event shall be treated as accruing, as the case may be—
- (a) to the person who makes the disposal,
  - (b) to the person who becomes a non-resident, [<sup>F214</sup>or
  - (c) to the person who holds the shares in question when they cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.]
- (2) Where—
- (a) sub-paragraph (1) above provides for the holding of shares at a particular time to be what identifies the person to whom any chargeable gain accrues, and

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- (b) at that time, some of those shares are held by the investor and others are held by a person to whom the investor has transferred them by a disposal within marriage [<sup>F215</sup>or civil partnership],  
the amount of the chargeable gain accruing by virtue of paragraph 4 above shall be computed separately in relation to the investor and that person without reference to the shares held by the other.

#### Textual Amendments

- F213** Words in Sch. 5B para. 5(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 8 para. 4\(g\)](#)
- F214** Sch. 5B para. 5(1)(c) and preceding word substituted for Sch. 5B para. 5(1)(c)(d) (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 32](#)
- F215** Words in Sch. 5B para. 5 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [127](#)

#### <sup>F216</sup>Claims

#### Textual Amendments

- F216** Sch. 5B para. 6 and cross-heading substituted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 33](#)

- 6 (1) Subject to sub-paragraph (2) below, section 306 of the Taxes Act [<sup>F217</sup>or sections 202(1), 203(1) and 204 to 207 of ITA 2007] shall apply in relation to a claim under this Schedule in respect of [<sup>F218</sup>the relevant shares] as it applies in relation to a claim for relief under Chapter III of Part VII of [<sup>F219</sup>the Taxes Act or Part 5 of ITA 2007 in respect of eligible or relevant shares].
- (2) [<sup>F220</sup>Section 306], as it so applies, shall have effect as if—
- (a) any reference to the conditions for the relief were a reference to the conditions for the application of this Schedule;
- (b) in subsection (1), the words “(or treated by section 289B(5) as so issued)” were omitted; and
- (c) subsections (7) to (9) were omitted.
- [<sup>F221</sup>(3) Sections 202(1), 203(1) and 204 to 207 of ITA 2007, as they so apply, shall have effect as if any reference to the requirements for the relief were a reference to the conditions for the application of this Schedule.]]

#### Textual Amendments

- F217** Words in Sch. 5B para. 6(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(5\)\(a\)](#) (with Sch. 2)
- F218** Words in Sch. 5B para. 6(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 8 para. 4\(h\)](#)
- F219** Words in Sch. 5B para. 6(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(5\)\(a\)](#) (with Sch. 2)
- F220** Words in Sch. 5B para. 6(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(5\)\(b\)](#) (with Sch. 2)

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**F221** Sch. 5B para. 6(3) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(5\)\(c\)](#) (with Sch. 2)

### [<sup>F222</sup>Reorganisations

#### Textual Amendments

**F222** Sch. 5B paras. 7-9 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 34](#)

- 7 (1) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—
- (a) shares to which deferral relief and relief under Chapter III of Part VII of the Taxes Act [<sup>F223</sup>or Part 5 of ITA 2007] are attributable,
  - (b) shares to which deferral relief but not relief under that Chapter [<sup>F224</sup>or that Part] is attributable, and
  - (c) shares to which deferral relief is not attributable,
- then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this paragraph) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).
- (2) Where—
- (a) an individual holds shares (“the existing holding”) which form part of the ordinary share capital of a company,
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and
  - (c) immediately following the reorganisation, the existing holding or the allotted shares are shares to which deferral relief is attributable,
- sections 127 to 130 shall not apply in relation to the existing holding.

#### Textual Amendments

**F223** Words in [Sch. 5B para. 7\(1\)\(a\)](#) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(6\)\(a\)](#) (with Sch. 2)

**F224** Words in [Sch. 5B para. 7\(1\)\(b\)](#) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(6\)\(b\)](#) (with Sch. 2)

### *Acquisition of share capital by new company*

- 8 (1) This paragraph applies where—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”);
  - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company;

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- (c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;
  - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;
  - (e) at some time before the issue of the new shares—
    - (i) the old company issued eligible shares; and
    - (ii) a certificate in relation to those eligible shares was issued by that company for the purposes of [F225section 306(2) of the Taxes Act or section 203(1) of ITA 2007] (as applied by paragraph 6 above) and in accordance with [F225section 306 of the Taxes Act or sections 204 and 205 of ITA 2007] (as so applied); and
  - (f) by virtue of section 127 as applied by section 135(3), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.
- (2) For the purposes of this Schedule, deferral relief attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.
- (3) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Schedule shall have effect as if—
- (a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;
  - (b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company; and
  - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (4) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were acquired by the individual on a disposal within marriage [F226or civil partnership], this Schedule shall have effect as if—
- (a) the new shares had been subscribed for at the time when, and for the amount for which, the old shares were subscribed for;
  - (b) the new shares had been issued by the new company at the time when the old shares were issued by the old company; and
  - (c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.
- (5) Where deferral relief becomes so attributable to any new shares—
- (a) this Schedule shall have effect as if anything which, under paragraph 1A(5) above, paragraph 16 below or section 306(2) of the Taxes Act [F227or section 203(1) of ITA 2007] as applied by paragraph 6 above has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and
  - (b) any appeal brought by the old company against a notice under paragraph 1A(5)(b) may be prosecuted by the new company as if it had been brought by that company.
- (6) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in sub-paragraph (1) above

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references to shares, except in the expressions “eligible shares” and “subscriber shares”, include references to securities.

- (7) Nothing in section 293(8) of the Taxes Act [<sup>F228</sup>or section 185 of ITA 2007], as applied by the definition of “qualifying company” in paragraph 19(1) below, shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in sub-paragraph (1) above or arrangements with a view to such an exchange.

#### Textual Amendments

- F225** Words in Sch. 5B para. 8(1)(e)(ii) substituted (6.4.2007) by *Income Tax Act 2007 (c. 3)*, s. 1034(1), **Sch. 1 para. 345(7)(a)** (with Sch. 2)
- F226** Words in Sch. 5B para. 8 inserted (5.12.2005) by *The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229)*, regs. 1(1), **127**
- F227** Words in Sch. 5B para. 8(5)(a) inserted (6.4.2007) by *Income Tax Act 2007 (c. 3)*, s. 1034(1), **Sch. 1 para. 345(7)(b)** (with Sch. 2)
- F228** Words in Sch. 5B para. 8(7) inserted (6.4.2007) by *Income Tax Act 2007 (c. 3)*, s. 1034(1), **Sch. 1 para. 345(7)(c)** (with Sch. 2)

#### *Other reconstructions and amalgamations*

- 9 (1) Subject to sub-paragraphs (2) and (3) below, sections 135 and 136 shall not apply in respect of shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act [<sup>F229</sup>or Part 5 of ITA 2007], is attributable.
- (2) Sub-paragraph (1) above shall not have effect to disapply section 135 or 136 where—
- (a) the new holding consists of new ordinary shares (“the new shares”) carrying no present or future preferential right to dividends or to a company’s assets on its winding up and no present or future right to be redeemed,
  - (b) the new shares are issued after the end of the relevant period, and
  - (c) the condition in sub-paragraph (4) below is satisfied.
- (3) Sub-paragraph (1) above shall not have effect to disapply section 135 where shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act [<sup>F230</sup>or Part 5 of ITA 2007], is attributable are exchanged for other shares in such circumstances as are mentioned in paragraph 8(1) above.
- (4) The condition is that at some time before the issue of the new shares—
- (a) the company issuing them issued eligible shares, and
  - (b) a certificate in relation to those eligible shares was issued by the company for the purposes of [<sup>F231</sup>section 306(2) of the Taxes Act or section 203(1) of ITA 2007] (as applied by paragraph 6 above) and in accordance with [<sup>F231</sup>section 306 of the Taxes Act or sections 204 and 205 of ITA 2007] (as so applied).
- (5) In sub-paragraph (2) above “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.]

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#### Textual Amendments

- F229** Words in Sch. 5B para. 9(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(8\)\(a\)](#) (with Sch. 2)
- F230** Words in Sch. 5B para. 9(3) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(8\)\(b\)](#) (with Sch. 2)
- F231** Words in Sch. 5B para. 9(4)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(8\)\(c\)](#) (with Sch. 2)

*[<sup>F232</sup>Re-investment in same company etc.*

#### Textual Amendments

- F232** Sch. 5B paras. 10-15 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 35](#)

- 10 (1) An individual to whom any eligible shares in a qualifying company are issued shall not be regarded for the purposes of this Schedule as making a qualifying investment if, where the asset disposed of consisted of shares in or [<sup>F233</sup>securities] of any company (“the initial holding”), the qualifying company—
- (a) is the company in which the initial holding subsisted; or
  - (b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the issue of the eligible shares, a member of the same group of companies as the company in which the initial holding subsisted.
- (2) Where—
- (a) any eligible shares in a qualifying company (“the acquired holding”) are issued to an individual,
  - (b) an amount of qualifying expenditure on those shares has been set under this Schedule against the whole or part of any chargeable gain (the “postponed gain”), and
  - (c) after the issue of those shares, eligible shares in a relevant company are issued to him,
- he shall not be regarded in relation to the issue to him of the shares in the relevant company as making a qualifying investment for the purposes of this Schedule.
- (3) For the purposes of sub-paragraph (2) above a company is a relevant company if—
- (a) where that individual has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding;
  - (b) it is a company in relation to the disposal of any shares in which there has been a claim under this Schedule such that, without that claim, there would have been no postponed gain in relation to the acquired holding; or
  - (c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.

[ In this paragraph “group of companies” means a company which has one or more 51  
<sup>F234</sup>(4) per cent. subsidiaries, together with those subsidiaries.]

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### Textual Amendments

- F233** Word in Sch. 5B para. 10(1) substituted (with effect in accordance with Sch. 18 para. 15(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 15\(1\)\(a\)](#)
- F234** Sch. 5B para. 10(4) inserted (with effect in accordance with Sch. 18 para. 15(2)(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 15\(1\)\(b\)](#)

### *Pre-arranged exits*

- 11 (1) Where an individual subscribes for eligible shares (“the shares”) in a company, the shares shall be treated as not being eligible shares for the purposes of this Schedule if the relevant arrangements include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of the shares or of other shares in or securities of the same company;
  - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;
  - (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
  - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in sub-paragraph (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 8(1) above.
- (3) The arrangements referred to in sub-paragraph (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the relevant arrangements include arrangements for the company to be wound up; or
  - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in sub-paragraph (1)(d) above do not include any arrangements which are confined to the provision—
- (a) for the company itself, or
  - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in sub-paragraph (4) above to the parent company of a trading group
- [ shall be construed in accordance with the provision contained for the purposes of section 293 of the Taxes Act in that section]<sup>F236</sup>, or
  - <sup>F235</sup>(a) is a reference to a company that meets the trading requirement in section 181(2)(b) of ITA 2007.]



*Status: Point in time view as at 21/07/2008.*

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- (6) In this paragraph “the relevant arrangements” means—
- (a) the arrangements under which the shares are issued to the individual; and
  - (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

**Textual Amendments**

**F235** Word in Sch. 5B para. 11(5) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(9\)\(a\)](#) (with [Sch. 2](#))

**F236** Sch. 5B para. 11(5)(b) and preceding word inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(9\)\(b\)](#) (with [Sch. 2](#))

*Put options and call options*

- 12 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and—
- (a) an option, the exercise of which would bind the grantor to purchase such shares, is granted to the individual during the relevant period; or
  - (b) an option, the exercise of which would bind the individual to sell such shares, is granted by the individual during the relevant period.
- (2) The shares to which the option relates shall be treated for the purposes of this Schedule—
- (a) if the option is granted on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the option is granted after that date, as ceasing to be eligible shares on the date when the option is granted.
- (3) The shares to which the option relates shall be taken to be those which, if—
- (a) the option were exercised immediately after the grant, and
  - (b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,
- would be treated for the purposes of this Schedule as disposed of in pursuance of the option.
- (4) Nothing in this paragraph shall prejudice the operation of paragraph 11 above.
- (5) An individual who acquires any eligible shares on a disposal within marriage [<sup>F237</sup>or civil partnership] shall be treated for the purposes of this paragraph and paragraphs 13 to 15 below as if he subscribed for those shares.

**Textual Amendments**

**F237** Words in Sch. 5B para. 12 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [127](#)

*Value received by investor*

- 13 (1) Where an individual who subscribes for eligible shares (“the shares”) in a company receives any value [<sup>F238</sup>(other than insignificant value)] from the company at any time

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in the [<sup>F239</sup>period of restriction], the shares shall be treated as follows for the purposes of this Schedule—

- (a) if the individual receives the value on or before the date of the issue of the shares, as never having been eligible shares; and
- (b) if the individual receives the value after that date, as ceasing to be eligible shares on the date when the value is received.

[ This paragraph is subject to paragraph 13B below.

<sup>F240</sup>(1A)

(1B) Where—

- (a) the individual who subscribes for the shares receives value (“the relevant receipt”) from the company during the period of restriction,
- (b) the individual has received from the company one or more receipts of insignificant value at a time or times—
  - (i) during that period, but
  - (ii) not later than the time of the relevant receipt, and
- (c) the aggregate amount of the value of the receipts within paragraphs (a) and (b) above is not an amount of insignificant value,

the individual shall be treated for the purposes of this Schedule as if the relevant receipt had been a receipt of an amount of value equal to the aggregate amount.

For this purpose a receipt does not fall within paragraph (b) above if it has previously been aggregated under this sub-paragraph.]

(2) For the purposes of this paragraph an individual receives value from the company if the company—

- (a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company’s share capital or any security on its cancellation or extinguishment;
- (b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares, any debt owed to the individual other than a debt which was incurred by the company—
  - (i) on or after the date [<sup>F241</sup>of issue of the shares]; and
  - (ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;
- (c) makes to the individual any payment for giving up his right to any debt on its extinguishment;
- (d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
- (e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares;
- (f) provides a benefit or facility for the individual;
- (g) disposes of an asset to the individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
- (h) acquires an asset from the individual for a consideration which is or the value of which is more than the market value of the asset; or
- (i) makes any payment to the individual other than a qualifying payment.

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- (3) For the purposes of sub-paragraph (2)(e) above there shall be treated as if it were a loan made by the company to the individual—
- (a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and
  - (b) the amount of any debt due from the individual to a third person which has been assigned to the company.
- <sup>F242</sup>(4) .....
- (5) For the purposes of this paragraph an individual also receives value from the company if any person who would, for the purposes of section 291 of the Taxes Act [<sup>F243</sup>or Chapter 2 of Part 5 of ITA 2007], be treated as connected with the company—
- (a) purchases any of its share capital or securities which belong to the individual; or
  - (b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities.
- (6) Where an individual's disposal of shares in a company gives rise to a chargeable event falling within paragraph 3(1)(a) or (b) above, the individual shall not be treated for the purposes of this paragraph as receiving value from the company in respect of the disposal.
- (7) In this paragraph “qualifying payment” means—
- (a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;
  - (b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or employee of that company;
  - (c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;
  - (d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;
  - (e) any payment for the supply of goods which does not exceed their market value;
  - (f) any payment for the acquisition of an asset which does not exceed its market value;
  - (g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;
  - (h) any reasonable and necessary remuneration which—
    - (i) is paid by any company for services rendered to that company in the course of a trade or profession [<sup>F244</sup>carried on wholly or partly in the United Kingdom]; and
    - (ii) is taken into account [<sup>F245</sup>in calculating for tax purposes the profits of that trade or profession];
  - (i) a payment in discharge of an ordinary trade debt.

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- (8) For the purposes of this paragraph a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (9) In this paragraph—
- (a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment; and
  - (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.
- (10) In this paragraph [<sup>F246</sup>and paragraph 13A(1) below]—
- (a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit;
  - (b) any reference to an individual includes a reference to an associate of his; and
  - (c) any reference to a company includes a reference to a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the material time.
- (11) In this paragraph “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—
- (a) does not exceed six months; and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.
- [ In paragraphs 13A to 13C below (except paragraph 13C(4))—
- <sup>F247</sup>(12) (a) references to “the shares” shall be construed in accordance with subparagraph (1) above, and
- (b) references to “the period of restriction” shall be construed as references to the period of restriction relating to the shares.]

#### **Textual Amendments**

- F238** Words in Sch. 5B para. 13(1) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 30\(1\)](#) (with [Sch. 3](#))
- F239** Words in Sch. 5B para. 13(1) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 30\(2\)](#) (with [Sch. 3](#))
- F240** Sch. 5B para. 13(1A)(1B) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 30\(3\)](#) (with [Sch. 3](#))
- F241** Words in Sch. 5B para. 13(2)(b)(i) substituted (with effect in accordance with Sch. 18 para. 16(2)(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 16\(1\)](#)
- F242** Sch. 5B para. 13(4) repealed (with effect in accordance with Sch. 33 Pt. 2(3) Note 6 of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 30\(4\)](#), [Sch. 33 Pt. 2\(3\)](#) (with [Sch. 3](#))
- F243** Words in [Sch. 5B para. 13\(5\)](#) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(10\)](#) (with [Sch. 2](#))
- F244** Words in Sch. 5B para. 13(7)(b)(i) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 450\(a\)](#) (with [Sch. 2](#))
- F245** Words in Sch. 5B para. 13(7)(b)(ii) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 450\(b\)](#) (with [Sch. 2](#))

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**F246** Words in Sch. 5B para. 13(10) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 30\(5\)](#) (with [Sch. 3](#))

**F247** Sch. 5B para. 13(12) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 30\(6\)](#) (with [Sch. 3](#))

*[<sup>F248</sup> Provision supplemental to paragraph 13*

**Textual Amendments**

**F248** Sch. 5B paras. 13A-13C and cross-headings inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 31](#) (with [Sch. 3](#))

13A (1) For the purposes of paragraph 13 above, the value received by the individual in question is—

- (a) in a case within sub-paragraph (2)(a), (b) or (c) of that paragraph, the amount received by the individual or, if greater, the market value of the share capital, securities or debt in question;
- (b) in a case within sub-paragraph (2)(d) of that paragraph, the amount of the liability;
- (c) in a case within sub-paragraph (2)(e) of that paragraph, the amount of the loan or advance reduced by the amount of any repayment made before the issue of the shares;
- (d) in a case within sub-paragraph (2)(f) of that paragraph, the cost to the company of providing the benefit or facility less any consideration given for it by the individual;
- (e) in a case within sub-paragraph (2)(g) or (h) of that paragraph, the difference between the market value of the asset and the consideration (if any) given for it;
- (f) in a case within sub-paragraph (2)(i) of that paragraph, the amount of the payment;
- (g) in a case within sub-paragraph (5) of that paragraph, the amount received by the individual or, if greater, the market value of the share capital or securities in question.

(2) In this paragraph and paragraph 13 above references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

This is subject to sub-paragraph (4) below.

(3) For the purposes of this paragraph and paragraph 13 above “an amount of insignificant value” means an amount of value which—

- (a) does not exceed £1,000, or
- (b) if it exceeds that amount, is insignificant in relation to the total amount of expenditure on the shares which is set under this Schedule against a corresponding total amount of the whole or any part of any chargeable gains.

(4) For the purposes of paragraph 13 above, if, at any time in the period—

- (a) beginning one year before the shares are issued, and
- (b) expiring at the end of the issue date,

arrangements are in existence which provide for the individual who subscribes for the shares to receive or to be entitled to receive, at any time in the period of restriction,

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any value from the company that issued the shares, no amount of value received by the individual shall be treated as a receipt of insignificant value.

- (5) In sub-paragraph (4) above—
- (a) any reference to the individual includes a reference to any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time), and
  - (b) the reference to the company includes a reference to any person who, at any time in the period of restriction, is connected with the company (whether or not that person is so connected at the material time).

*Receipt of replacement value*

- 13B (1) Where—
- (a) by reason of a receipt of value within sub-paragraph (2) (other than paragraph (b)) or sub-paragraph (5) of paragraph 13 above (“the original value”), the shares would, in the absence of this paragraph, be treated as never having been eligible shares or as ceasing to be eligible shares on the date when the value is received,
  - (b) the original supplier receives value (“the replacement value”) from the original recipient by reason of a qualifying receipt, and
  - (c) the amount of the replacement value is not less than the amount of the original value,
- the receipt of the original value shall be disregarded for the purposes of paragraph 13 above.
- (2) This paragraph is subject to paragraph 13C below.
- (3) For the purposes of this paragraph and paragraph 13C below—
- “the original recipient” means the person who receives the original value, and
  - “the original supplier” means the person from whom that value was received.
- (4) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) above if it arises—
- (a) by reason of the original recipient doing one or more of the following—
    - (i) making a payment to the original supplier, other than a payment which falls within paragraph (c) below or to which sub-paragraph (5) below applies;
    - (ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset;
    - (iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset;
  - (b) where the receipt of the original value was within paragraph 13(2)(d) above, by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or
  - (c) where the receipt of the original value was within paragraph 13(5) above, by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a

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consideration the amount or value of which is not less than the amount of the original value.

- (5) This sub-paragraph applies to—
- (a) any payment for any goods, services or facilities, provided (whether in the course of a trade or otherwise) by—
    - (i) the original supplier, or
    - (ii) any other person who, at any time in the period of restriction, is an associate of, or connected with, that supplier (whether or not that person is such an associate, or so connected, at the material time),which is reasonable in relation to the market value of those goods, services or facilities;
  - (b) any payment of any interest which represents no more than a reasonable commercial return on money lent to—
    - (i) the original recipient, or
    - (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time);
  - (c) any payment for the acquisition of an asset which does not exceed its market value;
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time),of an amount not exceeding a reasonable and commercial rent for the property;
  - (e) any payment in discharge of an ordinary trade debt (within the meaning of paragraph 13(11) above); and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within sub-paragraph (4)(a)(ii) above.
- (6) For the purposes of this paragraph, the amount of the replacement value is—
- (a) in a case within paragraph (a) of sub-paragraph (4) above, the aggregate of—
    - (i) the amount of any payment within sub-paragraph (i) of that paragraph, and
    - (ii) the difference between the market value of any asset within sub-paragraph (ii) or (iii) of that paragraph and the amount or value of the consideration (if any) received for it,
  - (b) in a case within sub-paragraph (4)(b) above, the same as the amount of the original value, and
  - (c) in a case within sub-paragraph (4)(c) above, the amount or value of the consideration received by the original supplier,
- and paragraph 13A(1) above applies for the purposes of determining the amount of the original value.
- (7) In this paragraph any reference to a payment to a person (however expressed) includes a reference to a payment made to him indirectly or to his order or for his benefit.

*Status: Point in time view as at 21/07/2008.*

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*Provision supplemental to paragraph 13B*

- 13C (1) The receipt of the replacement value by the original supplier shall be disregarded for the purposes of paragraph 13B above, as it applies in relation to the shares, to the extent to which that receipt has previously been set (under that paragraph) against any receipts of value which are, in consequence, disregarded for the purposes of paragraph 13 above as that paragraph applies in relation to those shares or any other shares subscribed for by the individual in question (“the individual”).
- (2) The receipt of the replacement value by the original supplier (“the event”) shall also be disregarded for the purposes of paragraph 13B above if—
- (a) the event occurs before the start of the period of restriction, or
  - (b) in a case where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
  - (c) where an appeal has been brought by the individual against an assessment made by virtue of paragraph 3(1)(e) above by reason of that receipt, the event occurs more than 60 days after the appeal has been finally determined.

But nothing in paragraph 13B above or this paragraph requires the replacement value to be received after the original value.

- (3) [<sup>F249</sup>This sub-paragraph] applies where—
- (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of paragraph 13B(1) above, and
  - (b) the event which gives rise to the receipt is (or includes) a subscription for shares by—
    - (i) the individual, or
    - (ii) any person who, at any time in the period of restriction, is an associate of the individual, whether or not he is such an associate at the material time.
- (4) Where this sub-paragraph applies, the person who subscribes for the shares shall not—
- (a) be eligible for any relief under Chapter 3 of Part 7 of the Taxes Act (enterprise investment scheme: income tax relief) in relation to those shares or any other shares in the same issue, or
  - (b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of this Schedule.
- [<sup>F250</sup>(4) Where either of the following applies—
- (a) sub-paragraph (3) above, and
  - (b) section 223(3) of ITA 2007 (which makes corresponding provision in relation to EIS relief under Part 5 of that Act),

the person who subscribes for the shares shall not by virtue of his subscription for those shares or any other shares in the same issue be treated as making a qualifying investment for the purposes of this Schedule.]

- (5) In this paragraph “the original value” and “the replacement value” shall be construed in accordance with paragraph 13B above.]



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### Textual Amendments

- F249** Words in Sch. 5B para. 13C(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(11\)\(a\)](#) (with Sch. 2)
- F250** Sch. 5B para. 13C(4) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(11\)\(b\)](#) (with Sch. 2)

### *Value received by other persons*

- 14 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares (“the shares”) in a company and at any time in the [<sup>F251</sup>period of restriction] the company or any subsidiary—
- (a) repays, redeems or repurchases any of its share capital which belongs to any member other than the individual or [<sup>F252</sup>a person] falling within sub-paragraph (3) below, or
  - (b) makes any payment (directly or indirectly) to any such member, or to his order or for his benefit, for the giving up of his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.
- [<sup>F253</sup>This is subject to [<sup>F254</sup>paragraphs 14AA and 14A] below.]
- (2) The shares shall be treated for the purposes of this Schedule—
- (a) if the repayment, redemption, repurchase or payment in question is made or effected on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if it is made or effected after that date, as ceasing to be eligible shares on the date when it is made or effected.
- (3) [<sup>F255</sup>A person] falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—
- (a) gives rise to a qualifying chargeable event in respect of him, or
  - (b) causes any relief under Chapter III of Part VII of the Taxes Act [<sup>F256</sup>or Part 5 of ITA 2007] attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a) of [<sup>F257</sup>the Taxes Act or section 209 or 216(2)(a) of ITA 2007], [<sup>F258</sup>or
  - (c) causes any investment relief [<sup>F259</sup>attributable to shares held by that person] (within the meaning of Schedule 15 to the Finance Act 2000) to be withdrawn or reduced by virtue of paragraph 46 (disposal of shares) or 49(1) (a) (repayment etc. of share capital or securities) of that Schedule]
- [<sup>F260</sup>or it would have the effect mentioned in paragraph (a), (b) or (c) above were it not a receipt of insignificant value for the purposes of paragraph 13 above, section 300 of the Taxes Act [<sup>F261</sup>or 214 of ITA 2007] or paragraph 47 of Schedule 15 to the Finance Act 2000, as the case may be].
- (4) In sub-paragraph (3) above “qualifying chargeable event” means—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above; or
  - (b) a chargeable event falling within paragraph 3(1)(e) above by virtue of sub-paragraph (1)(b) of paragraph 13 above (as it applies by virtue of sub-paragraph (2)(a) of that paragraph).

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- (5) Where—
- (a) a company issues share capital (“the original shares”) of nominal value equal to the authorised minimum [<sup>F262</sup>(within the meaning of the Companies Act 2006) for the purposes of complying with the requirements of section 761 of that Act (public company: requirement as to minimum share capital);] and
  - (b) after the registrar of companies has issued the company with a certificate under [<sup>F263</sup>section 761], it issues eligible shares,
- the preceding provisions of this paragraph shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

<sup>F264</sup>(6) .....

- (7) References in this paragraph [<sup>F265</sup>and [<sup>F266</sup>paragraphs 14AA and 14A] below] to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question.

#### Textual Amendments

- F251** Words in Sch. 5B para. 14(1) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 32(1)(a)** (with [Sch. 3](#))
- F252** Words in Sch. 5B para. 14(1)(a) substituted (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 16 para. 4(2)(a)**
- F253** Words in Sch. 5B para. 14(1) inserted (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 16 para. 4(2)(b)**
- F254** Words in Sch. 5B para. 14(1) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 32(1)(b)** (with [Sch. 3](#))
- F255** Words in Sch. 5B para. 14(3) substituted (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 16 para. 4(2)(c)**
- F256** Words in Sch. 5B para. 14(3)(b) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(12)(a)** (with [Sch. 2](#))
- F257** Words in Sch. 5B para. 14(3)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(12)(b)** (with [Sch. 2](#))
- F258** Sch. 5B para. 14(3)(c) and preceding word inserted (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 16 para. 4(2)(d)**
- F259** Words in Sch. 5B para. 14(3)(c) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 32(2)(a)** (with [Sch. 3](#))
- F260** Words in Sch. 5B para. 14(3) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 32(2)(b)** (with [Sch. 3](#))
- F261** Words in Sch. 5B para. 14(3) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(12)(c)** (with [Sch. 2](#))
- F262** Words in [Sch. 5B para. 14\(5\)\(a\)](#) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **18(2)(a)** (with art. 4)
- F263** Words in [Sch. 5B para. 14\(5\)\(b\)](#) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), **18(2)(b)** (with art. 4)
- F264** [Sch. 5B para. 14\(6\)](#) repealed (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), 18(3), **Sch.** (with art. 4)

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**F265** Words in Sch. 5B para. 14(7) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 32\(3\)](#) (with [Sch. 3](#))

**F266** Words in Sch. 5B para. 14(7) substituted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 17\(1\)](#)

*<sup>F267</sup>Insignificant repayments disregarded for purposes of paragraph 14*

**Textual Amendments**

**F267** Sch. 5B para. 14AA and cross-heading inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 33](#) (with [Sch. 3](#))

14AA (1) Any repayment shall be disregarded for the purposes of paragraph 14 above if whichever is the greater of—

- (a) the market value of the shares to which it relates (“the target shares”) immediately before the event occurs, and
- (b) the amount received by the member in question,

is insignificant in relation to the market value of the remaining issued share capital of the company in question (or, as the case may be, subsidiary in question) immediately after the event occurs.

This is subject to sub-paragraph (4) below.

- (2) For the purposes of this paragraph “repayment” means a repayment, redemption, repurchase or payment mentioned in paragraph 14(1) above.
- (3) For the purposes of sub-paragraph (1) above it shall be assumed that the target shares are cancelled at the time the repayment is made.
- (4) Where an individual subscribes for eligible shares in a company, sub-paragraph (1) above does not apply to prevent paragraph 14(2) above having effect in relation to the shares if, at a relevant time, arrangements are in existence that provide—
  - (a) for a repayment by the company or any subsidiary of the company (whether or not it is such a subsidiary at the time the arrangements are made), or
  - (b) for anyone to be entitled to such a repayment,at any time in the period of restriction.
- (5) For the purposes of sub-paragraph (4) above “a relevant time” means any time in the period—
  - (a) beginning one year before the eligible shares were issued, and
  - (b) expiring at the end of the issue date.]

*<sup>F268</sup>Certain receipts to be disregarded for purposes of paragraph 14*

**Textual Amendments**

**F268** Sch. 5B para. 14A and cross-heading inserted (with effect in accordance with s. 63(4) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 16 para. 4\(3\)](#)

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- 14A (1) Sub-paragraph (4) below applies where, by reason of a repayment, any investment relief which is attributable under Schedule 15 to the Finance Act 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.
- [<sup>F269</sup>(2) For the purposes of this paragraph “repayment” has the meaning given in paragraph 14AA(2) above.]
- (3) For the purposes of sub-paragraph (4) below “the relevant amount” is the amount determined by the formula—
- $$X5Y$$
- Where—
- X is the amount of the repayment, and
- Y is the aggregate amount of the investment relief withdrawn by reason of the repayment.
- (4) Where the relevant amount does not exceed £1,000, the repayment shall be disregarded for the purposes of paragraph 14 above, unless repayment arrangements are in existence at any time in the period—
- beginning one year before the shares mentioned in sub-paragraph (1) above are issued, and
  - expiring at the end of the issue date of those shares.
- (5) For this purpose “repayment arrangements” means arrangements which provide—
- for a repayment by the company that issued the shares (“the issuing company”) or any subsidiary of that company, or
  - for anyone to be entitled to such a repayment, at any time.
- (6) Sub-paragraph (5)(a) above applies in relation to a subsidiary of the issuing company whether or not it was such a subsidiary—
- <sup>F270</sup>(a) .....
  - when the arrangements were made.
- <sup>F271</sup>(7) .....
- (8) In this paragraph—
- “investment relief” has the same meaning as in [<sup>F272</sup>Schedule 15 to the Finance Act 2000 (corporate venturing scheme)]; and
  - references to the withdrawal of investment relief include its reduction.]

#### Textual Amendments

**F269** Sch. 5B para. 14A(2) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 34\(a\)](#) (with [Sch. 3](#))

**F270** Sch. 5B para. 14A(6)(a) repealed (with effect in accordance with Sch. 18 para. 18(2) to the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 18\(1\)](#), [Sch. 42 Pt. 2\(13\)](#)

**F271** Sch. 5B para. 14A(7) repealed (with effect in accordance with Sch. 33 Pt. 2(3) Note 6 to the amending Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 34\(b\)](#), [Sch. 33 Pt. 2\(3\)](#) (with [Sch. 3](#))

**F272** Words in Sch. 5B para. 14A(8)(a) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 34\(c\)](#) (with [Sch. 3](#))

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### *Investment-linked loans*

- 15 (1) Where at any time in the relevant period an investment-linked loan is made by any person to an individual who subscribes for eligible shares (“the shares”) in a company, the shares shall be treated for the purposes of this Schedule—
- (a) if the loan is made on or before the date of the issue of the shares, as never having been eligible shares; and
  - (b) if the loan is made after that date, as ceasing to be eligible shares on the date when the loan is made.
- (2) A loan made by any person to an individual is an investment-linked loan for the purposes of this paragraph if the loan is one which would not have been made, or would not have been made on the same terms, if the individual had not subscribed for the shares or had not been proposing to do so.
- (3) References in this paragraph to the making by any person of a loan to an individual include references—
- (a) to the giving by that person of any credit to that individual; and
  - (b) to the assignment or assignation to that person of any debt due from that individual.
- (4) In this paragraph any reference to an individual includes a reference to an associate of his.]

### *[<sup>F273</sup>Information*

#### **Textual Amendments**

**F273** Sch. 5B paras. 16-19 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 13 para. 36](#)

- 16 (1) Where, in relation to [<sup>F274</sup>any of the relevant shares] held by an individual—
- (a) a chargeable event falling within paragraph 3(1)(a) or (b) above occurs at any time [<sup>F275</sup>before the termination date relating to those shares],
  - (b) a chargeable event falling within paragraph 3(1)(c) or (d) above occurs, or
  - (c) a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 12(2)(b), 13(1)(b) or 15(1)(b) above,
- the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the circumstances giving rise to the event.
- (2) Where, in relation to [<sup>F274</sup>any of the relevant shares] in a company, a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 1A(1) or (2), 13(1)(b) or 14(2)(b) above—
- (a) the company, and
  - (b) any person connected with the company who has knowledge of that matter,
- shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the circumstances giving rise to the event.

[ In determining, for the purposes of sub-paragraph (1) or (2) above, whether a [<sup>F276</sup>(2A) chargeable event falling within paragraph 3(1)(e) above has occurred by virtue of paragraph 13(1)(b) above, the effect of paragraph 13B above shall be disregarded.]

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- (3) A chargeable event falling within paragraph 3(1)(e) above which, but for paragraph 1A(5) above, would occur at any time by virtue of paragraph 1A(1) or (2) above shall be treated for the purposes of sub-paragraph (2) above as occurring at that time.
- [ Where—
- <sup>F277</sup>(3A) (a) a person is required to give a notice under sub-paragraph (1) or (2) above in respect of a chargeable event which occurs by virtue of paragraph 13(1)(b) above or would occur by virtue of that paragraph but for the operation of paragraph 13B above, and
- (b) that person has knowledge of the replacement value received (or expected to be received) from the original recipient by the original supplier by reason of a qualifying receipt,
- the notice shall include particulars of that receipt of the replacement value (or expected receipt).
- In this sub-paragraph “the replacement value”, “the original recipient”, “the original supplier” and “qualifying receipt” shall be construed in accordance with paragraph 13B above.]
- (4) Where a company has issued a certificate under section 306(2) of the Taxes Act [<sup>F278</sup>or section 203(1) of ITA 2007] (as applied by paragraph 6 above) in respect of any eligible shares in the company, and the condition in paragraph 1(2)(g) above is not satisfied in relation to the shares—
- (a) the company, and
- (b) any person connected with the company who has knowledge of that matter, shall within 60 days of the time mentioned in section 289(3) of the Taxes Act [<sup>F279</sup>or section 175(3) of ITA 2007] or, in the case of a person within paragraph (b) above, of his coming to know that the condition is not satisfied, give notice to the inspector setting out the particulars of the case.
- [ Sub-paragraph (4) above shall apply in relation to the condition in paragraph 1(2)
- <sup>F280</sup>(4A) (h) above as it applies in relation to the condition in paragraph 1(2)(g) above, except that the reference to the time mentioned in section 289(3) of the Taxes Act [<sup>F281</sup>or section 175(3) of ITA 2007] shall be read as a reference to the time 12 months after that time.]
- (5) [<sup>F282</sup>If the inspector has reason to believe—
- (a) that a person has not given a notice which he is required to give—
- (i) under sub-paragraph (1) or (2) above in respect of any chargeable event, or
- (ii) under sub-paragraph (4) above in respect of any particular case, or
- (b) that a person has given or received value (within the meaning of paragraph 13(2) or (5) above) which, but for the fact that the amount given or received was an amount of insignificant value (within the meaning of paragraph 13A(3) above), would have triggered a requirement to give a notice under sub-paragraph (1) or (2) above, or
- (c) that a person has made or received any repayment (within the meaning of paragraph 14AA(2) above) which, but for the fact that it falls to be disregarded for the purposes of paragraph 14 above by virtue of paragraph 14AA(1) above, would have triggered a requirement to give a notice under sub-paragraph (2) above,]

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the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Schedule.

(6) Where a claim is made under this Schedule in respect of shares in a company and the inspector has reason to believe that it may not be well founded by reason of any such arrangements as are mentioned in paragraphs 1(2)(d) or 11(1) above, or section [F283 289(1D) or (9)(e), 289A(8)(b) or (8A), 293(4B), (6) or (8) or 308(2)(e), (3), (3A) or (4)] of the Taxes Act [F284 or section 176(4)(b) or (5)(b), 182(2) or (4), 183(6), 185(1), 190(1)(e) or 191(2)(c), (3), (4) or (5) of ITA 2007], he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—

- (a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangements exist or have existed;
- (b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.

(7) For the purposes of sub-paragraph (6) above, the persons who are persons concerned are—

- (a) in relation to paragraph 1(2)(d) above [F285 or section 293(4B) or (6) of the Taxes Act] [F286 or section 182(2) or (4) of ITA 2007], the claimant, the company and any person controlling the company;
- [ in relation to section 289(1D), 289A(8)(b) or (8A) or 308(3), (3A) or (4) of the Taxes Act [F287 (aa) [F288 or section 176(4)(b) or (5)(b), 183(6) or 191(3), (4) or (5) of ITA 2007], the claimant, the company, any other company in question and any person controlling the company or any other company in question;]
- (b) in relation to paragraph 11(1) above, the claimant, the company and any person connected with the company; and
- (c) in relation to section [F289 289(9)(e),] 293(8) or 308(2)(e) of the Taxes Act [F290 or section 185(1), 190(1)(e) or 191(2)(c) of ITA 2007], the company and any person controlling the company;

and for those purposes the references in paragraphs [F291 (a), (aa)] and (b) above to the claimant include references to any person to whom the claimant appears to have made a disposal within marriage [F292 or civil partnership] of any of the shares in question.

[ The references in sub-paragraphs (6) and (7) above to subsections (3), (3A) and (4) F293 (7A) of section 308 of the Taxes Act [F294 and subsections (3), (4) and (5) of section 191 of ITA 2007] are to be read as including those provisions as applied by section 289(10) and (11) of [F295 the Taxes Act or section 190(2) of ITA 2007].]

(8) Where deferral relief is attributable to shares in a company—

- (a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of paragraph 13 above, and
- (b) any person on whose behalf such a payment or asset is received,

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shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

- (9) Where a claim has been made under this Schedule in relation to shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state—
- (a) whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself; and
  - (b) if so, the name and address of that person.
- (10) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

#### Textual Amendments

- F274** Words in Sch. 5B para. 16(1)(2) substituted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 4(i)**
- F275** Words in Sch. 5B para. 16(1)(a) substituted (with effect in accordance with Sch. 15 para. 35(5) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 35(1)** (with [Sch. 3](#))
- F276** Sch. 5B para. 16(2A) inserted (with effect in accordance with Sch. 15 para. 35(5) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 35(2)** (with [Sch. 3](#))
- F277** Words in Sch. 5B para. 16(3A) substituted (with effect in accordance with Sch. 15 para. 35(5) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 35(3)** (with [Sch. 3](#))
- F278** Words in Sch. 5B para. 16(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(a)(i)** (with [Sch. 2](#))
- F279** Words in Sch. 5B para. 16(4) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(a)(ii)** (with [Sch. 2](#))
- F280** Sch. 5B para. 16(4A) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 28** (with [Sch. 3](#))
- F281** Words in [Sch. 5B para. 16\(4A\)](#) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(b)** (with [Sch. 2](#))
- F282** Words in Sch. 5B para. 16(5) substituted (with effect in accordance with Sch. 15 para. 35(5) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 35(4)** (with [Sch. 3](#))
- F283** Words in Sch. 5B para. 16(6) substituted (with effect in accordance with Sch. 18 para. 19(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 19(1)(a)**
- F284** Words in Sch. 5B para. 16(6) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(c)** (with [Sch. 2](#))
- F285** Words in Sch. 5B para. 16(7)(a) inserted (with effect in accordance with Sch. 18 para. 19(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 19(1)(b)(i)**
- F286** Words in Sch. 5B para. 16(7)(a) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(d)(i)** (with [Sch. 2](#))
- F287** Sch. 5B para. 16(7)(aa) inserted (with effect in accordance with Sch. 18 para. 19(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 19(1)(b)(ii)**
- F288** Words in Sch. 5B para. 16(7)(aa) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(d)(ii)** (with [Sch. 2](#))
- F289** Word in Sch. 5B para. 16(7)(c) inserted (with effect in accordance with Sch. 18 para. 19(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 19(1)(b)(iii)**
- F290** Words in Sch. 5B para. 16(7)(c) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(13)(d)(iii)** (with [Sch. 2](#))
- F291** Words in Sch. 5B para. 16(7) substituted (with effect in accordance with Sch. 18 para. 19(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 19(1)(b)(iv)**



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- F292** Words in Sch. 5B para. 16 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), [127](#)
- F293** Sch. 5B para. 16(7A) inserted (with effect in accordance with Sch. 18 para. 19(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 18 para. 19\(1\)\(c\)](#)
- F294** Words in Sch. 5B para. 16(7A) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(13\)\(e\)\(i\)](#) (with [Sch. 2](#))
- F295** Words in Sch. 5B para. 16(7A) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 345\(13\)\(e\)\(ii\)](#) (with [Sch. 2](#))

*Trustees: general*

- 17 (1) Subject to the following provisions of this paragraph, this Schedule shall apply as if—
- (a) any reference to an individual included a reference to the trustees of a settlement, and
  - (b) in relation to any such trustees, the reference in paragraph 1(1) above to any asset were a reference to any asset comprised in any settled property to which this paragraph applies (a “trust asset”).
- (2) This paragraph applies—
- (a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and
  - (b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals.
- (3) If, at the time of the disposal of the trust asset in a case where this Schedule applies by virtue of this paragraph—
- (a) the settled property comprising that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, but
  - (b) not all the beneficiaries are individuals,
- only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of this Schedule as it so applies.
- (4) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(a) above unless, immediately after the acquisition of the relevant shares, the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(a) above.
- (5) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above unless, immediately after the acquisition of the relevant shares—
- (a) the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, and
  - (b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the trust asset.
- (6) If, at any time, in the case of settled property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, both individuals and others have interests in

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possession, “the relevant proportion” at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—

- (a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and
- (b) the total amount of all the income of the settled property.

(7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries (“the relevant beneficiaries”) hold interests not in possession, this paragraph shall apply as if—

- (a) the interests of the relevant beneficiaries were a single interest in possession, and
- (b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.

(8) In this paragraph references to interests in possession do not include interests for a fixed term and, except in sub-paragraph (1), references to individuals include any charity.

*Trustees: anti-avoidance*

18 (1) Paragraphs 13 [<sup>F296</sup>to 13C] and 15 above shall have effect in relation to the subscription for shares by the trustees of a settlement as if references to the individual subscribing for the shares were references to—

- (a) those trustees;
- (b) any individual or charity by virtue of whose interest, at a relevant time, paragraph 17 above applies to the settled property; or
- (c) any associate of such an individual, or any person connected with such a charity.

(2) The relevant times for the purposes of sub-paragraph (1)(b) above are the time when the shares are issued and—

- (a) in a case where [<sup>F297</sup>sub-paragraph (1) of paragraph 13 above applies, or that sub-paragraph would apply were it not for the fact that the amount of value is an amount of insignificant value for the purposes of that sub-paragraph], the time when the value is received;
- [<sup>F298</sup>(ab) in a case where paragraph 13(1) above would apply were it not for the operation of paragraph 13B above, the time when the original value (within the meaning of paragraph 13B above) in question is received;]
- (b) in a case where paragraph 15 above applies, the time when the loan is made.

**Textual Amendments**

**F296** Words in Sch. 5B para. 18(1) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 36\(a\)](#) (with [Sch. 3](#))

**F297** Words in Sch. 5B para. 18(2)(a) substituted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 36\(b\)\(i\)](#) (with [Sch. 3](#))

**F298** Sch. 5B para. 18(2)(ab) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), [Sch. 15 para. 36\(b\)\(ii\)](#) (with [Sch. 3](#))

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Interpretation

19 (1) For the purposes of this Schedule—

[<sup>F299</sup>“51 per cent. subsidiary” has the meaning given by section 838 of the Taxes Act;]

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;

“associate” has the meaning that would be given by subsections (3) and (4) of section 417 of the Taxes Act if in those subsections “relative” did not include a brother or sister;

[<sup>F300</sup>“bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise);]

<sup>F301</sup> .....

“eligible shares” has the meaning given by section 289(7) of [<sup>F302</sup>the Taxes Act or means shares that meet the requirement in section 173 (2) of ITA 2007];

<sup>F303</sup> .....

“non-resident” means a person who is neither resident nor ordinarily resident in the United Kingdom;

“ordinary share capital” has [<sup>F304</sup>the meaning given by section 989 of ITA 2007];

“ordinary shares”, in relation to a company, means shares forming part of its ordinary share capital;

[<sup>F305</sup>“the period of restriction”, in relation to any shares, means the period

- (a) beginning one year before the shares are issued, and
- (b) ending immediately before the termination date relating to the shares;]

“qualifying business activity” has the meaning given by section 289(2) of the Taxes Act [<sup>F306</sup>or section 179 of ITA 2007];

[<sup>F307</sup>“qualifying company”, in relation to any eligible shares, means a company which, in relation to those shares, is—

- (a) a qualifying company for the purposes of Chapter 3 of Part 7 of the Taxes Act (except that for the purposes of this Schedule the reference in section 293(1B)(b)(i) of that Act to section 304A of that Act shall be read as a reference to paragraph 8 above), or
- (b) a qualifying company for the purposes of Part 5 of ITA 2007 (except that for the purposes of this Schedule the reference in section 184(1)(c)(i) of that Act to section 247 of that Act shall be read as a reference to paragraph 8 above).]

“the relevant period”, in the case of any shares, means the period found by applying section 312(1A)(a) of [<sup>F308</sup>the Taxes Act or section 159(2) of ITA 2007] by reference to the company that issued the shares and by reference to the shares;

<sup>F309</sup> .....

<sup>F303</sup> .....

[<sup>F310</sup>“termination date”, in relation to any shares, means the date found by applying the definition of “termination date” in section 312(1) of the Taxes

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Act [<sup>F311</sup>or section 256 of ITA 2007] by reference to the company that issued the shares and by reference to the shares.]

[ For the purposes of this Schedule, “the relevant shares”, in relation to a case to which <sup>F312</sup>(1A) this Schedule applies, means the shares which—

- (a) are acquired by the investor in making the qualifying investment, and
- (b) where the qualifying investment is made before the time at which the original gain accrues, are still held by the investor at that time.

This is subject to sub-paragraphs (1B) and (1D) below.

(1B) If any corresponding bonus shares in the same company are issued to the investor or any person who has acquired any of the relevant shares from the investor on a disposal within marriage [<sup>F313</sup>or civil partnership], this Schedule shall apply as if references to the relevant shares were to all the shares comprising the relevant shares and the bonus shares so issued.

(1C) In sub-paragraph (1B) above “corresponding bonus shares” means bonus shares which—

- (a) are issued in respect of the relevant shares; and
- (b) are of the same class, and carry the same rights, as those shares.

(1D) If, in circumstances in which paragraph 8 above applies, new shares are issued in exchange for old shares, references in this Schedule to the relevant shares, so far as they relate to the old shares, shall be construed as references to the new shares and not to the old shares.

(1E) In sub-paragraph (1D) above “new shares” and “old shares” have the same meaning as in paragraph 8 above.]

(2) For the purposes of this Schedule, “deferral relief” is attributable to any shares if—

- (a) expenditure on the shares has been set under this Schedule against the whole or part of any gain; and
- (b) in relation to the shares there has been no chargeable event for the purposes of this Schedule.

(3) In this Schedule—

- (a) references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day;
- (b) references to a disposal within marriage [<sup>F313</sup>or civil partnership] are references to any disposal to which section 58 applies; <sup>F314</sup>...
- (c) references to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994 [<sup>F315</sup>; and
- (d) references to Part 5 of ITA 2007 or any provision of that Part are to a Part or provision that applies only in relation to shares issued on or after 6th April 2007].

(4) For the purposes of this Schedule shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.

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- (5) Notwithstanding anything in section 288(5), shares shall not for the purposes of this Schedule be treated as issued by reason only of being comprised in a letter of allotment or similar instrument.]]

#### Textual Amendments

- F299** Words in Sch. 5B para. 19(1) inserted (with effect in accordance with Sch. 18 para. 20(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 20(1)(a)**
- F300** Words in Sch. 5B para. 19(1) inserted (with effect in accordance with Sch. 18 para. 20(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 18 para. 20(1)(b)**
- F301** Words in Sch. 5B para. 19(1) repealed (with effect in accordance with Sch. 33 Pt. 2(3) Note 6 of the amending Act) by [Finance Act 2001 \(c. 9\)](#), **Sch. 33 Pt. 2(3)** (with Sch. 3)
- F302** Words in Sch. 5B para. 19(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(14)(a)** (with Sch. 2)
- F303** Words in Sch. 5B para. 19(1) repealed (with effect in accordance with Sch. 40 Pt. II(5) Note 4 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 40 Pt. II(5)**
- F304** Words in Sch. 5B para. 19(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(14)(b)** (with Sch. 2)
- F305** Words in Sch. 5B para. 19(1) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 37(a)** (with Sch. 3)
- F306** Words in Sch. 5B para. 19(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(14)(c)** (with Sch. 2)
- F307** Words in Sch. 5B para. 19(1) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(14)(d)** (with Sch. 2)
- F308** Words in Sch. 5B para. 19(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(14)(e)** (with Sch. 2)
- F309** Words in Sch. 5B para. 19 repealed (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 3(1)**, **Sch. 20 Pt. III(18)**
- F310** Words in Sch. 5B para. 19(1) inserted (11.5.2001) by [Finance Act 2001 \(c. 9\)](#), **Sch. 15 para. 37(c)** (with Sch. 3)
- F311** Words in Sch. 5B para. 19(1) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(14)(f)** (with Sch. 2)
- F312** Sch. 5B para. 19(1A)-(1E) inserted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **Sch. 8 para. 3(2)**
- F313** Words in Sch. 5B para. 19 inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **127**
- F314** Word in Sch. 5B para. 19(3) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(15)**, **Sch. 3 Pt. 1** (with Sch. 2)
- F315** Sch. 5B para. 19(3)(d) and preceding word inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 1 para. 345(15)** (with Sch. 2)

*Status: Point in time view as at 21/07/2008.*

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**Textual Amendments**

**F316** Sch. 5BA omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 2 para. 49**

**F317** SCHEDULE 5C

**Textual Amendments**

**F317** Sch. 5C repealed (with effect in accordance with Sch. 19 para. 7 of the amending Act) by Finance Act 2004 (c. 12), Sch. 19 para. 5, **Sch. 42 Pt. 2(13)**

**F318** SCHEDULE 6

Sections 163, 164.

**Textual Amendments**

**F318** Sch. 6 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2) of, Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), s. 140(2)(c), **Sch. 27 Pt. III(31)** (with s. 140(1))

SCHEDULE 7

Section 165.

RELIEF FOR GIFTS OF BUSINESS ASSETS

**PART I**

AGRICULTURAL PROPERTY AND SETTLED PROPERTY

*Agricultural property*

- 1 (1) This paragraph applies where—
- (a) there is a disposal of an asset which is, or is an interest in, agricultural property within the meaning of Chapter II of Part V of the <sup>M18</sup>Inheritance Tax Act 1984 (inheritance tax relief for agricultural property), and
  - (b) apart from this paragraph, the disposal would not fall within section 165(1) by reason only that the agricultural property is not used for the purposes of a trade carried on as mentioned in section 165(2)(a).

*Status: Point in time view as at 21/07/2008.*

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- (2) Where this paragraph applies, section 165(1) shall apply in relation to the disposal if 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).

#### Marginal Citations

**M18** 1984 c. 51.

#### *Settled property*

- 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 165 is made by the trustees and the person who acquires the asset (“the transferee”) or, where the trustees of a settlement are also the transferee, by the trustees making the disposal alone,
- then, subject to sections 165(3), 166, 167<sup>F319</sup>, 169, 169B and 169C], section 165(4) 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 <sup>F320</sup>not listed on a recognised stock exchange], 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 165(4) applies by virtue of this paragraph, references to the trustees shall be substituted for the references in section 165(4)(a) to the transferor; and where it applies in relation to a disposal which is deemed to occur by virtue of section 71(1) or 72(1) section 165(7) shall not apply.

#### Textual Amendments

**F319** Words in Sch. 7 para. 2(1) substituted (with effect in accordance with Sch. 21 para. 10(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 21 para. 9\(2\)](#)

**F320** Words in Sch. 7 para. 2(2)(b)(i) substituted (with effect in accordance with s. 90(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 90\(3\)](#)

*Status: Point in time view as at 21/07/2008.*

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- 3 (1) This paragraph applies where—
- (a) there is a disposal of an asset which is, or is an interest in, agricultural property within the meaning of Chapter II of Part V of the <sup>M19</sup>Inheritance Tax Act 1984, and
  - (b) apart from this paragraph, the disposal would not fall within paragraph 2(1)(a) above by reason only that the agricultural property is not used for the purposes of a trade as mentioned in paragraph 2(2)(a) above.
- (2) Where this paragraph applies paragraph 2(1) above shall apply in relation to the disposal if 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).

#### Marginal Citations

M19 1984 c. 51.

## PART II

### REDUCTIONS IN HELD-OVER GAIN

#### *Application and interpretation*

- 4 (1) The provisions of this Part of this Schedule apply in cases where a claim for relief is made under section 165.
- (2) In this Part of this Schedule—
- (a) “the principal provision” means section 165(2), or, as the case may require, sub-paragraph (2) of paragraph 2 above,
  - (b) “shares” includes securities,
  - (c) “the transferor” has the same meaning as in section 165 except that, in a case where paragraph 2 above applies, it refers to the trustees mentioned in that paragraph, and
  - (d) “unrelieved gain”, in relation to a disposal, has the same meaning as in section 165(7).
- (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 165 by virtue of subsection (2)(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 165 by virtue of subsection (2)(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.



*Status: Point in time view as at 21/07/2008.*

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- (4) In relation to a disposal of an asset or of shares, any reference in the following provisions of this Part of this Schedule to the held-over gain is a reference to the held-over gain on that disposal as determined under subsection (6) or, where it applies, subsection (7) of section 165.

*Reductions peculiar to disposals of assets*

- 5 (1) If, in the case of a disposal of an asset, the asset was not used for the purposes of the trade, profession or vocation referred to in paragraph (a) of the principal provision throughout the period of its ownership by the transferor, the amount of the held-over gain shall be reduced by multiplying it by the fraction—

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

where—

A is the number of days in that period of ownership during which the asset was so used, and

B is the number of days in that period.

- (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 <sup>M20</sup>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).

**Marginal Citations**

**M20** 1984 c. 51.

- 6 (1) If, in the case of a disposal of an asset, the asset is a building or structure and, over the period of its ownership by the transferor or any substantial part of that period, part of the building or structure was, and part was not, used for the purposes of the trade, profession or vocation referred to in paragraph (a) of the principal provision, there shall be determined the fraction of the unrelieved gain on the disposal which it is just and reasonable to apportion to the part of the asset which was so used, and the amount of the held-over gain (as reduced, if appropriate, under paragraph 5 above) shall be reduced by multiplying it by that fraction.
- (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).

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*Reduction peculiar to disposal of shares*

- 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 12 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 [<sup>F321</sup>personal company],
- the amount of the held-over gain shall be reduced by multiplying it by the fraction—

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

where—

A is the market value on the date of the disposal of those chargeable assets of the company or of the group which are business assets, and

B is the market value on that date of all the chargeable assets of the company, or as the case may be of the group.

- (2) For the purposes of this paragraph—
- (a) an asset is a business asset in relation to a company or a group if it is or is an interest in an asset used for the purposes of a trade, profession or vocation carried on by the company, or as the case may be by a member 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.
- (3) 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—

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

where—

A is the amount of the ordinary share capital of the subsidiary owned directly or indirectly by the holding company, and

B is the whole of that share capital.

*Status: Point in time view as at 21/07/2008.*

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- (4) Expressions used in sub-paragraph (3) above have the same meanings as in section 838 of the Taxes Act.

**Textual Amendments**

**F321** Words in Sch. 7 para. 7(1) substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**

*Reduction where gain partly relieved by retirement relief*

F322g . . . . .

**Textual Amendments**

**F322** Sch. 7 para. 8 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

[<sup>F323</sup> SCHEDULE 7A

Section 177A.

RESTRICTION ON SET-OFF OF PRE-ENTRY LOSSES

**Textual Amendments**

**F323** 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 [<sup>F324</sup>, but this Schedule shall have no effect in any case where section 184A (restrictions on buying losses: tax avoidance schemes) has effect in relation to those losses].
- (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 [<sup>F325</sup>the relevant event occurred in relation to it], by any company (whether or not

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the one which makes the disposal) which is or has at any time been a member of [<sup>F326</sup>the relevant group].

[ In this paragraph references to the relevant event occurring in relation to a <sup>F327</sup>(3A) company—

(a) in a case in which—

(i) the company was resident in the United Kingdom at the time when it became a member of the relevant group, or

(ii) the asset was a chargeable asset in relation to the company at that time,

are references to the company becoming a member of that group;

[ in a case in which (whether or not paragraph (a)(i) also applies)—

<sup>F328</sup>(aa) (i) the company is an SE resident in the United Kingdom, and

(ii) the asset was transferred to the SE as part of the process of its formation by the merger by acquisition of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

are references to the asset becoming a chargeable asset in relation to the SE or, if at the time of the formation of the SE the asset was a chargeable asset in relation to a company which ceased to exist as part of the process of the formation of the SE, to the asset becoming a chargeable asset in relation to that company;]

(b) in any other case, are references to whichever is the first of—

(i) the company becoming resident in the United Kingdom, or

(ii) the asset becoming a chargeable asset in relation to the company.

For this purpose an asset is a “chargeable asset” in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section [<sup>F329</sup>10B][<sup>F330</sup>(or, if the company is an SE, by reason of the asset having been transferred to the SE on its formation)] form part of its chargeable profits for corporation tax purposes.]

(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 [<sup>F331</sup>the relevant event occurred in relation to it] 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 [<sup>F332</sup>the relevant event occurred in relation to the company by reference to which that asset is a pre-entry asset]; and for the purposes of this Schedule—

(a) where [<sup>F333</sup>a relevant event has occurred in relation to a company] on more than one occasion, an asset is a pre-entry asset by reference to that company

*Status: Point in time view as at 21/07/2008.*

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if 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 [<sup>F334</sup>a relevant event occurred in relation to a company], 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) [<sup>F335</sup>or (10A)] 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.

#### Textual Amendments

- F324** Words in Sch. 7A para. 1(1) inserted (with effect in accordance with s. 70(6)-(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 70(3)** (with s. 70(10)-(11))
- F325** Words in Sch. 7A para. 1(3) substituted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(2)(a)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F326** Words in Sch. 7A para. 1(3) substituted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(2)(b)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F327** Sch. 7A para. 1(3A) inserted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(3)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F328** Sch. 7A para. 1(3A)(aa) inserted (with effect in accordance with s. 65(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **s. 65(2)**
- F329** Word in Sch. 7A para. 1(3A) substituted (with effect in accordance with s. 155(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 27 para. 2(3)**
- F330** Words in Sch. 7A para. 1(3A) inserted (with effect in accordance with s. 65(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **s. 65(3)**
- F331** Words in Sch. 7A para. 1(4)(a) substituted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(4)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F332** Words in Sch. 7A para. 1(5) substituted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(5)(a)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F333** Words in Sch. 7A para. 1(5)(a) substituted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(5)(b)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F334** Words in Sch. 7A para. 1(5)(b) substituted (with effect in accordance with Sch. 29 para. 7(6) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), **Sch. 29 para. 7(5)(c)** (with Sch. 29 paras. 7(7)-(9), 46(5))
- F335** Words in Sch. 7A para. 1(6)(a) inserted (with effect in accordance with s. 65(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **s. 65(4)**

#### *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—

$$A \times BC \times DE$$

- (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;
  - [<sup>F336</sup>B is the amount of the item of relevant allowable expenditure for which an amount falls to be determined under this paragraph;
  - C is the total amount of all the relevant allowable expenditure;]

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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 <sup>F337</sup>assumptions applying by virtue of sub-paragraphs (4) to (6B)] 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, <sup>F338</sup>... —

- (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.

(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).

<sup>F339</sup>(6A) Notwithstanding anything in section 56(2), where in the case of the disposal of any pre-entry asset—

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- (a) any company has at any time between the relevant time and the time of the disposal acquired that asset or the equivalent asset, and
- (b) the acquisition was either an acquisition in pursuance of a disposal on which there is treated by virtue of section 171 as having been neither a gain nor a loss accruing or an acquisition by virtue of which an asset is treated as the equivalent asset,

the items of relevant allowable expenditure and the times when those items shall be treated as having been incurred shall be determined for the purposes of this paragraph on the assumptions specified in sub-paragraph (6B) below.

(6B) Those assumptions are that—

- (a) the company by reference to which the asset in question is a pre-entry asset, and
- (b) the company mentioned in sub-paragraph (6A) above and every other company which has made an acquisition which, in relation to the disposal of that asset, falls within that sub-paragraph,

were the same person and, accordingly, that the pre-entry asset had been acquired by the company disposing of it at the time when it or the equivalent asset would have been treated for the purposes of this paragraph as acquired by the company mentioned in paragraph (a) above.

(7) In sub-paragraphs (5) to (6B) above the references to the equivalent asset, in relation to another asset acquired or disposed of by any company, are references to any asset which falls in relation to that company to be treated (whether by virtue of paragraph 1(8) above or otherwise) as the same as the other asset or which would fall to be so treated after applying, as respects other assets, the assumptions for which those sub-paragraphs provide.]

(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).

[ Where by virtue of section 55(8) the allowable loss accruing on the disposal of a <sup>F340</sup>(8A) pre-entry asset, or any part of the loss, is attributable to an amount (“the rolled-up amount”) of rolled-up indexation (as defined in section 55(9) to (11)), then, for the purposes of this paragraph—

- (a) the total amount of all the relevant allowable expenditure shall be treated as increased by the rolled-up amount, and
- (b) the amount of each item of relevant allowable expenditure shall be treated as increased by so much (if any) of the rolled-up amount as is attributable to that item.

(8B) Where—

- (a) section 56(3) applies on the disposal of a pre-entry asset on which an allowable loss accrues, and
- (b) in accordance with that subsection, the total amount of all the relevant allowable expenditure is reduced by any amount (“the global reduction”),



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the amount of each item of relevant allowable expenditure shall be treated for the purposes of this paragraph as reduced by so much (if any) of the global reduction as is attributable to that item.]

(9) In this paragraph—

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“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.

#### Textual Amendments

- F336** Words in Sch. 7A para. 2(2) substituted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(8\)\(a\)](#) (with [Sch. 12](#))
- F337** Words in Sch. 7A para. 2(3)(a) substituted (with effect in accordance with s. 94(4) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 94\(2\)](#)
- F338** Words in Sch. 7A para. 2(4) repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(8\)\(b\)](#), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))
- F339** Sch. 7A para. 2(6A)(6B)(7) substituted for Sch. 7A para. 2(7) (with effect in accordance with s. 94(4) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 94\(2\)](#)
- F340** Sch. 7A para. 2(8A)(8B) inserted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(8\)\(c\)](#) (with [Sch. 12](#))
- F341** Words in Sch. 7A para. 2(9) repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(8\)\(d\)](#), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

#### *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-

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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.
- (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—

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- (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—
- (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

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- (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,
  - (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.

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- (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, <sup>F342</sup>....
- <sup>F343</sup>(13) .....
- (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.

#### Textual Amendments

- F342** Words in Sch. 7A para. 4(12) repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(9)(a), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))
- F343** Sch. 7A para. 4(13) repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 93(9)(b), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

#### *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.

*Status: Point in time view as at 21/07/2008.*

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- [ In determining for the purposes of sub-paragraph (2)(a) above the amount of any loss<sup>F344</sup>(2A) which would have accrued if the asset had been disposed of at the relevant time at its market value at that time—
- (a) it shall be assumed that the amendments of this Act made by section 93(1) to (5) of the Finance Act 1994 (indexation losses) had effect in relation to that disposal and, accordingly,
  - (b) references in those amendments and in subsection (11) of that section to 30th November 1993 shall be read as references to the day on which the relevant time falls.]
- (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—
- (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—

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- (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.

#### Textual Amendments

**F344** Sch. 7A para. 5(2A) inserted (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994 \(c. 9\), s. 93\(10\)](#) (with [Sch. 12](#))

#### *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 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.

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- (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—
- (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—



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- (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.
- (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.

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(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;

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

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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.

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

- C9** Sch. 7A para. 8(1) applied by 1988 c. 1, Sch. 28A para. 13 (as inserted (with effect in accordance with Sch. 26 para. 5 of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 26 para. 3](#))

*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) <sup>F345</sup>or (b) 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) [F346 or (10A)] be treated [F347 in relation to any company that is or has become a member of the second group (“the relevant company”) as the same group for the purposes of this paragraph if—
- (a) the time at which the relevant company became a member of the first group is a time in the same accounting period as that in which the principal company of the first group became a member of the second group; or
  - (b) 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.

#### Textual Amendments

**F345** Words in Sch. 7A para. 9(2)(c) inserted (with application in accordance with s. 94(4) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 94(3)

**F346** Words in Sch. 7A para. 9(6) inserted (with effect in accordance with s. 65(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 65(5)

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**F347** Words in Sch. 7A para. 9(6) substituted (with effect in accordance with s. 138(2) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 138\(1\)](#)

*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.

*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—

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“enactment” includes any provision of any Northern Ireland legislation, within the meaning of section 24 of the <sup>M21</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>M22</sup>Statutory Rules (Northern Ireland) Order 1979.

#### Marginal Citations

**M21** 1978 c. 30.

**M22** S.I. 1979/1573 (N.I. 13).

#### *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 [<sup>F348</sup>of the no gain/no loss provisions], 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.]

#### Textual Amendments

**F348** Words in Sch. 7A para. 12(b) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 68](#)

#### <sup>F349</sup>SCHEDULE 7AA

#### Textual Amendments

**F349** Sch. 7AA repealed (with effect in accordance with s. 70(6)-(8) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), s. 70(4), [Sch. 26 Pt. 3\(9\)](#) (with s. 70(10)-(11))

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## <sup>F350</sup>SCHEDULE 7AB

### ROLL-OVER OF DEGROUPING CHARGE: MODIFICATION OF ENACTMENTS

#### Textual Amendments

**F350** Sch. 7AB inserted (with application in accordance with s. 43(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 43(2), [Sch. 7](#)

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

**C10** Sch. 7AB: power to modify conferred by Finance Act 1993 (c. 34), s. 86(2) (as amended (with application in accordance with s. 43(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), s. 43(3))

#### *Introductory*

- 1 (1) This Schedule sets out how sections 152 and 153 and other related enactments are modified for the purposes of section 179B (roll-over of degrouping charge on business assets).
- (2) In the enactments as so modified—
- “company A” and “company B” have the same meanings as in section 179;
  - “relevant asset” means the asset mentioned in section 179B(1);
  - “deemed sale” means the sale of the relevant asset that is treated as taking place by virtue of section 179(3) or (6);
  - “deemed sale consideration” means the amount for which company A is treated as having sold the relevant asset;
  - “time of accrual” means—
    - (a) in a case where section 179(3) applies, the time at which, by virtue of section 179(4), the gain or loss accruing on the deemed sale is treated as accruing to company A;
    - (b) in a case where section 179(6) applies, the latest time at which the company satisfies the conditions in section 179(7).

#### *Section 152*

- 2 (1) For subsection (1) of section 152 (roll-over relief) substitute—
- “(1) If—
- (a) company B was carrying on a trade at the time when it disposed of the relevant asset to company A,
  - (b) the relevant asset was used, and used only, for the purposes of that trade throughout the period when it was owned by company B,
  - (c) an amount that is not less than the deemed sale consideration is applied by company A in acquiring other assets, or an interest in other assets (“the new assets”),
  - (d) on acquisition the new assets are taken into use, and used only, for the purposes of a trade carried on by company A,
  - (e) both the relevant asset and the new assets are within the classes of assets listed in section 155, and

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- (f) company A makes a claim as respects the amount applied as mentioned in paragraph (c),  
 company A shall be treated for the purposes of this Act as if the deemed sale consideration were (if otherwise of a greater amount) reduced to such amount as would secure that neither a gain nor a loss accrues to the company in respect of the deemed sale.
- (1A) Where subsection (1) applies, company A shall be treated for the purposes of this Act as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the same amount as the amount of the reduction under that subsection.
- (1B) Subsection (1) does not affect the value at which company A is treated by virtue of section 179 as having reacquired the relevant asset.
- (1C) Subsection (1A) does not affect the treatment for the purposes of this Act of the other party to the transaction involving the new assets.”.
- (2) In subsection (2) of that section (application of subsection (1) where old assets held on 6th April 1965)—
- (a) for “subsection (1)(a)” substitute “subsection (1)”;
  - (b) for “subsection (1)(b)” substitute “subsection (1A)”.
- (3) In subsection (3) of that section (reinvestment period), for “after the disposal of, or of the interest in, the old assets” substitute “after the time of accrual”.
- (4) In subsection (5) of that section (new assets must be acquired for purposes of trade), for “the trade” substitute “the trade carried on by company A”.
- (5) In subsection (6) of that section (apportionment where part of building etc not used for purposes of trade), omit “or disposal” and insert at the end “or of the deemed sale consideration”.
- (6) After that subsection insert—
- “(6A) In subsection (6) “period of ownership”, in relation to the relevant asset, means the period during which the asset was owned by company B.”.
- (7) In subsection (7) of that section (apportionment where old assets not used for purposes of trade throughout period of ownership)—
- (a) for the words from the beginning to “period of ownership” substitute “If the relevant asset was not used for the purposes of the trade carried on by company B throughout the period during which it was owned by that company”;
  - (b) for the words from “or disposal” to the end substitute “of the asset or of the deemed sale consideration”.
- (8) In subsection (9) of that section (“period of ownership” does not include period before 31st March 1982), for ““period of ownership” does not” substitute “the references to the period during which the relevant asset was owned by company B do not”.
- (9) In subsection (11) of that section (apportionment of consideration for assets not all of which are subject of claim), omit “or disposal” and insert at the end “; and similarly in relation to the deemed sale consideration”.



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### Section 153

3 For subsection (1) of section 153 (assets only partly replaced) substitute—

“(1) If—

- (a) an amount that is less than the deemed sale consideration is applied by company A in acquiring other assets, or an interest in other assets (“the new assets”),
- (b) the difference between the deemed sale consideration and the amount so applied (“the shortfall”) is less than the amount of the gain (whether all chargeable gain or not) accruing on the deemed sale,
- (c) the conditions in paragraphs (a), (b), (d) and (e) of section 152(1) are satisfied, and
- (d) company A makes a claim as respects the amount applied as mentioned in paragraph (a) above,

company A shall be treated for the purposes of this Act as if the amount of the gain accruing as mentioned in paragraph (b) above were reduced to the same amount as the shortfall (with a proportionate reduction, if not all of that gain is chargeable gain, in the amount of the chargeable gain).

(1A) Where subsection (1) applies, company A shall be treated for the purposes of this Act as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under that subsection.

(1B) Subsection (1) does not affect the value at which company A is treated by virtue of section 179 as having reacquired the relevant asset.

(1C) Subsection (1A) does not affect the treatment for the purposes of this Act of the other party to the transaction involving the new assets.”.

### Section 153A

4 (1) In subsection (1) of section 153A (provisional application of sections 152 and 153)—

- (a) for the words from “a person” to “takes place” substitute “company A declares, in its return for the chargeable period in which the time of accrual falls”;
- (b) for “the trade” substitute “a trade carried on by company A”;
- (c) for “the whole or any specified part of the consideration” substitute “an amount equal to the deemed sale consideration or any specified part of that amount”.

(2) In subsection (5) of that section (meaning of “relevant day”), for paragraphs (a) and (b) substitute “the fourth anniversary of the last day of the accounting period of company A in which the time of accrual falls”.

### Section 155

5 In section 155 (relevant classes of assets), in Head A of Class 1, after paragraph 2 insert—

“In Head A “the trade” means—

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- (a) for the purposes of determining whether the relevant asset is within this head, the trade carried on by company B;
- (b) for the purposes of determining whether the new assets are within this head, the trade carried on by company A.”.

#### *Section 159*

- 6 (1) In subsection (1) of section 159 (new assets must be chargeable assets), for the words from “in the case of a person” to the second “in relation to him” substitute “if the relevant asset (or, as the case may be, the property mentioned in section 179(3)(b)) is a chargeable asset in relation to company A at the time of accrual, unless the new assets are chargeable assets in relation to that company”.
- (2) In subsection (2) of that section (subsection (1) not to apply where new assets acquired by UK resident after disposal of old ones)—
- (a) for paragraph (a) substitute—
    - “(a) company A acquires the new assets after the time of accrual, and”;
  - (b) in paragraph (b) for “the person” substitute “that company”.
- (3) In subsection (3) of that section (subsection (2) not to apply in certain cases where new assets acquired by dual resident), for “the person” substitute “company A”.
- (4) In subsection (6) of that section (definitions)—
- (a) in paragraph (a) for ““the old assets” and “the new assets” have the same meanings” substitute ““the new assets” has the same meaning”;
  - (b) omit paragraph (b).
- (5) Omit subsection (7) of that section (acquisitions before 14th March 1989).

#### *Section 175*

- 7 (1) In subsection (2) of section 175 (single-trade rule for group members not to apply in case of dual resident investing company)—
- (a) for “the consideration for the disposal of the old assets” substitute “the amount of the deemed sale consideration”;
  - (b) for ““the old assets” and “the new assets” have the same meanings” substitute ““the new assets” has the same meaning”.
- (2) In subsection (2A) of that section (claim by two group members to be treated as same person for roll-over purposes), for paragraph (a) substitute—
- “(a) company A is a member of a group of companies at the time of accrual.”.
- (3) In subsection (2AA) of that section (conditions for claim under subsection (2A))—
- (a) in paragraph (a) for the words from the beginning to “chargeable assets” substitute “that company A is resident in the United Kingdom at the time of accrual, or the relevant asset (or, as the case may be, the property mentioned in section 179(3)(b)) is a chargeable asset”;
  - (b) in paragraph (b) for “the assets” substitute “the new assets (within the meaning of section 152)”.

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(4) Immediately before subsection (2B) of that section (roll-over relief for group member not itself carrying on trade) insert—

“(2AB) Section 152 or 153 shall apply where—

- (a) company B was not carrying on a trade at the time when it disposed of the relevant asset to company A, but was a member of a group of companies at that time, and
- (b) immediately before that time the relevant asset was used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carried on a trade,

as if company B had been carrying on that trade.”.

(5) In subsection (2B) of that section—

- (a) omit paragraph (a);
- (b) in paragraph (b), for “those purposes” substitute “the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade”.

(6) Omit subsection (4) of that section (acquisitions before 20th March 1990).

#### *Section 185*

8 (1) In subsection (3) of section 185 (no roll-over relief in certain cases where company acquires new assets after becoming non-resident)—

- (a) omit “the company”;
- (b) for paragraph (a) substitute—
  - “(a) the time of accrual falls before the relevant time; and”;
- (c) insert “the company” at the beginning of paragraph (b).

(2) In subsection (5) of that section (definitions), in paragraph (c) for ““the old assets” and “the new assets” have the same meanings” substitute ““the new assets” has the same meaning”.

#### *Section 198*

9 (1) For subsection (1) of section 198 (replacement of business assets used in connection with oil fields) substitute—

“(1) If at the time of accrual the relevant asset (or, as the case may be, the property mentioned in section 179(3)(b)) was used by company A for the purposes of a ring fence trade carried on by it, section 152 or 153 shall not apply unless the new assets are on acquisition taken into use, and used only, for the purposes of that trade.”.

(2) In subsection (3) of that section (new asset conclusively presumed to be depreciating asset), for “in relation to any of the consideration on a material disposal” substitute “in a case falling within subsection (1) above”.

(3) In subsection (5) of that section (definitions), omit paragraph (a).

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*Schedule 22 to the Finance Act 2000*

- 10 In sub-paragraph (2) of paragraph 67 of Schedule 22 to the Finance Act 2000 (c. 17) (no roll-over relief for tonnage tax assets)—
- (a) after “the disposal”, in the first and third places, insert “or deemed sale”;
  - (b) in paragraph (a) after “Asset No.1” insert “or, as the case may be, the deemed sale consideration”.]

[<sup>F351</sup>SCHEDULE 7AC

EXEMPTIONS FOR DISPOSALS BY COMPANIES WITH SUBSTANTIAL SHAREHOLDING

**Textual Amendments**

**F351** Sch. 7AC inserted (with effect in accordance with s. 44(3)(4) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 8 para. 1](#)

**PART 1**

THE EXEMPTIONS

*The main exemption*

- 1 (1) A gain accruing to a company (“the investing company”) on a disposal of shares or an interest in shares in another company (“the company invested in”) is not a chargeable gain if the requirements of this Schedule are met.
- (2) The requirements are set out in—
- Part 2 (the substantial shareholding requirement), and
  - Part 3 (requirements to be met in relation to the investing company and the company invested in).
- (3) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

*Subsidiary exemption: disposal of asset related to shares where main exemption conditions met*

- 2 (1) A gain accruing to a company (“company A”) on a disposal of an asset related to shares in another company (“company B”) is not a chargeable gain if either of the following conditions is met.
- (2) The first condition is that—
- (a) immediately before the disposal company A holds shares or an interest in shares in company B, and
  - (b) any gain accruing to company A on a disposal at that time of the shares or interest would, by virtue of paragraph 1, not be a chargeable gain.
- (3) The second condition is that—

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- (a) immediately before the disposal company A does not hold shares or an interest in shares in company B but is a member of a group and another member of that group does hold shares or an interest in shares in company B, and
  - (b) if company A, rather than that other company, held the shares or interest, any gain accruing to company A on a disposal at that time of the shares or interest would, by virtue of paragraph 1, not be a chargeable gain.
- (4) Where assets of a company are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, this paragraph applies as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).
- (5) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

*Subsidiary exemption: disposal of shares or related asset where main exemption conditions previously met*

- 3 (1) A gain accruing to a company (“company A”) on a disposal of shares, or an interest in shares or an asset related to shares, in another company (“company B”) is not a chargeable gain if the following conditions are met.
- (2) The conditions are—
- (a) that at the time of the disposal company A meets the requirement in paragraph 7 (the substantial shareholding requirement) in relation to company B;
  - (b) that a chargeable gain or allowable loss would, apart from this paragraph, accrue to company A on the disposal (but see sub-paragraph (3) below);
  - (c) that at the time of the disposal—
    - (i) company A is resident in the United Kingdom, or
    - (ii) any chargeable gain accruing to company A on the disposal would, by virtue of [<sup>F352</sup>section 10B], form part of that company’s chargeable profits for corporation tax purposes;
  - (d) that there was a time within the period of two years ending with the disposal (“the relevant period”) when, if—
    - (i) company A, or
    - (ii) a company that at any time in the relevant period was a member of the same group as company A,had disposed of shares or an interest in shares in company B that it then held, a gain accruing would, by virtue of paragraph 1, not have been a chargeable gain; and
  - (e) that, if at the time of the disposal the requirements of paragraph 19 (requirements relating to company invested in) are not met in relation to company B, there was a time within the relevant period when company B was controlled by—
    - (i) company A, or
    - (ii) company A together with any persons connected with it, or
    - (iii) a company that at any time in the relevant period was a member of the same group as company A, or

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(iv) any such company together with any persons connected with it.

(3) Sub-paragraph (1) does not apply if—

- (a) the condition in sub-paragraph (2)(b) is met but would not be met but for a failure to meet the requirement in paragraph 18(1)(b) (requirement as to investing company to be met immediately after the disposal), and
- (b) the failure to meet that requirement is not due to—
  - (i) the fact that company A has been wound up or dissolved, or
  - (ii) where the winding up or dissolution takes place as soon as is reasonably practicable in the circumstances, the fact that company A is about to be wound up or dissolved.

(4) In determining for the purpose of sub-paragraph (2)(d) whether a gain accruing on the hypothetical disposal referred to would have been a chargeable gain, the requirements of paragraph 18(1)(b) and of paragraph 19(1)(b) (requirement as to company invested in to be met immediately after the disposal) shall be assumed to be met.

(5) Where—

- (a) immediately before the disposal company B holds an asset,
- (b) the expenditure allowable in computing any gain or loss on that asset, were it to be disposed of by company B immediately before that disposal, would fall to be reduced because of a claim to relief under section 165 (gifts relief) in relation to an earlier disposal, and
- (c) that earlier disposal took place within the relevant period,

sub-paragraph (1) does not prevent a gain accruing to company A on the disposal from being a chargeable gain but any loss so accruing is not an allowable loss.

(6) Where assets of company B are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, sub-paragraph (5)(a) applies as if the assets were vested in the company.

(7) In determining “the relevant period” for the purposes of sub-paragraph (2)(d) or (e) or sub-paragraph (5)(c), section 28 (time of disposal under contract) applies with the omission of subsection (2) (postponement of time of disposal in case of conditional contract).

(8) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

#### **Textual Amendments**

**F352** Words in Sch. 7AC para. 3(2)(c)(ii) substituted (with effect in accordance with Sch. 4 para. 10(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 4 para. 9\(2\)](#)

#### *Application of exemptions in priority to provisions deeming there to be no disposal etc*

4 (1) For the purposes of determining whether an exemption conferred by this Schedule applies, the question whether there is a disposal shall be determined without regard to—

- (a) section 116(10) (reorganisation, conversion of securities, etc treated as not involving disposal),

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- (b) section 127 (share reorganisations etc treated as not involving disposal), or
  - (c) section 192(2)(a) (distribution not treated as capital distribution).
- (2) Sub-paragraph (1) does not apply to a disposal of shares if the effect of its applying would be that relief attributable to the shares under Schedule 15 to the Finance Act 2000 (corporate venturing scheme) would be withdrawn or reduced under paragraph 46 of that Schedule (withdrawal or reduction of investment relief on disposal of shares).
- (3) Where or to the extent that an exemption conferred by this Schedule does apply—
- (a) the provisions mentioned in sub-paragraph (1)(a) and (b) do not apply in relation to the disposal, and
  - (b) the provision mentioned in sub-paragraph (1)(c) does not apply in relation to the subject matter of the disposal.
- (4) Where section 127 is disapplied by sub-paragraph (3)(a) in a case in which that section would otherwise have applied in relation to the disposal by virtue of paragraph 84 of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: share exchanges), paragraph 85 of that Schedule (attribution of relief to new shares) does not apply.
- (5) In this paragraph any reference to section 127 includes a reference to that provision as applied by any enactment relating to corporation tax.

*Circumstances in which exemptions do not apply*

- 5 (1) Where in pursuance of arrangements to which this paragraph applies—
- (a) an untaxed gain accrues to a company (“company A”) on a disposal of shares, or an interest in shares or an asset related to shares, in another company (“company B”), and
  - (b) before the accrual of that gain—
    - (i) company A acquired control of company B, or the same person or persons acquired control of both companies, or
    - (ii) there was a significant change of trading activities affecting company B at a time when it was controlled by company A, or when both companies were controlled by the same person or persons,none of the exemptions in this Schedule applies to the disposal.
- (2) This paragraph applies to arrangements from which the sole or main benefit that (but for this paragraph) could be expected to arise is that the gain on the disposal would, by virtue of this Schedule, not be a chargeable gain.
- (3) For the purposes of sub-paragraph (1)(a) a gain is “untaxed” if the gain, or all of it but a part that is not substantial, represents profits that have not been brought into account (in the United Kingdom or elsewhere) for the purposes of tax on profits for a period ending on or before the date of the disposal.
- (4) The reference in sub-paragraph (3) to profits being brought into account for the purposes of tax on profits includes a reference to the case where—
- (a) an amount in respect of those profits is apportioned to a company resident in the United Kingdom by virtue of subsection (3) of section 747 of the Taxes Act 1988 (imputation of chargeable profits etc of controlled foreign companies), and

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- (b) a sum is chargeable on that company in respect of that amount by virtue of subsection (4) of that section for an accounting period of that company ending on or before the date of the disposal.
- (5) For the purposes of sub-paragraph (1)(b)(ii) there is a “significant change of trading activities affecting company B” if—
  - (a) there is a major change in the nature or conduct of a trade carried on by company B or a 51% subsidiary of company B, or
  - (b) there is a major change in the scale of the activities of a trade carried on by company B or a 51% subsidiary of company B, or
  - (c) company B or a 51% subsidiary of company B begins to carry on a trade.
- (6) In this paragraph—
  - “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - “major change in the nature or conduct of a trade” has the same meaning as in section 768 of the Taxes Act (change of ownership of company: disallowance of trading losses);
  - “profits” means income or gains (including unrealised income or gains).

*Other cases excluded from exemptions*

- 6 (1) The exemptions conferred by this Schedule do not apply—
  - (a) to a disposal that by virtue of any enactment relating to chargeable gains is deemed to be for a consideration such that no gain or loss accrues to the person making the disposal,
  - (b) to a disposal a gain on which would, by virtue of any enactment not contained in this Schedule, not be a chargeable gain, or
  - (c) to a deemed disposal under section 440(1) or (2) of the Taxes Act (deemed disposal on transfer of asset of insurance company from one category to another).
- (2) The hypothetical disposal referred to in paragraph 2(2)(b) or (3)(b) or paragraph 3(2)(d) shall be assumed not to be a disposal within sub-paragraph (1)(a), (b) or (c) above.

**PART 2**

THE SUBSTANTIAL SHAREHOLDING REQUIREMENT

*The requirement*

- 7 The investing company must have held a substantial shareholding in the company invested in throughout a twelve-month period beginning not more than two years before the day on which the disposal takes place.

*Meaning of “substantial shareholdin”g*

- 8 (1) For the purposes of this Schedule a company holds a “substantial shareholding” in another company if it holds shares or interests in shares in that company by virtue of which—
  - (a) it holds not less than 10% of the company’s ordinary share capital,



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- (b) it is beneficially entitled to not less than 10% of the profits available for distribution to equity holders of the company, and
- (c) it would be beneficially entitled on a winding up to not less than 10% of the assets of the company available for distribution to equity holders.

This is without prejudice to what is meant by “substantial” where the word appears in other contexts.

- (2) Schedule 18 to the Taxes Act 1988 (meaning of equity holder and determination of profits or assets available for distribution) applies for the purposes of sub-paragraph (1).
- (3) In that Schedule as it applies for those purposes—
  - (a) for any reference to sections 403C and 413(7) of that Act, or either of those provisions, substitute a reference to sub-paragraph (1) above;
  - (b) omit the words in paragraph 1(4) from “but” to the end;
  - (c) omit paragraph 5(3) and paragraphs 5B to 5F; and
  - (d) omit paragraph 7(1)(b).

#### *Aggregation of holdings of group companies*

- 9 (1) For the purposes of paragraph 7 (the substantial shareholding requirement) a company that is a member of a group is treated—
  - (a) as holding any shares or interest in shares held by any other company in the group, and
  - (b) as having the same entitlement as any such company to any rights enjoyed by virtue of holding shares or an interest in shares.
- (2) Sub-paragraph (1) is subject to paragraph 17(4) (exclusion of aggregation in case of assets of long-term insurance fund of insurance company).

#### *Effect of earlier no-gain/no-loss transfer*

- 10 (1) For the purposes of this Part the period for which a company has held shares is treated as extended by any earlier period during which the shares concerned, or shares from which they are derived, were held—
  - (a) by a company from which the shares concerned were transferred to the first-mentioned company on a no-gain/ no-loss transfer, or
  - (b) by a company from which the shares concerned, or shares from which they are derived, were transferred on a previous no-gain/no-loss transfer—
    - (i) to a company within paragraph (a), or
    - (ii) to another company within this paragraph.
- (2) For the purposes of sub-paragraph (1)—
  - (a) a “no-gain/no-loss transfer” means a disposal and corresponding acquisition that by virtue of any enactment relating to chargeable gains are deemed to be for a consideration such that no gain or loss accrues to the person making the disposal;
  - (b) a transfer shall be treated as if it had been a no-gain/no- loss transfer if it is a transfer to which subsection (1) of section 171 (transfers within a group) would apply but for subsection (3) of that section.

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- (3) Where sub-paragraph (1) applies to extend the period for which a company (“company A”) is treated as having held any shares, that company shall be treated for the purposes of this Part as having had at any time the same entitlement—
- (a) to shares, and
  - (b) to any rights enjoyed by virtue of holding shares,
- as the company (“company B”) that at that time held the shares concerned or, as the case may be, the shares from which they are derived.
- (4) The shares and rights to be so attributed to company A include any holding or entitlement attributed at that time to company B under paragraph 9 (aggregation of holdings of group companies).
- (5) In this paragraph, except in paragraphs (a) to (c) of sub-paragraph (6), “shares” includes an interest in shares.
- (6) For the purposes of this paragraph shares are “derived” from other shares only where—
- (a) a company becomes a co-owner of shares previously owned by it alone, or vice versa,
  - (b) a company’s interest in shares as co-owner changes (without the company ceasing to be a co-owner),
  - (c) one holding of shares is treated by virtue of section 127 as the same asset as another, or
  - (d) there is a sequence of two or more of the occurrences mentioned in paragraphs (a) to (c).

The reference in paragraph (c) to section 127 includes a reference to that provision as applied by any enactment relating to corporation tax.

*Effect of deemed disposal and reacquisition*

- 11 (1) For the purposes of this Part a company is not regarded as having held shares throughout a period if, at any time during that period, there is a deemed disposal and reacquisition of—
- (a) the shares concerned, or
  - (b) shares, or an interest in shares, from which those shares are derived.
- (2) For the purposes of this Part a company is not regarded as having held an interest in shares throughout a period if, at any time during that period, there is a deemed disposal and reacquisition of—
- (a) the interest concerned, or
  - (b) shares, or an interest in shares, from which that interest is derived.
- (3) In this paragraph—
- “deemed disposal and reacquisition” means a disposal and immediate reacquisition treated as taking place under any enactment relating to corporation tax;
- “derived” has the same meaning as in paragraph 10.

*Effect of repurchase agreement*

- [<sup>F353</sup>12(1) This paragraph applies where—

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- (a) a company (“the borrower”) which holds shares in another company sells the shares under an arrangement by reference to which the borrower has a debtor repo, and
  - (b) by virtue of paragraph 6 of Schedule 13 to the Finance Act 2007 (sale and repurchase of securities) the sale is ignored for the purposes of corporation tax in respect of chargeable gains.
- (2) For the period for which the arrangement is in force—
- (a) the borrower shall be treated for the purposes of this Part as continuing to hold the shares and accordingly as retaining its entitlement to any rights attaching to them, and
  - (b) the lender shall be treated for those purposes as not holding the shares and as not becoming entitled to any such rights.

This is subject to the following qualification.

- (3) If at any time before the end of that period the borrower, or another member of the same group as the borrower, becomes the holder—
- (a) of any of the shares, or
  - (b) of any shares directly or indirectly representing any of them,
- sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, the shares represented by them.
- (4) Expressions used in this paragraph and in Schedule 13 to the Finance Act 2007 have the same meaning in this paragraph as in that Schedule.]

#### Textual Amendments

**F353** Sch. 7AC para. 12 substituted (with effect in relation to an arrangement that comes into force on or after 1.10.2007) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 13; S.I. 2007/2483, art. 3

#### *Effect of stock lending arrangements*

- 13 (1) This paragraph applies where—
- (a) a company that holds shares in another company transfers the shares under a stock lending arrangement, and
  - (b) by virtue of section 263B(2) (stock lending arrangements) the disposal is disregarded for the purposes of the enactments relating to chargeable gains.
- (2) During the period of the stock lending arrangement—
- (a) the lender shall be treated for the purposes of this Part as continuing to hold the shares transferred and accordingly as retaining his entitlement to any rights attached to them, and
  - (b) the borrower shall be treated for those purposes as not holding the shares transferred and as not becoming entitled to any such rights.
- This is subject to the following qualification.
- (3) If at any time before the end of the period of the stock lending arrangement the lender, or another member of the same group as the lender, becomes the holder—
- (a) of any of the shares transferred, or
  - (b) of any shares directly or indirectly representing any of the shares transferred,

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sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares.

- (4) In this paragraph a “stock lending arrangement” means arrangements between two persons (“the borrower” and “the lender”) under which—
- (a) the lender transfers shares to the borrower otherwise than by way of sale, and
  - (b) a requirement is imposed on the borrower to transfer those shares back to the lender otherwise than by way of sale.
- (5) Any reference in this paragraph to the period of a stock lending arrangement is to the period beginning with the transfer of the shares by the lender to the borrower and ending—
- (a) with the transfer of the shares back to the lender in pursuance of the arrangement, or
  - (b) when it becomes apparent that the requirement for the borrower to make a transfer back to the lender will not be complied with.
- (6) The following provisions apply for the purposes of this paragraph as they apply for the purposes of section 263B—
- (a) subsections (5) and (6) of that section (references to transfer back of securities to include transfer of other securities of the same description);
  - (b) section 263C (references to transfer back of securities to include payment in respect of redemption).

*Effect in relation to company invested in of earlier company reconstruction etc*

- 14 (1) This paragraph applies where shares in one company (“company X”)—
- (a) are exchanged (or deemed to be exchanged) for shares in another company (“company Y”), or
  - (b) are deemed to be exchanged by virtue of section 136 for shares in company X and shares in another company (“company Y”),
- in circumstances such that, under section 127 as that section applies by virtue of section 135 or 136, the original shares and the new holding are treated as the same asset.
- (2) Where company Y—
- (a) is the company invested in, and is accordingly the company by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) falls to be met, or
  - (b) is a company by reference to which, by virtue of this paragraph, that requirement may be met, or
  - (c) is a company by reference to which, by virtue of paragraph 15 (effect of earlier demerger) that requirement may be met,
- that requirement may instead be met, in relation to times before the exchange (or deemed exchange), by reference to company X.
- (3) If in any case that requirement can be met by virtue of this paragraph (or by virtue of this paragraph together with paragraph 15), it shall be treated as met.
- (4) In sub-paragraph (1) “original shares” and “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.

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*Effect in relation to company invested in of earlier demerger*

- 15 (1) This paragraph applies where shares in one company (“the subsidiary”) are transferred by another company (“the parent company”) on a demerger.
- (2) Where the subsidiary—
- (a) is the company invested in, and is accordingly the company by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) falls to be met, or
  - (b) is a company by reference to which, by virtue of this paragraph, that requirement may be met, or
  - (c) is a company by reference to which, by virtue of paragraph 14 (effect of earlier company reconstruction etc), that requirement may be met,
- that requirement may instead be met, in relation to times before the transfer, by reference to the parent company.
- (3) If in any case that requirement can be met by virtue of this paragraph (or by virtue of this paragraph together with paragraph 14), it shall be treated as met.
- (4) In this paragraph a “transfer of shares on a demerger” means a transfer such that, by virtue of section 192(2)(b), sections 126 to 130 apply as if the parent company and the subsidiary were the same company and the transfer were a reorganisation of that company’s share capital not involving a disposal or acquisition.

*Effect of investing company’s liquidation*

- 16 Where assets of the investing company, or of a company that is a member of the same group as the investing company, are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, this Part applies as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

*Special rules for assets of insurance company’s long-term insurance fund*

- 17 (1) In the following two cases paragraph 8(1) (meaning of substantial shareholding) has effect as if, in paragraphs (a), (b) and (c), “30%” were substituted for “10%”.
- (2) The first case is where the investing company is an insurance company and the disposal is of an asset of its long-term insurance fund.
- (3) The second case is where—
- (a) the investing company is a 51% subsidiary of an insurance company, and
  - (b) the insurance company holds as an asset of its long-term insurance fund shares or an interest in shares—
    - (i) in the investing company, or
    - (ii) in another company through which it owns shares in the investing company.

The reference in paragraph (b)(ii) to owning shares through another company has the same meaning as in section 838 of the Taxes Act (subsidiaries).

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- (4) Where the investing company is a member of a group that includes an insurance company, paragraph 9 (aggregation of holdings of group companies) does not apply in relation to shares or an interest in shares held by the insurance company as assets of its long-term insurance fund.

[ The reference in sub-paragraph (2) to an asset of the investing company's long-term insurance fund, and the references in sub-paragraphs (3) and (4) to shares or an interest in shares held as assets of its long-term insurance fund, do not include a structural asset, or structural assets, within the meaning of section 83XA of the Finance Act 1989.]

F355(5) . . . . .

#### Textual Amendments

**F354** Sch. 7AC para. 17(4A) inserted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 10 para. 2(5)**

**F355** Sch. 7AC para. 17(5) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 14\(5\)\(b\)](#), **Sch. 27 Pt. 2(10)**

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

**C11** Sch. 7AC para. 17 modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), **reg. 50A** (as inserted (30.1.2003) by [S.I. 2003/23](#), [regs. 1\(1\), 9](#))

### PART 3

#### REQUIREMENTS TO BE MET IN RELATION TO INVESTING COMPANY AND COMPANY INVESTED IN

##### *Requirements relating to the investing company*

- 18 (1) The investing company must—
- (a) have been a sole trading company or a member of a qualifying group throughout the period (“the qualifying period”)—
    - (i) beginning with the start of the latest twelve-month period by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) is met, and
    - (ii) ending with the time of the disposal, and
  - (b) be a sole trading company or a member of a qualifying group immediately after the time of the disposal.
- (2) For this purpose a “qualifying group” means—
- (a) a trading group, or
  - (b) a group that would be a trading group if the activities of any group member that is not established for profit were disregarded to the extent that they are carried on otherwise than for profit.

In determining whether a company is established for profit, no account shall be taken of any object or power of the company that is only incidental to its main objects.

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- (3) The requirement in sub-paragraph (1)(a) is met if the investing company was a sole trading company for some of the qualifying period and a member of a qualifying group for the remainder of that period.
- (4) The requirement in sub-paragraph (1)(a) is treated as met if at the time of the disposal—
  - (a) the investing company is a member of a group, and
  - (b) there is another member of the group in relation to which that requirement would have been met if—
    - (i) the subject matter of the disposal had been transferred to it immediately before the disposal in circumstances in which section 171(1) (transfers within a group) applied, and
    - (ii) it had made the disposal.
- (5) If the disposal is by virtue of section 28(1) or (2) (asset disposed of under contract) treated as made at a time before the asset is conveyed or transferred, the requirements in sub-paragraph (1)(a) and (b) must also be complied with as they would have effect if the references in those provisions and sub-paragraph (4) to the time of the disposal were to the time of the conveyance or transfer.
- (6) In this paragraph a “sole trading company” means a trading company that is not a member of a group.

*Requirements relating to the company invested in*

- 19 (1) The company invested in must—
  - (a) have been a qualifying company throughout the period—
    - (i) beginning with the start of the latest twelve-month period by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) is met, and
    - (ii) ending with the time of the disposal, and
  - (b) be a qualifying company immediately after the time of the disposal.
- (2) For this purpose a “qualifying company” means a trading company or the holding company of a trading group or a trading subgroup.
- (3) If the disposal is by virtue of section 28(1) or (2) (asset disposed of under contract) treated as made at a time before the asset is conveyed or transferred, the requirements in sub-paragraph (1)(a) and (b) must also be complied with as they would have effect if the references there to the time of the disposal were to the time of the conveyance or transfer.

*Meaning of “trading company”*

- 20 (1) In this Schedule “trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) “trading activities” means activities carried on by the company—
  - (a) in the course of, or for the purposes of, a trade being carried on by it,
  - (b) for the purposes of a trade that it is preparing to carry on,

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- (c) with a view to its acquiring or starting to carry on a trade, or
  - (d) with a view to its acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group or trading subgroup, and
    - (ii) if the acquiring company is a member of a group, is not a member of that group.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a 51% subsidiary of the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group.

*Meaning of “trading group”*

- 21 (1) In this Schedule “trading group” means a group—
- (a) one or more of whose members carry on trading activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) “trading activities” means activities carried on by a member of the group—
- (a) in the course of, or for the purposes of, a trade being carried on by any member of the group,
  - (b) for the purposes of a trade that any member of the group is preparing to carry on,
  - (c) with a view to any member of the group acquiring or starting to carry on a trade, or
  - (d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group or trading subgroup, and
    - (ii) is not a member of the same group as the acquiring company.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a member of the same group as the acquiring company, or



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- (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture company a member of the same group as the acquiring company.
- (5) For the purposes of this paragraph the activities of the members of the group shall be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).

*Meaning of “trading subgroup”*

- 22 (1) In this Schedule “trading subgroup” means a subgroup—
- (a) one or more of whose members carry on trading activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) “trading activities” means activities carried on by a member of the subgroup—
- (a) in the course of, or for the purposes of, a trade being carried on by any member of the subgroup,
  - (b) for the purposes of a trade that any member of the subgroup is preparing to carry on,
  - (c) with a view to any member of the subgroup acquiring or starting to carry on a trade, or
  - (d) with a view to any member of the subgroup acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group or trading subgroup, and
    - (ii) is not a member of the same group as the acquiring company.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the subgroup member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a member of the same subgroup as the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group.
- (5) For the purposes of this paragraph the activities of the members of the subgroup shall be treated as one business (with the result that activities are disregarded to the extent that they are intra-subgroup activities).

*Treatment of holdings in joint venture companies*

- 23 (1) This paragraph applies where a company (“the company”) has a qualifying shareholding in a joint venture company.
- (2) In determining whether the company is a trading company—
- (a) its holding of shares in the joint venture company shall be disregarded, and

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- (b) it shall be treated as carrying on an appropriate proportion—
- (i) of the activities of the joint venture company, or
  - (ii) where the joint venture company is a holding company, of the activities of that company and its 51% subsidiaries.

This sub-paragraph does not apply if the company is a member of a group and the joint venture company is a member of the same group.

- (3) In determining whether the company is a member of a trading group or the holding company of a trading group—

- (a) every holding of shares in the joint venture company by a member of the group having a qualifying shareholding in that company shall be disregarded, and
- (b) each member of the group having a qualifying shareholding in the joint venture company shall be treated as carrying on an appropriate proportion—
  - (i) of the activities of the joint venture company, or
  - (ii) where the joint venture company is a holding company, of the activities of that company and its 51% subsidiaries.

This sub-paragraph does not apply if the joint venture company is a member of the group.

- (4) In determining whether the company is the holding company of a trading subgroup—

- (a) every holding of shares in the joint venture company by the company and any of its 51% subsidiaries having a qualifying shareholding in the joint venture company shall be disregarded, and
- (b) the company and each of its 51% subsidiaries having a qualifying shareholding in the joint venture company shall be treated as carrying on an appropriate proportion—
  - (i) of the activities of the joint venture company, or
  - (ii) where the joint venture company is a holding company, of the activities of that company and its 51% subsidiaries.

This sub-paragraph does not apply if the joint venture company is a member of the same group as the company.

- (5) In sub-paragraphs (2)(b), (3)(b) and (4)(b) “an appropriate proportion” means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the company concerned.

- (6) In this paragraph “shares”, in relation to a joint venture company, includes securities of that company or an interest in shares in or securities of that company.

- (7) For the purposes of this paragraph the activities of a joint venture company that is a holding company and its 51% subsidiaries shall be treated as a single business (so that activities are disregarded to the extent that they are intra-group activities or, as the case may be, intra-subgroup activities).

*Meaning of “joint venture company” and “qualifying shareholding”*

- 24 (1) For the purposes of this Schedule a company is a “joint venture company” if, and only if—

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- (a) it is a trading company or the holding company of a trading group or trading subgroup, and
- (b) there are five or fewer persons who between them hold 75% or more of its ordinary share capital.

In determining whether there are five or fewer such persons as are mentioned in paragraph (b), the members of a group are treated as if they were a single company.

- (2) For the purposes of this Schedule—
- (a) a company that is not a member of a group has a “qualifying shareholding” in a joint venture company if, and only if, it holds shares or an interest in shares in the joint venture company by virtue of which it holds 10% or more of that company’s ordinary share capital;
  - (b) a company that is a member of a group has a “qualifying shareholding” in a joint venture company if, and only if—
    - (i) it holds ordinary share capital of the joint venture company, and
    - (ii) the members of the group between them hold 10% or more of the ordinary share capital of that company.

*Effect in relation to company invested in of earlier company reconstruction, demerger etc*

- 25 The provisions of—
- (a) paragraph 14 (effect of earlier company reconstruction etc), and
  - (b) paragraph 15 (effect of earlier demerger),
- have effect in relation to the requirements of paragraph 19 (requirements in relation to company invested in) as they have effect in relation to the requirement of paragraph 7 (the substantial shareholding requirement).

## PART 4

### INTERPRETATION

*Meaning of “company”, “group” and related expressions*

- 26 (1) In this Schedule—
- (a) “company” has the meaning given by section 170(9); and
  - (b) references to a group, or to membership of a group, shall be construed in accordance with the provisions of section 170 read as if “51 per cent” were substituted for “75 per cent”.
- (2) References in this Schedule to a “subgroup” are to companies that would form a group but for the fact that one of them is a 51% subsidiary of another company.
- (3) In this Schedule “holding company”—
- (a) in relation to a group, means the company described in section 170 as the principal company of the group;
  - (b) in relation to a subgroup, means a company that would be the holding company of a group but for being a 51% subsidiary of another company.

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- (4) In this Schedule “51% subsidiary” has the meaning given by section 838 of the Taxes Act.

In applying that section for the purposes of this Schedule, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

- (5) References in this Schedule to a “group” or “subsidiary” shall be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.

*Meaning of “trade”*

- 27 In this Schedule “trade” means anything that—
- (a) is a trade, profession or vocation, within the meaning of the Income Tax Acts, and
  - (b) is conducted on a commercial basis with a view to the realisation of profits.

*Meaning of “twelve-month period”*

- 28 For the purposes of this Schedule a “twelve-month period” means a period ending with the day before the first anniversary of the day with which, or in the course of which, the period began.

*Meaning of “interest in shares”*

- 29 (1) References in this Schedule to an interest in shares are to an interest as a co-owner of shares.
- (2) It does not matter whether the shares are owned jointly or in common, or whether the interests of the co-owners are equal.

*Meaning of “asset related to shares”*

- 30 (1) This paragraph explains what is meant by an asset related to shares in a company.
- (2) An asset is related to shares in a company if it is—
- (a) an option to acquire or dispose of shares or an interest in shares in that company, or
  - (b) a security to which are attached rights by virtue of which the holder is or may become entitled to acquire or dispose of (whether by conversion or exchange or otherwise)—
    - (i) shares or an interest in shares in that company, or
    - (ii) an option to acquire or dispose of shares or an interest in shares in that company, or
    - (iii) another security falling within this paragraph, or
  - (c) an option to acquire or dispose of any security within paragraph (b) or an interest in any such security, or
  - (d) an interest in, or option over, any such option or security as is mentioned in paragraph (a), (b) or (c), or
  - (e) any interest in, or option over, any such interest or option as is mentioned in paragraph (d) or this paragraph.

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- (3) In determining whether a security is within sub-paragraph (2)(b), no account shall be taken—
- (a) of any rights attached to the security other than rights relating, directly or indirectly, to shares of the company in question, or
  - (b) of rights as regards which, at the time the security came into existence, there was no more than a negligible likelihood that they would in due course be exercised to a significant extent.
- (4) The references in this paragraph to an interest in a security or option have a meaning corresponding to that given by paragraph 29 in relation to an interest in shares.

*Index of defined expressions*

31 In this Schedule the expressions listed below are defined or otherwise explained by the provisions indicated:

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asset related to shares	paragraph 30
company	paragraph 26(1)(a)
company invested in	paragraph 1
51% subsidiary	paragraph 26(4) and (5)
group (and member of group)	paragraph 26(1)(b) and (5)
holding company	paragraph 26(3)
interest in shares	paragraph 29
investing company	paragraph 1
joint venture company	paragraph 24(1)
qualifying shareholding (in joint venture company)	paragraph 24(2)
subgroup	paragraph 26(2)
trade	paragraph 27
trading company	paragraph 20
trading group	paragraph 21
trading subgroup	paragraph 22
twelve-month period	paragraph 28

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**PART 5**

CONSEQUENTIAL PROVISIONS

*Meaning of “chargeable share”s or “chargeable asset”*

32 Any exemption conferred by this Schedule shall be disregarded in determining whether shares are “chargeable shares”, or an asset is a “chargeable asset”, for the purposes of any enactment relating to corporation tax or capital gains tax.

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*Negligible value claims*

- 33 (1) This paragraph applies where—
- (a) a company makes a claim under section 24(2) (assets of negligible value) in relation to shares held by it, and
  - (b) by virtue of this Schedule any loss accruing to the company on a disposal of the shares at the time of the claim would not be an allowable loss.
- (2) Where this paragraph applies the company may not exercise the option under section 24(2) to specify a time earlier than the time of the claim as the time when the shares are treated as sold and reacquired by virtue of that subsection.
- (3) This paragraph applies to—
- (a) an interest in shares in a company, or
  - (b) an asset related to shares in a company,
- as it applies to shares in that company.

*Reorganisations etc: deemed accrual of chargeable gain or allowable loss held over on earlier transaction*

- 34 (1) The exemptions conferred by this Schedule do not apply to or affect a chargeable gain or allowable loss deemed to accrue on a disposal by virtue of section 116(10) (b) (reorganisations, conversions and reconstructions: deemed accrual of gain or loss held over on earlier transaction).
- (2) Sub-paragraph (1) does not apply where the relevant earlier transaction was a deemed disposal and reacquisition under section 92(7) of the Finance Act 1996 (convertible securities etc).

*Recovery of charge postponed on transfer of assets to non-resident company*

- 35 (1) This paragraph applies where—
- (a) a company disposes of an asset in circumstances falling within section 140(4) (recovery of charge postponed on transfer of assets to non-resident company), and
  - (b) by virtue of this Schedule any gain accruing to the company on the disposal would not be a chargeable gain.
- (2) Where this paragraph applies the amount by which the consideration received on the disposal would be treated as increased by virtue of section 140(4) shall instead be treated as accruing to the company, at the time of the disposal, as a chargeable gain to which this Schedule does not apply.
- (3) Any reference in section 140 to an amount being brought or taken into account under or in accordance with subsection (4) of that section includes a reference to an amount being treated, by virtue of sub-paragraph (2) above, as accruing as a chargeable gain.

*Appropriation of asset to trading stock*

- 36 (1) Where—
- (a) an asset acquired by a company otherwise than as trading stock of a trade carried on by it is appropriated by the company for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise), and

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- (b) if the company had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to the company but for an exemption conferred by this Schedule,

the company is treated for the purposes of the enactments relating to chargeable gains as if it had thereby disposed of the asset for its market value.

- (2) Section 173 (transfers within a group: trading stock) applies in relation to this paragraph as it applies in relation to section 161 (appropriations to and from stock).

*Recovery of held-over gain on claim for gifts relief*

- 37 (1) This paragraph applies where—
- (a) a company disposes of an asset,
  - (b) the expenditure allowable in computing a gain or loss on that disposal falls to be reduced because of a claim for relief under section 165 (gifts relief) in relation to an earlier disposal, and
  - (c) by virtue of this Schedule any gain accruing to the company on the disposal mentioned in paragraph (a) would not be a chargeable gain.
- (2) Where this paragraph applies the amount of the held-over gain, or an appropriate proportion of it, shall be treated as accruing to the company, at the time of the disposal mentioned in sub-paragraph (1)(a), as a chargeable gain to which this Schedule does not apply.
- (3) An “appropriate proportion” means a proportion determined on a just and reasonable basis having regard to the subject matter of the disposal mentioned in sub-paragraph (1)(a) and the subject matter of the earlier disposal that was the subject of the claim for relief under section 165.
- (4) In this paragraph “held-over gain” has the same meaning as in section 165.

*Degrouping: time when deemed sale and reacquisition treated as taking place*

- 38 (1) Where—
- (a) a company, as a result of ceasing at any time (“the time of degrouping”) to be a member of a group, is treated by section 179(3) as having sold and immediately reacquired an asset, and
  - (b) if the company owning the asset at the time of degrouping had disposed of it immediately before that time, any gain accruing on the disposal would by virtue of this Schedule not have been a chargeable gain,
- section 179(3) shall have effect as if it provided for the deemed sale and reacquisition to be treated as taking place immediately before the time of degrouping.
- (2) Where—
- (a) a company, as a result of ceasing at any time (“the relevant time”) to satisfy the conditions in section 179(7), is treated by section 179(6) as having sold and immediately reacquired an asset, and
  - (b) if the company owning the asset at the relevant time had disposed of it immediately before that time, any gain accruing on the disposal would by virtue of this Schedule not have been a chargeable gain,
- section 179(6) shall have effect as if it provided for the deemed sale and reacquisition to be treated as taking place immediately before the relevant time.

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- (3) Any reference in this paragraph to a disposal or other event taking place immediately before the time of degrouping or the relevant time is to its taking place immediately before that time but on the same day.

*Effect of FOREX matching regulations*

- 39 (1) No gain or loss shall be treated as arising under the FOREX matching regulations on a disposal on which by virtue of this Schedule any gain would not be a chargeable gain.
- (2) The “FOREX matching regulations” means any regulations made under Schedule 15 to the Finance Act 1993 (exchange gains and losses: alternative method of calculation).]

[<sup>F356</sup>SCHEDULE 7AD

GAINS OF INSURANCE COMPANY FROM VENTURE CAPITAL INVESTMENT PARTNERSHIP

**Textual Amendments**

**F356** Sch. 7AD inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), s. 85(2), [Sch. 31](#)

*Introduction*

- 1 This Schedule applies where the assets of the long-term insurance fund of an insurance company (“the company”) include assets held by the company as a limited partner in a venture capital investment partnership (“the partnership”).

*Meaning of “venture capital investment partnership”*

- 2 (1) A “venture capital investment partnership” means a partnership in relation to which the following conditions are met.
- (2) The first condition is that the sole or main purpose of the partnership is to invest in unquoted shares or securities.
- This condition shall not be regarded as met unless it appears from—
- (a) the agreement constituting the partnership, or
- (b) any prospectus issued to prospective partners,
- that that is the sole or main purpose of the partnership.
- (3) The second condition is that the partnership does not carry on a trade.
- (4) The third condition is that not less than 90% of the book value of the partnership’s investments is attributable to investments that are either—
- (a) shares or securities that were unquoted at the time of their acquisition by the partnership, or
- (b) shares that were quoted at the time of their acquisition by the partnership but which it was reasonable to believe would cease to be quoted within the next twelve months.



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- (5) For the purposes of the third condition—
- (a) the following shall be disregarded—
    - (i) any holding of cash, including cash deposited in a bank account or similar account but not cash acquired wholly or partly for the purpose of realising a gain on its disposal;
    - (ii) any holding of quoted shares or securities acquired by the partnership in exchange for unquoted shares or securities;
  - (b) whether the 90% test is met shall be determined by reference to the values shown in the partnership's accounts at the end of a period of account of the partnership.
- (6) Where a partnership ceases to meet the above conditions, the company shall be treated as if the partnership had continued to be a venture capital investment partnership until the end of the period of account of the partnership during which it ceased to meet the conditions.
- (7) A partnership that ceases to meet those conditions cannot qualify again as a venture capital investment partnership.

For this purpose a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member.

*Interest in relevant assets of partnership treated as single asset*

- 3 (1) Where this Schedule applies section 59 (partnerships) does not have effect to make the company chargeable on its share of gains accruing on each disposal of relevant assets of the partnership.
- (2) Instead—
- (a) the company's interest in relevant assets of the partnership is treated as a single asset ("the single asset") acquired by the company when it became a member of the partnership, and
  - (b) the following provisions of this Schedule have effect.
- (3) For the purposes of this Schedule the "relevant assets" of the partnership are the shares and securities held by the partnership, other than qualifying corporate bonds.
- (4) Nothing in this Schedule shall be read—
- (a) as affecting the operation of section 59 in relation to partners who are not insurance companies carrying on long-term business or are not limited partners, or
  - (b) as imposing any liability on the partnership as such.

*The cost of the single asset*

- 4 (1) The company is treated as having given, wholly and exclusively for the acquisition of the single asset, consideration equal to the amount of capital contributed by it on becoming a member of the partnership.
- (2) Any further amounts of capital contributed by it to the partnership are treated on a disposal of the single asset as expenditure incurred wholly and exclusively on the

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asset for the purpose of enhancing its value and reflected in its state or nature at the time of the disposal.

- (3) Where the investments of the partnership include qualifying corporate bonds, the amount to be taken into account under sub-paragraph (1) or (2) is proportionately reduced.
- (4) The reduction is made by applying to that amount the fraction:

ABA

where—

A is the book value of all shares and securities held by the partnership at the end of the period of account of the partnership in which the amount of capital in question is fully invested by the partnership, and

B is the book value of all qualifying corporate bonds held by the partnership at the end of that period of account.

- (5) For the purposes of sub-paragraph (4) the “book value” means the value shown in the partnership’s accounts at the end of the period of account.

*Deemed disposal of single asset in case of distribution*

- 5 (1) There is a disposal of the single asset on each occasion on which the company receives a distribution from the partnership that does not consist entirely of income or the proceeds of sale or redemption of assets that are not relevant assets.
- (2) The disposal is taken to be for a consideration equal to the amount of the distribution or of so much of it as does not consist of income or the proceeds of sale or redemption of assets that are not relevant assets.
- (3) Where—
- (a) the partnership disposes of relevant assets on which a chargeable gain or allowable loss would accrue if they were held by the company alone, and
  - (b) no distribution of the proceeds of the disposal is made within twelve months of the disposal,

the company is treated as having received its share of the proceeds as a distribution at the end of the period of account of the partnership following that in which the disposal took place, or at the end of the period of six months after the date of the disposal, whichever is the later.

- (4) The operation of sub-paragraph (3) is not affected by the partnership having ceased to be a venture capital investment partnership before the time at which the distribution is treated as received by the company.
- (5) Where sub-paragraph (3) applies, any subsequent actual distribution of the proceeds is disregarded.

*Apportionment in case of part disposal*

- 6 (1) For the purposes of section 42 (apportionment of cost etc in case of part disposal) the market value of the property remaining undisposed of on a part disposal of the single asset shall be determined as follows.

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- (2) If there is no further disposal of that asset in the period of account in which the part disposal in question takes place, the market value of the property remaining undisposed of shall be taken to be equal to the company's share of the book value of the relevant assets of the partnership as shown in the partnership's accounts at the end of that period of account.
- (3) If there is a further disposal of that asset in the period of account in which the part disposal in question takes place, or more than one, the market value of the property remaining undisposed of shall be taken to be equal to the sum of—
  - (a) the amount or value of the consideration on the further disposal or, as the case may be, the total amount or value of the consideration on the further disposals, and
  - (b) the amount (if any) of the company's share of the book value of the relevant assets of the partnership as shown in the partnership's accounts at the end of that period of account.

*Disposal of partnership asset giving rise to offshore income gain*

- 7 (1) Nothing in this Schedule shall be read as affecting the operation of Chapter 5 of Part 17 of the Taxes Act (offshore funds).
- (2) Where an offshore income gain accrues to the company under that Chapter from the disposal of any relevant asset of the partnership, the amount of any distribution received or treated as received by the company from the partnership that represents the whole or part of the proceeds of disposal of that asset is treated for the purposes of this Schedule as reduced by the amount of the whole or a corresponding part of the offshore income gain.

*Exclusion of negligible value claim*

- 8 No claim may be made in respect of the single asset under section 24(2) (assets that have become of negligible value).

*Investment in other venture capital investment partnerships*

- 9 (1) For the purposes of paragraph 2 (meaning of “venture capital investment partnership”) an investment by way of capital contribution to another venture capital investment partnership shall be treated as an investment in unquoted shares or securities.
- (2) The Treasury may by regulations make provision, in place of but corresponding to that made by paragraphs 3 to 8, in relation to gains accruing on a disposal of relevant assets by such a partnership.
- (3) The regulations may make provision for any period of account to which, in accordance with paragraphs 11 to 13, this Schedule applies.

*Interpretation*

- 10 (1) In this Schedule—  
F357 .....  
“limited partner” means—

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- (a) a person carrying on a business as a limited partner in a partnership registered under the Limited Partnership Act 1907, or
- (b) a person carrying on a business jointly with others who, under the law of a country or territory outside the United Kingdom, is not entitled to take part in the management of the business and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the business;

“relevant assets” has the meaning given by paragraph 3(3);

“securities” has the same meaning as in section 132 and also includes any debentures;

“unquoted” and “quoted”, in relation to shares or securities, refer to listing on a recognised stock exchange.

- (2) References in this Schedule to the partnership’s accounts are to accounts drawn up in accordance with generally accepted accounting practice.

If no such accounts are drawn up, the references to the treatment of any matter, or the amounts shown, in the accounts of the partnership are to what would have appeared if accounts had been drawn up in accordance with generally accepted accounting practice.

- (3) References in this Schedule to capital contributed to a limited partnership include amounts purporting to be provided by way of loan if—

- (a) the loan carries no interest,
- (b) all the limited partners are required to make such loans, and
- (c) the loans are accounted for as partners' capital, or partners' equity, in the accounts of the partnership.

- (4) For the purposes of this Schedule the assets of—

- (a) a Scottish partnership, or
- (b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such,

shall be treated as held by the members of the partnership in the proportions in which they are entitled to share in the profits of the partnership.

References in this Schedule to the company’s interest in, or share of, the partnership’s assets shall be construed accordingly.

#### **Textual Amendments**

**F357** Words in Sch. 7AD para. 10(1) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)

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

**C12** Sch. 7AD para. 10 modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 1997 \(S.I. 1997/473\)](#), reg. 50B (as inserted (30.1.2003) by [S.I. 2003/23](#), regs. 1(1), 9)

#### *General commencement and transitional provisions*

- 11 (1) Subject to paragraph 12 (election to remain outside Schedule), this Schedule applies—

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- (a) to periods of account of the partnership beginning on or after 1st January 2002, and
  - (b) to a period of account of the partnership beginning before that date and ending on or after it, unless the company elects that it shall not do so.
- (2) Where the company became a member of the partnership before the beginning of the first period of account of the partnership to which this Schedule applies, the cost of the single asset at the beginning of that period of account shall be taken to be equal to the total of the relevant indexed base costs.
- (3) For the purposes of sub-paragraph (2)—
- (a) the “indexed base cost” means—
    - (i) in relation to a holding that by virtue of section 104 is to be treated as a single asset, what would be the indexed pool of expenditure within the meaning of section 110 if the holding were disposed of, and
    - (ii) in relation to any other asset, the amount of expenditure together with the indexation allowance that would be fall to be deducted if the asset were disposed of; and
  - (b) the “relevant indexed base costs” means the indexed base costs that would be taken into account in computing in accordance with section 59 the gain or loss of the company if all the shares and securities (other than qualifying corporate bonds) held by the partnership were disposed of on the last day of the company’s accounting period immediately preceding its first accounting period beginning on or after 1st January 2002.
- (4) No account shall be taken under this Schedule of a distribution by the partnership in a period of account to which this Schedule applies to the extent that it represents a chargeable gain accruing in an earlier period to which this Schedule does not apply.

*Election to remain outside Schedule*

- 12 If the company—
- (a) became a member of the partnership before the beginning of the first period of account of the partnership to which this Schedule would otherwise apply, or
  - (b) made its first contribution of capital to the partnership before 17th April 2002,
- it may elect that the provisions of this Schedule shall not apply to it in relation to that partnership.

*How and when election to be made*

- 13 Any election under paragraph 11 or 12 must be made—
- (a) by notice to an officer of the Board,
  - (b) not later than the end of the period of two years after the end of the company’s first accounting period beginning on or after 1st January 2002.]

.....

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#### Textual Amendments

**F358** Sch. 7B repealed (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2006 \(S.I. 2006/3271\)](#), reg. 1, **Sch. Pt. 1**

## [<sup>F359</sup>SCHEDULE 7C

### RELIEF FOR TRANSFERS TO APPROVED SHARE PLANS

#### Textual Amendments

**F359** Sch. 7C inserted (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), s. 48(2), **Sch. 9**

#### *Introductory*

- 1 (1) A person (“the claimant”) who makes a disposal of shares (“the disposal”) to the trustees of the plan trust of [<sup>F360</sup>a share incentive] plan (“the plan”) is entitled to claim relief under paragraph 5 if—
- (a) the conditions in paragraph 2 are fulfilled, and
  - (b) paragraph 3(1) or (2) applies.
- (2) Sub-paragraph (1) does not apply to a company that makes a disposal of shares.
- (3) In this paragraph the references to a disposal of shares include a disposal of an interest in shares.

#### Textual Amendments

**F360** Words in Sch. 7C para. 1(1) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 6 para. 220(2)** (with Sch. 7)

#### *Conditions relating to the disposal*

- 2 (1) The first condition is that, at the time of the disposal, the plan is approved under [<sup>F361</sup>Schedule 2 to ITEPA 2003].
- (2) The second condition is that the relevant shares meet the requirements in [<sup>F362</sup>Part 4] of that Schedule (types of shares that may be [<sup>F363</sup>awarded]) in relation to the plan.
- For this purpose that Part applies as if paragraph [<sup>F364</sup>27(1)(a) and (c) and (2)] (listed shares and shares in a company under the control of a company whose shares are listed) were omitted.
- (3) The third condition is that, at any time in the entitlement period, the trustees hold, for the beneficiaries of the plan trust, shares in the relevant company that—
- (a) constitute not less than 10% of the ordinary share capital of the company, and
  - (b) carry rights to not less than 10% of—

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- (i) any profits available for distribution to shareholders of the company, and
  - (ii) any assets of that company available for distribution to its shareholders in the event of a winding up.
- (4) For the purposes of sub-paragraph (3), shares that have been appropriated to, or acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning [<sup>F365</sup>given by paragraph 97 of Schedule 2 to ITEPA 2003]).
- (5) The fourth condition is that, at all times in the proscribed period, there are no unauthorised arrangements under which the claimant or a person connected with him may be entitled to acquire (directly or indirectly) from the trustees of the plan trust any shares, or an interest in or right deriving from any shares.
- (6) For the purposes of this paragraph—
- “ordinary share capital” has the meaning given in [<sup>F366</sup>section 989 of ITA 2007];
  - “the relevant company” means the company of whose share capital the relevant shares form part; and
  - “the relevant shares” means the shares that are, or an interest in which is, the subject of the disposal.

#### Textual Amendments

- F361** Words in Sch. 7C para. 2(1) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 220\(3\)\(a\)](#) (with [Sch. 7](#))
- F362** Words in Sch. 7C para. 2(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 220\(3\)\(b\)\(i\)](#) (with [Sch. 7](#))
- F363** Word in Sch. 7C para. 2(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 220\(3\)\(b\)\(ii\)](#) (with [Sch. 7](#))
- F364** Words in Sch. 7C para. 2(2) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 220\(3\)\(b\)\(iii\)](#) (with [Sch. 7](#))
- F365** Words in Sch. 7C para. 2(4) substituted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 6 para. 220\(3\)\(c\)](#) (with [Sch. 7](#))
- F366** Words in [Sch. 7C para. 2\(6\)](#) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 348\(2\)](#) (with [Sch. 2](#))

#### *Reinvestment of disposal proceeds*

- 3 (1) This sub-paragraph applies if the claimant obtains consideration for the disposal and, at any time in the acquisition period, all of the amount or value of the consideration is applied by him in making an acquisition of assets or an interest in assets (“replacement assets”) which—
- (a) are, immediately after the time of the acquisition, chargeable assets in relation to the claimant, and

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- (b) are not shares in, or debentures issued by, the relevant company or a company which is (at the time of the acquisition) in the same group as the relevant company;

but the preceding provisions of this sub-paragraph shall have effect without the words “, at any time in the acquisition period,” if the acquisition is made pursuant to an unconditional contract entered into in the acquisition period.

- (2) This sub-paragraph applies if—
  - (a) sub-paragraph (1) would have applied but for the fact that part only of the amount or value mentioned in that sub-paragraph is applied as there mentioned, and
  - (b) all the amount or value so mentioned except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal is so applied.
- (3) In sub-paragraph (1)(b)—
  - “the relevant company” has the meaning given in paragraph 2(6); and
  - “group” shall be construed in accordance with section 170.

*Provision supplementary to paragraphs 2 and 3*

- 4 (1) This paragraph applies for the purposes of paragraphs 2 and 3.
- (2) The entitlement period is the period beginning with the disposal and ending on the expiry of 12 months beginning with the date of the disposal.
- (3) The acquisition period is the period beginning with the disposal and ending on the expiry of six months beginning with—
  - (a) the date of the disposal, or
  - (b) if later, the date on which the third condition (set out in paragraph 2(3)) is first fulfilled.
- (4) The proscribed period is the period beginning with the disposal and ending on—
  - (a) the date of the acquisition, or
  - (b) if later, the date on which the third condition (set out in paragraph 2(3)) is first fulfilled.
- (5) All arrangements are unauthorised unless they only allow shares to be appropriated to or acquired on behalf of an individual under the plan.

*The relief*

- 5 (1) Where the claimant is entitled to claim relief under this paragraph and paragraph 3(1) applies, he shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—
  - (a) as if the consideration for the disposal were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and
  - (b) as if the amount or value of the consideration for the acquisition were reduced by the excess of the amount or value of the actual consideration for the disposal over the amount of the consideration which the claimant is treated as receiving under paragraph (a).



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- (2) Where the claimant is entitled to claim relief under this paragraph and paragraph 3(2) applies, he shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—
  - (a) as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in paragraph 3(2)(b), and
  - (b) as if the amount or value of the consideration for the acquisition were reduced by the amount by which the gain is reduced under paragraph (a) above.
- (3) Nothing in sub-paragraph (1) or (2) shall affect the treatment for the purposes of this Act of the other party to the disposal or of the other party to the acquisition.
- (4) The provisions of this Act fixing the amount of the consideration deemed to be given for a disposal or acquisition shall be applied before the preceding provisions of this paragraph are applied.

*Dwelling-houses: special provision*

- 6 (1) Sub-paragraph (2) applies where—
  - (a) a claim is made under paragraph 5,
  - (b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset is a dwelling-house or part of a dwelling-house or land, and
  - (d) there was a time in the period beginning with the acquisition and ending with the time when paragraph 5(1) or (2) falls to be applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F367</sup>or civil partner].
- (2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.
- (3) Sub-paragraph (4) applies where—
  - (a) the provisions of paragraph 5(1) or (2) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consists of a dwelling-house or part of a dwelling-house or land, and
  - (c) there is a time after paragraph 5(1) or (2) has been applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F368</sup>or civil partner].
- (4) In such a case—
  - (a) the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but
  - (b) any gain treated as accruing in consequence of the application of paragraph (a) shall be treated as accruing at the time mentioned in sub-paragraph (3)(c) or, if there is more than one such time, at the earliest of them.

*Status: Point in time view as at 21/07/2008.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Sub-paragraph (6) applies where—
- (a) a claim is made under paragraph 5,
  - (b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset was an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,
  - (d) the option has been exercised, and
  - (e) there was a time in the period beginning with the exercise of the option and ending with the time when paragraph 5(1) or (2) falls to be applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F369</sup>or civil partner].
- (6) In such a case the option shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.
- (7) Sub-paragraph (8) applies where—
- (a) the provisions of paragraph 5(1) or (2) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consisted of an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,
  - (c) the option has been exercised, and
  - (d) there is a time after paragraph 5(1) or (2) has been applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse [<sup>F370</sup>or civil partner].
- (8) In such a case—
- (a) the option shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but
  - (b) any gain treated as accruing in consequence of the application of paragraph (a) shall be treated as accruing at the time mentioned in sub-paragraph (7)(d) or, if there is more than one such time, at the earliest of them.
- (9) References in this paragraph to an individual include a person entitled to occupy under the terms of a settlement.

#### Textual Amendments

**F367** Words in Sch. 7C para. 6(1)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **129**

**F368** Words in Sch. 7C para. 6(3)(c) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **129**

**F369** Words in Sch. 7C para. 6(5)(e) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **129**

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**F370** Words in Sch. 7C para. 6(7)(d) inserted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **129**

*Shares: special provision*

- 7 (1) Sub-paragraph (2) applies where—
- (a) a claim is made under paragraph 5,
  - (b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,
  - (c) the asset consists of shares, and
  - (d) relief is claimed under Chapter III of Part VII of the Taxes Act [<sup>F371</sup>or Part 5 of ITA 2007] (enterprise investment scheme) at any time in the period beginning with the acquisition and ending when paragraph 5(1) or (2) falls to be applied.
- (2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.
- (3) Sub-paragraph (4) applies where—
- (a) the provisions of paragraph 5(1) or (2) have been applied,
  - (b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consists of shares, and
  - (c) at any time after paragraph 5(1) or (2) has been applied relief is claimed in respect of the asset under Chapter III of Part VII of the Taxes Act [<sup>F372</sup>or Part 5 of ITA 2007] (enterprise investment scheme).
- (4) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly.

**Textual Amendments**

**F371** Words in [Sch. 7C para. 7\(1\)\(d\)](#) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 348\(3\)](#) (with [Sch. 2](#))

**F372** Words in [Sch. 7C para. 7\(3\)\(c\)](#) inserted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 348\(3\)](#) (with [Sch. 2](#))

*Meaning of “chargeable asset”*

- 8 For the purposes of this Schedule an asset is a chargeable asset in relation to the claimant at a particular time if, were the asset to be disposed of at that time, any gain accruing to him on the disposal would be a chargeable gain, and either—
- (a) at that time he is resident or ordinarily resident in the United Kingdom, or
  - (b) he would be chargeable to capital gains tax under section 10(1) (non-resident with United Kingdom branch or agency) in respect of the gain,

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unless (were he to dispose of the asset at that time) the claimant would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gains accruing to him on the disposal.]

## [<sup>F373</sup>SCHEDULE 7D

Section 238A

### APPROVED SHARE SCHEMES AND SHARE INCENTIVES

#### Textual Amendments

**F373** Sch. 7D inserted (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 6 para. 221](#) (with [Sch. 7](#))

## PART 1

### APPROVED SHARE INCENTIVE PLANS

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

**C13** Sch. 7D Pt. 1 applied (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 2 para. 87](#) (with [Sch. 7](#))

#### *Introductory*

- 1 (1) The provisions of this Part of this Schedule apply for capital gains tax purposes in relation to an approved share incentive plan (“the plan”).
- (2) This Part of this Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).
- (3) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by the index.
- (4) In particular, for the purposes of paragraphs 5 and 7 of this Schedule “market value” has the meaning given by paragraph 92 of Schedule 2 to that Act (determination of market value); and Part 8 of this Act has effect subject to this paragraph.

#### *Gains accruing to trustees*

- 2 (1) Any gain accruing to the trustees is not a chargeable gain if the shares—
  - (a) are shares in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met, and
  - (b) are awarded to employees, or acquired on their behalf as dividend shares, in accordance with the plan within the relevant period.

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- (2) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the relevant period is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to sub-paragraph (4).

- (3) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the relevant period is—
- (a) the period of five years beginning with the date on which the shares were acquired by the trustees, or
  - (b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to sub-paragraph (4).

- (4) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), the relevant period is the period of ten years beginning with the date of acquisition.
- (5) For the purposes of determining whether shares are awarded to a participant within the relevant period, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.
- (6) Sub-paragraph (5) is subject to paragraph 78(1) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (7) For the purposes of this paragraph “readily convertible assets” has the meaning given by sections 701 and 702 of that Act (readily convertible assets).

This is subject to sub-paragraph (8).

- (8) In determining for the purposes of this paragraph whether shares are readily convertible assets any market for the shares that—
- (a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and
  - (b) exists solely for the purposes of the plan,
- shall be disregarded.
- (9) In relation to shares acquired by the trustees before 11th May 2001 this paragraph has effect with the substitution—
- (a) in sub-paragraph (2), of “If the shares are readily convertible assets at the time they” for the words before “are acquired”, and
  - (b) in sub-paragraph (3)—
    - (i) of “If at the time of their acquisition by the trustees the shares are not readily convertible assets” for the words before “the relevant period”, and
    - (ii) in paragraph (b), of “the shares in question” for “any of the shares in that company”.

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*Participant absolutely entitled as against trustees*

- 3 (1) Sub-paragraph (2) applies to any shares awarded to a participant under the plan.
- (2) The participant is treated for capital gains tax purposes as absolutely entitled to those shares as against the trustees.
- (3) Sub-paragraph (2) applies notwithstanding anything in the plan or the trust instrument.

*Different classes of shares*

- 4 (1) For the purposes of Chapter 1 of Part 4 of this Act (shares, securities, options etc: general) a participant's plan shares are treated, so long as they are subject to the plan, as of a different class from any shares (which would otherwise be treated as of the same class) that are not plan shares.
- (2) For the purposes of that Chapter, any shares to which sub-paragraph (3) applies shall be treated as of a different class from any shares to which sub-paragraph (4) applies, even if they would otherwise fall to be treated as of the same class.
- (3) This sub-paragraph applies to any shares transferred to the trustees of the plan trust by a qualifying transfer that have not been awarded to participants under the plan.
- (4) This sub-paragraph applies to any shares held by the trustees that were not transferred to them by a qualifying transfer.
- (5) In this paragraph "qualifying transfer" has the meaning given in paragraph 78(2) of Schedule 2 to ITEPA 2003 (acquisition by trustees of shares from employee share ownership trust).
- (6) For the purposes of Chapter 1 of Part 4 of this Act any shares which—
- (a) were acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA to the Taxes Act (deduction for contribution to plan trust), and
  - (b) have not been awarded under the plan,
- shall be treated as of a different class from any shares held by the trustees that were not so acquired by them, even if they would otherwise fall to be treated as of the same class.

*No chargeable gain on shares ceasing to be subject to the plan*

- 5 (1) Shares which cease to be subject to the plan are treated as having been disposed of and immediately reacquired by the participant at market value.
- (2) Any gain accruing on that disposal is not a chargeable gain.

*Deemed disposal by trustees on disposal of beneficial interest*

- 6 (1) If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the SIP code as having been disposed of at that time by the trustees for the like consideration as was obtained for the disposal of the beneficial interest.
- (2) For this purpose there is no disposal of the participant's beneficial interest if and at the time when—

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- (a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or
  - (b) in Scotland, that interest becomes vested in a judicial factor, in a trustee of the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.
- (3) If a disposal of shares falling within this paragraph is not at arm's length, the proceeds of the disposal shall be taken for the purposes of the SIP code to be equal to the market value of the shares at the time of the disposal.

#### *Treatment of forfeited shares*

- 7 (1) If any of the participant's plan shares are forfeited, they are treated as having been disposed of by the participant and acquired by the trustees at market value at the date of forfeiture.
- (2) Any gain accruing on that disposal is not a chargeable gain.

#### *Disposal of rights under rights issue*

- 8 (1) Any gain accruing on the disposal of rights under paragraph 77 of Schedule 2 to ITEPA 2003 (power of trustees to raise funds to subscribe for rights issue) is not a chargeable gain.
- (2) Sub-paragraph (1) does not apply to a disposal of rights unless similar rights are conferred in respect of all ordinary shares in the company.

## **PART 2**

### APPROVED SAYE OPTION SCHEMES

#### *Introductory*

- 9 (1) This Part of this Schedule forms part of the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 3 to that Act (approved SAYE option schemes) have the meaning indicated by the index.

#### *Market value rule not to apply*

- 10 (1) This paragraph applies where—
- (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved SAYE option scheme, and
    - (ii) by reason of the individual's office or employment as a director or employee of a company,
  - (b) the individual exercises the option in accordance with the provisions of the SAYE option scheme at a time when the scheme is approved, and

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- (c) condition A or condition B in section 519(2) or (3) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) The company mentioned in sub-paragraph (1)(a)(ii) may be—
  - (a) the company whose shares are the subject of the option, or
  - (b) some other company.
- (3) If the option—
  - (a) was granted under the SAYE option scheme before the withdrawal of approval under paragraph 42 of Schedule 3 to ITEPA 2003, but
  - (b) is exercised after the withdrawal of approval,
 then, for the purposes of sub-paragraph (1)(b) above in its application to the option, the scheme is to be treated as if it were still approved at the time of the exercise.
- (4) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
  - (a) the individual’s acquisition of shares by the exercise of the option, or
  - (b) any corresponding disposal of those shares to the individual.
- (5) References in sub-paragraphs (1)(b) and (4) above to the individual include references to a person exercising the option in accordance with provision included in the scheme by virtue of paragraph 32 of Schedule 3 to ITEPA 2003 (exercise of options: death); and sub-paragraph (1)(c) above does not apply in relation to a person so exercising the option.

### PART 3

#### APPROVED CSOP SCHEMES

##### *Introductory*

- 11 (1) This Part of this Schedule forms part of the CSOP code (see section 521 of ITEPA 2003 (approved CSOP schemes)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 4 to that Act (approved CSOP schemes) have the meaning indicated by the index.
- (3) This Part of this Schedule applies where—
  - (a) a share option (“the option”) has been granted to an individual—
    - (i) in accordance with the provisions of an approved CSOP scheme, and
    - (ii) by reason of the individual’s office or employment as a director or employee of a company, and
  - (b) shares (“the relevant shares”) are acquired by the exercise of the option.
- (4) The company mentioned in sub-paragraph (3)(a)(ii) may be—
  - (a) the company whose shares are the subject of the option, or
  - (b) some other company.



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*Relief where income tax charged in respect of grant of option*

- 12 (1) This paragraph applies where an amount (the “employment income amount”) counted as employment income of the individual under section 526 of ITEPA 2003 (charge where option granted at a discount) in respect of the option.
- (2) For the purposes of section 38(1)(a) (acquisition and disposal costs etc.), that part of the employment income amount which is attributable to the relevant shares shall be treated as consideration given for the acquisition of the relevant shares.
- (3) This paragraph also applies where the individual was chargeable to income tax on an amount in respect of the option under—
- (a) subsection (6) of section 185 of ICTA (as it had effect before 1st January 1992),
  - (b) subsection (6A) of that section (as it had effect in relation to options obtained on or after 1st January 1992 but before 29th April 1996), or
  - (c) subsection (6) of that section (as it had effect in relation to options obtained on or after 29th April 1996);
- and in such a case the “employment income amount” means the amount on which the individual was so chargeable.
- (4) This paragraph applies whether or not—
- (a) the exercise of the option is in accordance with the provisions of the CSOP scheme, or
  - (b) the CSOP scheme is approved at the time of the exercise.

*Market value rule not to apply*

- 13 (1) This paragraph applies where—
- (a) the individual exercises the option in accordance with the provisions of the CSOP scheme at a time when the scheme is approved, and
  - (b) the condition in section 524(2) of ITEPA 2003 (no charge in respect of exercise of option) is met.
- (2) Section 17(1) (disposals and acquisitions treated as made at market value) shall not apply in calculating the consideration for—
- (a) the individual’s acquisition of the relevant shares by the exercise of the option, or
  - (b) any corresponding disposal of the relevant shares to the individual.
- (3) Sub-paragraph (2) also applies where the option is exercised at a time when the scheme is approved in accordance with provision included in the scheme by virtue of paragraph 25 of Schedule 4 to ITEPA 2003 (exercise of options: death); and references in that sub-paragraph to the individual are to be read accordingly.

*Status: Point in time view as at 21/07/2008.*

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## PART 4

### ENTERPRISE MANAGEMENT INCENTIVES

#### *Introductory*

- 14 (1) This Part of this Schedule forms part of the EMI code (see section 527 of ITEPA 2003 (enterprise management incentives: qualifying options)).
- (2) Accordingly, expressions used in this Part of this Schedule and contained in the index at the end of Schedule 5 to that Act (enterprise management incentives) have the meaning indicated by the index.
- (3) In this Part of this Schedule, “qualifying shares”—
- (a) means shares acquired by the exercise of a qualifying option, subject to subparagraphs (4) and (5), and
  - (b) includes shares (“replacement shares”) which—
    - (i) are treated under section 127 (equation of original shares and new holding) as the same asset as a holding of qualifying shares, and
    - (ii) meet the requirements of paragraph 35 of Schedule 5 to ITEPA 2003 (type of shares that may be acquired).
- (4) If a disqualifying event occurs in relation to a qualifying option (whether the original option or a replacement option), shares acquired by the exercise of that option are qualifying shares only if the option is exercised within 40 days of that event.
- (5) References in this Part of this Schedule to “the original option”, where there has been one or more replacement options, are to the option that the replacement option (or, if there has been more than one, the first of them) replaced.

#### *Taper relief on disposal of qualifying shares*

F374 15 .....

#### **Textual Amendments**

**F374** Sch. 7D para. 15 omitted (with effect in accordance with Sch. 2 para. 56(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 50](#)

#### *Rights issues in respect of qualifying shares*

- 16 Where—
- (a) an individual holds qualifying shares, and
  - (b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a) (allotment in proportion to shareholdings), a reorganisation affecting that holding,
- sections 127 to 130 (which relate to reorganisation or reduction of share capital) shall not apply in relation to that holding.]

*Status: Point in time view as at 21/07/2008.*

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## SCHEDULE 8

Section 240.

### LEASES

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

**C14** Sch. 8 modified (with effect in accordance with s. 39(4)(a)(5) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 39\(3\)](#), [Sch. 6 para. 37](#)

#### *Leases of land as wasting assets: curved line restriction of allowable expenditure*

- 1 (1) A lease of land shall not be a wasting asset until the time when its duration does not exceed 50 years.
- (2) If at the beginning of the period of ownership of a lease of land it is subject to a sublease not at a rackrent and the value of the lease at the end of the duration of the sublease, estimated as at the beginning of the period of ownership, exceeds the expenditure allowable under section 38(1)(a) in computing the gain accruing on a disposal of the lease, the lease shall not be a wasting asset until the end of the duration of the sublease.
- (3) In the case of a wasting asset which is a lease of land the rate at which expenditure is assumed to be written off shall, instead of being a uniform rate as provided by section 46, be a rate fixed in accordance with the Table below.
- (4) Accordingly, for the purposes of the computation of the gain accruing on a disposal of a lease, and given that —
- (a) the percentage derived from the Table for the duration of the lease at the beginning of the period of ownership is P(1),
  - (b) the percentage so derived for the duration of the lease at the time when any item of expenditure attributable to the lease under section 38(1)(b) is first reflected in the nature of the lease is P(2), and
  - (c) the percentage so derived for the duration of the lease at the time of the disposal is P(3), then—
    - (i) there shall be excluded from the expenditure attributable to the lease under section 38(1)(a) a fraction equal to —

$$\frac{P(1) - P(3)}{P(1)},$$

and

- (ii) there shall be excluded from any item of expenditure attributable to the lease under section 38(1)(b) a fraction equal to—

$$\frac{P(2) - P(3)}{P(2)}.$$

*Status: Point in time view as at 21/07/2008.*

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- (5) This paragraph applies notwithstanding that the period of ownership of the lease is a period exceeding 50 years and, accordingly, no expenditure shall be written off under this paragraph in respect of any period earlier than the time when the lease becomes a wasting asset.
- (6) Section 47 shall apply in relation to this paragraph as it applies in relation to section 46.

If the duration of the lease is not an exact number of years the percentage to be derived from the Table above shall be the percentage for the whole number of years plus one-twelfth of the difference between that and the percentage for the next higher number of years for each odd month counting an odd 14 days or more as one month.

TABLE

<i>Years</i>	<i>Percentage</i>
50 (or more)	100
49	99.657
48	99.289
47	98.902
46	98.490
45	98.059
44	97.595
43	97.107
42	96.593
41	96.041
40	95.457
39	94.842
38	94.189
37	93.497
36	92.761
35	91.981
34	91.156
33	90.280
32	89.354
31	88.371
30	87.330
29	86.226
28	85.053

*Status: Point in time view as at 21/07/2008.*

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27	83.816
26	82.496
25	81.100
24	79.622
23	78.055
22	76.399
21	74.635
20	72.770
19	70.791
18	68.697
17	66.470
16	64.116
15	61.617
14	58.971
13	56.167
12	53.191
11	50.038
10	46.695
9	43.154
8	39.399
7	35.414
6	31.195
5	26.722
4	21.983
3	16.959
2	11.629
1	5.983
0	0

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*Premiums for leases*

- 2 (1) Subject to this Schedule where the payment of a premium is required under a lease of land, or otherwise under the terms subject to which a lease of land is granted, there is a part disposal of the freehold or other asset out of which the lease is granted.
- (2) In applying section 42 to such a part disposal, the property which remains undisposed of includes a right to any rent or other payments, other than a premium, payable under the lease, and that right shall be valued as at the time of the part disposal.
- 3 (1) This paragraph applies in relation to a lease of land.

*Status: Point in time view as at 21/07/2008.*

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- (2) Where under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this Schedule to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum<sup>F375</sup>, being a premium which—
- (a) is due when the sum is payable by the tenant; and
  - (b) where the sum is payable in lieu of rent, is in respect of the period in relation to which the sum is payable.]
- (3) Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this Schedule to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum<sup>F376</sup>, being a premium which—
- (a) is due when the sum is payable by the tenant; and
  - (b) is in respect of the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.]
- <sup>F377</sup>(4) Where under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, that shall not be the occasion of any recomputation of the gain accruing on the receipt of any other premium, and the premium shall be regarded—
- (a) in the case of a premium deemed to have been received for the surrender of a lease, as consideration for a separate transaction which is effected when the premium is deemed to be due and consists of the disposal by the landlord of his interest in the lease; and
  - (b) in any other case, as consideration for a separate transaction which is effected when the premium is deemed to be due and consists of a further part disposal of the freehold or other asset out of which the lease is granted.
- (5) If under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, otherwise than as consideration for the surrender of the lease, and the landlord is a tenant under a lease the duration of which does not exceed 50 years, this Schedule shall apply—
- (a) as if an amount equal to the amount of that premium deemed to have been received had been given by way of consideration for the grant of the part of the sublease covered by the period in respect of which the premium is deemed to have been paid; and
  - (b) as if that consideration were expenditure incurred by the sublessee and attributable to that part of the sublease under section 38(1)(b).]
- (7) Sub-paragraph (3) above shall apply in relation to a transaction not at arm's length, and in particular in relation to a transaction entered into gratuitously, as if such sum had become payable by the tenant otherwise than by way of rent as might have been required of him if the transaction had been at arm's length.

#### Textual Amendments

**F375** Words in Sch. 8 para. 3(2) substituted (with effect in accordance with s. 142(5) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 142\(2\)](#)

**F376** Words in Sch. 8 para. 3(3) substituted (with effect in accordance with s. 142(5) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 142\(3\)](#)

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**F377** Sch. 8 para. 3(4)(5) substituted for Sch. 8 para. 3(4)-(6) (with effect in accordance with s. 142(5) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 142\(4\)](#)

*Subleases out of short leases*

- 4
- (1) In the computation of the gain accruing on the part disposal of a lease which is a wasting asset by way of the grant of a sublease for a premium the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) shall be apportioned in accordance with this paragraph, and section 42 shall not apply.
  - (2) Out of each item of the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) there shall be apportioned to what is disposed of —
    - (a) if the amount of the premium is not less than what would be obtainable by way of premium for the said sublease if the rent payable under that sublease were the same as the rent payable under the lease, the fraction which, under paragraph 1(3) of this Schedule, is to be written off over the period which is the duration of the sublease, and
    - (b) if the amount of the premium is less than the said amount so obtainable, the said fraction multiplied by a fraction equal to the amount of the said premium divided by the said amount so obtainable.
  - (3) If the sublease is a sublease of part only of the land comprised in the lease this paragraph shall apply only in relation to a proportion of the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) which is the same as the proportion which the value of the land comprised in the sublease bears to the value of that and the other land comprised in the lease; and the remainder of that expenditure shall be apportioned to what remains undisposed of.

*Exclusion of premiums taxed under Schedule A etc.*

- 5
- (1) Where by reference to any premium [<sup>F378</sup>any amount is brought into account by virtue of section 34 of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act)] [<sup>F379</sup>or by virtue of any of sections 277 to 281 of ITTOIA 2005 as a receipt of a UK property business (within the meaning of that Act)], that amount out of the premium shall be excluded from the consideration brought into account in the computation of the gain accruing on the disposal for which the premium is consideration except where the consideration is taken into account in the denominator of the fraction by reference to which an apportionment is made under section 42.
  - (2) Where by reference to any premium in respect of a sublease granted out of a lease the duration of which (that is of the lease) does not, at the time of granting the lease, exceed 50 years, [<sup>F378</sup>any amount is brought into account by virtue of section 34 of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act)] [<sup>F380</sup>or by virtue of any of sections 277 to 281 of ITTOIA 2005 as a receipt of a UK property business (within the meaning of that Act)] that amount shall be deducted from any gain accruing on the disposal for which the premium is consideration as computed in accordance with the provisions of this Act apart from this subparagraph, but not so as to convert the gain into a loss, or to increase any loss.
  - (3) Subject to subsection (4) below, where [<sup>F381</sup>any amount is brought into account by virtue of section 36 of the Taxes Act (sale of land with right of re-conveyance) as a

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receipt of a Schedule A business (within the meaning of that Act)]<sup>F382</sup> or by virtue of section 284 or 285 of ITTOIA 2005 (sale of land with right to reconveyance or leaseback) as a receipt of a UK property business (within the meaning of that Act),] a sum of that amount shall be excluded from the consideration brought into account in the computation of the gain accruing on the disposal of the estate or interest in respect of which income tax becomes so chargeable, except where the consideration is taken into account in the denominator of the fraction by reference to which an apportionment is made under section 42.

- (4) If what is disposed of is the remainder of a lease or a sublease out of a lease the duration of which does not exceed 50 years, sub-paragraph (3) shall not apply but the amount there referred to shall be deducted from any gain accruing on the disposal as computed in accordance with the provisions of this Act apart from this sub-paragraph and sub-paragraph (3), but not so as to convert the gain into a loss, or to increase any loss.
- <sup>F383</sup>(5) References in sub-paragraphs (1) and (2) above to a premium include references to—
- (a) a premium deemed to have been received under subsection (4) or (5) of section 34 of the Taxes Act (which correspond to paragraph 3(2) and (3) of this Schedule),
  - (b) a sum that becomes payable by the tenant under the terms subject to which a lease is granted in lieu of the whole or a part of the rent for any period,
  - (c) a sum that becomes payable by the tenant under the terms subject to which a lease is granted as consideration for the surrender of the lease, and
  - (d) a sum that becomes payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of any of the terms of a lease.]
- (6) Section 37 shall not be taken as authorising the exclusion of any amount from the consideration for a disposal of assets taken into account in the computation of the gain by reference to <sup>F384</sup>any amount from which a sum representing income tax is required to be deducted under Part 15 of ITA 2007].

#### Textual Amendments

- F378** Words in Sch. 8 para. 5(1)(2) substituted (with effect in accordance with s. 38 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 5 para. 63\(2\)\(a\)](#) (with [Sch. 5 para. 73](#))
- F379** Words in Sch. 8 para. 5(1) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 451\(2\)\(a\)](#) (with [Sch. 2](#))
- F380** Words in Sch. 8 para. 5(2) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 451\(2\)\(b\)](#) (with [Sch. 2](#))
- F381** Words in Sch. 8 para. 5(3) substituted (with effect in accordance with s. 38 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 5 para. 63\(2\)\(b\)](#) (with [Sch. 5 para. 73](#))
- F382** Words in Sch. 8 para. 5(3) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 451\(2\)\(c\)](#) (with [Sch. 2](#))
- F383** Sch. 8 para. 5(5) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 451\(2\)\(d\)](#) (with [Sch. 2](#))
- F384** Words in Sch. 8 para. 5(6) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 349](#) (with [Sch. 2](#))

6 <sup>F385</sup>(1) If—

- (a) under section 37(4) of the Taxes Act (allowance where, by the grant of a sublease, a lessee has converted a capital amount into a right to income) a



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person is to be treated as paying additional rent in consequence of having granted a sublease, or

- (b) under section 292 of ITTOIA 2005 a person is to be treated as incurring expenses in consequence of having granted a sublease,

the amount of any loss accruing to the person on the disposal by way of the grant of the sublease shall be reduced by the total amount of rent which the person is thereby treated as paying, or the total amount of expenses which the person is thereby treated as incurring, over the term of the sublease (and without regard to whether relief is thereby effectively given over the term of the sublease), but not so as to convert the loss into a gain, or to increase any gain.]

- (2) Nothing in section 37 of this Act shall be taken as applying in relation to any amount [<sup>F386</sup>brought into account by virtue of section 35 of the Taxes Act (charge on assignment of a lease granted at an undervalue) as a receipt of a Schedule A business (within the meaning of that Act)] [<sup>F387</sup> or by virtue of section 282 of ITTOIA 2005 (assignments for profit of lease granted at undervalue) as a receipt of a UK property business (within the meaning of that Act)].
- (3) If any adjustment is made under section 36(2)(b) of the Taxes Act on a claim under that paragraph [<sup>F388</sup> or under section 301 or 302 of ITTOIA 2005 on a claim under that section,] any necessary adjustment shall be made to give effect to the consequences of the claim on the operation of this paragraph or paragraph 5 above.

#### Textual Amendments

- F385** Sch. 8 para. 6(1) substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 451\(3\)\(a\)](#) (with Sch. 2)
- F386** Words in Sch. 8 para. 6(2) substituted (with effect in accordance with s. 38 of the amending Act) by [Finance Act 1998 \(c. 36\), Sch. 5 para. 63\(3\)](#) (with Sch. 5 para. 73)
- F387** Words in Sch. 8 para. 6(2) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 451\(3\)\(b\)](#) (with Sch. 2)
- F388** Words in Sch. 8 para. 6(3) inserted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 451\(3\)\(c\)](#) (with Sch. 2)

[<sup>F389</sup> If—

- (a) under section 34(2) and (3) of the Taxes Act any amount is brought into account by virtue of section 34(2) and (3) of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act) which is or is treated as carried on by any person, or
- (b) under section 277 of ITTOIA 2005 any amount is brought into account by virtue of section 278 of that Act as a receipt of a UK property business (within the meaning of that Act) which is carried on by any person,

that person shall be treated for the purposes of the computation of any gain accruing to him as having incurred at the time the lease was granted expenditure of that amount (in addition to any other expenditure) attributable to the asset under section 38(1)(b).]

#### Textual Amendments

- F389** Sch. 8 para. 7 substituted (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 451\(4\)](#) (with Sch. 2)

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- [<sup>F390</sup>7A References in paragraphs 5 to 7 above to an amount brought into account as a receipt of a Schedule A business [<sup>F391</sup>or UK property business] include references to an amount brought into account as a receipt of an overseas property business.]

#### Textual Amendments

**F390** Sch. 8 para. 7A substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 63(5)** (with Sch. 5 para. 73)

**F391** Words in Sch. 8 para. 7A inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 451(5)** (with Sch. 2)

#### *Duration of leases*

- 8 (1) In ascertaining for the purposes of this Act the duration of a lease of land the following provisions shall have effect.
- (2) Where the terms of the lease include provision for the determination of the lease by notice given by the landlord, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice given by the landlord.
- (3) Where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease, the lease shall not be treated as having been granted for a term longer than one ending on that date.
- (4) Sub-paragraph (3) applies in particular where the lease provides for the rent to go up after a given date, or for the tenant's obligations to become in any other respect more onerous after a given date, but includes provision for the determination of the lease on that date, by notice given by the tenant, and those provisions render it unlikely that the lease will continue beyond that date.
- (5) Where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant this paragraph shall apply as if the term of the lease extended for as long as it could be extended by the tenant, but subject to any right of the landlord by notice to determine the lease.
- (6) It is hereby declared that the question what is the duration of a lease is to be decided, in relation to the grant or any disposal of the lease, by reference to the facts which were known or ascertainable at the time when the lease was acquired or created.

#### *Leases of property other than land*

- 9 (1) Paragraphs 2, 3, 4 and 8 of this Schedule shall apply in relation to leases of property other than land as they apply to leases of land, but subject to any necessary modifications.
- (2) Where by reference to any capital sum within the meaning of section 785 of the Taxes Act (leases of assets other than land) any person has been charged to income tax on any amount, that amount out of the capital sum shall be deducted from any gain accruing on the disposal for which that capital sum is consideration, as computed in accordance with the provisions of this Act apart from this sub-paragraph, but not so as to convert the gain into a loss, or increase any loss.

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- (3) In the case of a lease of a wasting asset which is movable property the lease shall be assumed to terminate not later than the end of the life of the wasting asset.

### *Interpretation*

- 10 (1) In this Act, unless the context otherwise requires “lease” —
- (a) in relation to land, includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined,
  - (b) in relation to any description of property other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, property,
- and “lessor”, “lessee” and “rent” shall be construed accordingly.
- (2) In this Schedule “premium” includes any like sum, whether payable to the intermediate or a superior landlord, and for the purposes of this Schedule any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as [<sup>F392</sup>other sufficient consideration for the payment can be shown to have been given].
- (3) In the application of this Schedule to Scotland “premium” includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sublease.

#### **Textual Amendments**

**F392** Words in Sch. 8 para. 10(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 67**

## SCHEDULE 9

Section 288.

### GILT-EDGED SECURITIES

#### PART I

##### GENERAL

- 1 For the purposes of this Act “gilt-edged securities” means the securities specified in Part II of this Schedule, and such stocks and bonds issued under section 12 of the National Loans Act 1968, denominated in sterling and issued after 15th April 1969, as may be specified by order made by the Treasury.
- [<sup>F393</sup>1A(1) Any security which is a strip of a security which is a gilt-edged security for the purposes of this Act is also itself a gilt-edged security for those purposes.
- (2) In this paragraph “strip” has the same meaning as in section 47 of the Finance Act 1942.]

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### Textual Amendments

**F393** Sch. 9 para. 1A inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), [Sch. 40 para. 8](#)

- 2 The Treasury shall cause particulars of any order made under paragraph 1 above to be published in the London and Edinburgh Gazettes as soon as may be after the order is made.
- 3 Section 14(b) of the Interpretation Act 1978 (implied power to amend orders made by statutory instrument) shall not apply to the power of making orders under paragraph 1 above.

## PART II

### EXISTING GILT-EDGED SECURITIES

#### STOCKS AND BONDS CHARGED ON THE NATIONAL LOANS FUND

12 <sup>3</sup> / <sub>4</sub> %	Treasury Loan 1992
8%	Treasury Loan 1992
10%	Treasury Stock 1992
3%	Treasury Stock 1992
12 <sup>1</sup> / <sub>4</sub> %	Exchequer Stock 1992
13 <sup>1</sup> / <sub>2</sub> %	Exchequer Stock 1992
10 <sup>1</sup> / <sub>2</sub> %	Treasury Convertible Stock 1992
2%	Index-linked Treasury Stock 1992
12 <sup>1</sup> / <sub>2</sub> %	Treasury Loan 1993
6%	Funding Loan 1993
13 <sup>3</sup> / <sub>4</sub> %	Treasury Loan 1993
10%	Treasury Loan 1993
8 <sup>1</sup> / <sub>4</sub> %	Treasury Stock 1993
14 <sup>1</sup> / <sub>2</sub> %	Treasury Loan 1994
12 <sup>1</sup> / <sub>2</sub> %	Exchequer Stock 1994
9%	Treasury Loan 1994
10%	Treasury Loan 1994
13 <sup>1</sup> / <sub>2</sub> %	Exchequer Stock 1994
8 <sup>1</sup> / <sub>2</sub> %	Treasury Stock 1994
8 <sup>1</sup> / <sub>2</sub> %	Treasury Stock 1994 "A"
2%	Index-linked Treasury Stock 1994
3%	Exchequer Gas Stock 1990-95

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12%	Treasury Stock 1995
10¼%	Exchequer Stock 1995
12¾%	Treasury Loan 1995
9%	Treasury Loan 1992-96
15¼%	Treasury Loan 1996
13¼%	Exchequer Loan 1996
14%	Treasury Stock 1996
2%	Index-linked Treasury Stock 1996
10%	Conversion Stock 1996
13¼%	Treasury Loan 1997
10½%	Exchequer Stock 1997
8¾%	Treasury Loan 1997
8¾%	Treasury Loan 1997 "B"
8¾%	Treasury Loan 1997 "C"
15%	Exchequer Stock 1997
6¾%	Treasury Loan 1995-98
15½%	Treasury Loan 1998
12%	Exchequer Stock 1998
12%	Exchequer Stock 1998 "A"
9¾%	Exchequer Stock 1998
9¾%	Exchequer Stock 1998 "A"
9½%	Treasury Loan 1999
10½%	Treasury Stock 1999
12½%	Exchequer Stock 1999
12½%	Exchequer Stock 1999 "A"
12½%	Exchequer Stock 1999 "B"
2½%	Index-linked Treasury Convertible Stock 1999
10½%	Conversion Stock 1999
9%	Conversion Stock 2000
9%	Conversion Stock 2000 "A"
13%	Treasury Stock 2000
8½%	Treasury Loan 2000
14%	Treasury Stock 1998-2001
2½%	Index-linked Treasury Stock 2001

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9 <sup>3</sup> / <sub>4</sub> %	Conversion Stock 2001
10%	Treasury Stock 2001
9 <sup>1</sup> / <sub>2</sub> %	Conversion Loan 2001
12%	Exchequer Stock 1999-2002
12%	Exchequer Stock 1999-2002 "A"
9 <sup>1</sup> / <sub>2</sub> %	Conversion Stock 2002
10%	Conversion Stock 2002
9%	Exchequer Stock 2002
9 <sup>3</sup> / <sub>4</sub> %	Treasury Stock 2002
13 <sup>3</sup> / <sub>4</sub> %	Treasury Stock 2000-2003
13 <sup>3</sup> / <sub>4</sub> %	Treasury Stock 2000-2003 "A"
2 <sup>1</sup> / <sub>2</sub> %	Indexed-linked Treasury Stock 2003
9 <sup>3</sup> / <sub>4</sub> %	Conversion Loan 2003
10%	Treasury Stock 2003
3 <sup>1</sup> / <sub>2</sub> %	Funding Stock 1999-2004
11 <sup>1</sup> / <sub>2</sub> %	Treasury Stock 2001-2004
9 <sup>1</sup> / <sub>2</sub> %	Conversion Stock 2004
10%	Treasury Stock 2004
12 <sup>1</sup> / <sub>2</sub> %	Treasury Stock 2003-2005
12 <sup>1</sup> / <sub>2</sub> %	Treasury Stock 2003-2005 "A"
10 <sup>1</sup> / <sub>2</sub> %	Exchequer Stock 2005
9 <sup>1</sup> / <sub>2</sub> %	Conversion Stock 2005
9 <sup>1</sup> / <sub>2</sub> %	Conversion Stock 2005 "A"
8%	Treasury Loan 2002-2006
8%	Treasury Loan 2002-2006 "A"
2%	Indexed-linked Treasury Stock 2006
9 <sup>3</sup> / <sub>4</sub> %	Conversion Stock 2006
11 <sup>3</sup> / <sub>4</sub> %	Treasury Stock 2003-2007
11 <sup>3</sup> / <sub>4</sub> %	Treasury Stock 2003-2007 "A"
8 <sup>1</sup> / <sub>2</sub> %	Treasury Loan 2007
13 <sup>1</sup> / <sub>2</sub> %	Treasury Stock 2004-2008
9%	Treasury Loan 2008
9%	Treasury Loan 2008 "A"
2 <sup>1</sup> / <sub>2</sub> %	Indexed-linked Treasury Stock 2009
8%	Treasury Stock 2009

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2½%	Indexed-linked Treasury Stock 2011
9%	Conversion Loan 2011
5½%	Treasury Stock 2008-2012
2½%	Indexed-linked Treasury Stock 2013
7¾%	Treasury Loan 2012-2015
2½%	Treasury Stock 1986-2016
2½%	Indexed-linked Treasury Stock 2016
2½%	Indexed-linked Treasury Stock 2016 "A"
12%	Exchequer Stock 2013-2017
2½%	Indexed-linked Treasury Stock 2020
2½%	Indexed-linked Treasury Stock 2024
2½%	Annuities 1905 or after
2¾%	Annuities 1905 or after
2½%	Consolidated Stock 1923 or after
4%	Consolidated Loan 1957 or after
3½%	Conversion Loan 1961 or after
2½%	Treasury Stock 1975 or after
3%	Treasury Stock 1966 or after
3½%	War Loan 1952 or after
10%	Conversion Stock 1996 "A"
10%	Conversion Stock 1996 "B"
12%	Exchequer Stock 1998 "B"
9%	Conversion Stock 2000 "B"
13%	Treasury Stock 2000 "A"
10%	Treasury Stock 2001 "A"
10%	Treasury Stock 2001 "B"
9¾%	Treasury Stock 2002 "A"
9¾%	Treasury Stock 2002 "B"
10%	Treasury Stock 2003 "A"
9½%	Conversion Stock 2004 "A"
9%	Treasury Loan 2008 "B"
9%	Treasury Loan 2008 "C"
9%	Conversion Loan 2011 "A"
<i>Securities issued by certain public corporations and guaranteed by the Treasury</i>	
3%	North of Scotland Electricity Stock 1989-92

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*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULE 10

Section 290.

## CONSEQUENTIAL AMENDMENTS

*Post Office Act 1969 c. 48*F394<sup>1</sup>**Textual Amendments**

**F394** Sch. 10 para. 1 repealed (26.3.2001) by [The Postal Services Act 2000 \(Consequential Modifications No. 1\) Order 2001 \(S.I. 2001/1149\)](#), art. 1(2), **Sch. 2**

*Taxes Management Act 1970 c. 9*

- 2 (1) The Taxes Management Act 1970 shall have effect subject to the following amendments.
- (2) In sections 11(1)(b), 27(1), 47(1), 57(1)(a), 78(3)(b), 111 and 119(4) for (2) In sections 11(1)(b), 27(1), 47(1), 57(1)(a), <sup>F395</sup> ..., 111 and 119(4) for “Capital Gains Tax Act 1979” there shall be substituted “ 1992 Act ”.
- (3) In section 12(2)—
- for “Capital Gains Tax Act 1979” there shall be substituted “ 1992 Act ”;
  - for “19(4)” there shall be substituted “ 51(1) ”;
  - for “71” there shall be substituted “ 121 ”;
  - for “130, 131 or 133” there shall be substituted “ 263, 268 or 269 ”;
  - for “128(6)” there shall be substituted “ 262(6) ”.
- (4) In section 25(9) for “sections 64, 93 and 155(1) of the Capital Gains Tax Act 1979” there shall be substituted “ sections 99 and 288(1) of the 1992 Act. ”
- (5) The following section shall be substituted for section 28 —
- “**28** (1) A person holding shares or securities in a company which is not resident or ordinarily resident in the United Kingdom may be required by a notice by the Board to give such particulars as the Board may consider are required to determine whether the company falls within section 13 of the 1992 Act and whether any chargeable gains have accrued to that company in respect of which the person to whom the notice is given is liable to capital gains tax under that section.
- (2) For the purposes of this section “company” and “shares” shall be construed in accordance with sections 99 and 288(1) of the 1992 Act.”
- (6) In section 30(2)(a) and (3)(a) for “47 of the Finance (No.2) Act 1975” there shall be substituted “ 283 of the 1992 Act ”.
- (7) In section 31(3)(c) for “38 of the Finance Act 1973” there shall be substituted “ 276 of the 1992 Act ”.
- (8) In section 86(4) for “7 of the Capital Gains Tax Act 1979” there shall be substituted “ 7 of the 1992 Act ”.



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- (9) In section 87A(3) for the words from “section 267(3C)” to “1979” there shall be substituted “ 137(4), 139(7) or 179(11) of the 1992 Act or section 96(8) of the Finance Act 1990 ”. This sub-paragraph shall come into force on the day appointed under section 95 of the Finance (No.2) Act 1987 for the purposes of section 85 of that Act.
- (10) In section 98 —
- (a) in column 1 of the Table —
- (i) for “149D of the Capital Gains Tax Act 1979” there shall be substituted “ 151 of the 1992 Act ”;
- (ii) for “6(9) of Schedule 1 to the Capital Gains Tax Act 1979” there shall be substituted “ 2(9) of Schedule 1 to the 1992 Act ”;
- (iii) for “84 of the Finance Act 1981” there shall be substituted “ 98 of the 1992 Act ”;
- (iv) for “Paragraph 7(1) of Schedule 10 to the Finance Act 1988” there shall be substituted “ Section 79(6) of the 1992 Act ; ”
- (v) for “39 of the Finance Act 1990” there shall be substituted “ 235 of the 1992 Act ”;
- (vi) for “12 of Schedule 16 to the Finance Act 1991” there shall be substituted “ 10 of Schedule 5 to the 1992 Act ”; and
- (b) in column 2 of the Table —
- (i) for “149D of the Capital Gains Tax Act 1979” there shall be substituted “ 151 of the 1992 Act ”; and
- (ii) for “13 to 16 of Schedule 16 to the Finance Act 1991” there shall be substituted “ 11 to 14 of Schedule 5 to the 1992 Act ”.
- (11) In section 118(1)—
- (a) in the definition of “chargeable gain” for “Capital Gains Tax Act 1979” there shall be substituted “ 1992 Act ”; and
- (b) in paragraph (b) of the definition of “the Taxes Acts” for “the Capital Gains Tax Act 1979” there shall be substituted “ the Taxation of Chargeable Gains Act 1992 ” and
- (c) immediately after that definition there shall be inserted— “ the 1992 Act ” means the Taxation of Chargeable Gains Act 1992.

#### Textual Amendments

**F395** Word in Sch. 10 para. 2(2) repealed (with effect in accordance with Sch. 29 Pt. 8(16) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 29 Pt. VIII\(16\)](#)

#### *Finance Act 1973 c. 51*

- 3 (1) In section 38(2) of the Finance Act 1973 for “In this section and in Schedule 15 to this Act” there shall be substituted “ Schedule 15 to this Act shall have effect and in that Schedule ”.
- (2) In paragraphs 2 and 4 of Schedule 15 to that Act for “38 of this Act” there shall be substituted “ 276 of the Taxation of Chargeable Gains Act 1992 ”.

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*British Aerospace Act 1980 c. 26*

- 4 In section 12(2) of the British Aerospace Act 1980 for “272(5) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 170(12) of the Taxation of Chargeable Gains Act 1992 ”.

*British Telecommunications Act 1981 c. 38*

- 5 In section 82(1) for “Capital Gains Tax Act 1979” and “Schedule 5” there shall be substituted respectively “ Taxation of Chargeable Gains Act 1992 ” and “ Schedule 2 ”.

*Value Added Tax Act 1983 c. 55*

F396<sup>6</sup> .....

**Textual Amendments**

**F396** Sch. 10 para. 6 repealed (1.9.1994) by [Value Added Tax Act 1994 \(c. 23\)](#), s. 101(1), [Sch. 15](#)

*Telecommunications Act 1984 c. 12*

F397<sup>7</sup> .....

**Textual Amendments**

**F397** Sch. 10 para. 7 repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

*Inheritance Tax Act 1984 c. 51*

- 8 (1) The Inheritance Tax Act shall have effect subject to the following amendments.
- (2) In section 31(4G)(b) for “147 of the Capital Gains Tax Act 1979” there shall be substituted “ 258 of the 1992 Act ”.
- (3) In section 79(2) for “147 of the Capital Gains Tax Act” and “147” (where it secondly appears) there shall be substituted respectively “ 258 of the 1992 Act ” and “ 258 ”.
- (4) In section 97 —
- (a) the amendments made by section 138(6) of the Finance Act 1989 shall continue to have effect notwithstanding the repeal by this Act of that provision; and
- (b) for “273(1) of the Taxes Act 1970”, “272 of the Taxes Act 1970” and “273 to 281” there shall be substituted respectively “ 171(1) of the 1992 Act ”, “ 170 of the 1992 Act ” and “ 171 to 181 ”.
- (5) In sections 107(4), 113A(6) and 124A(6) for “77 to 86 of the Capital Gains Tax Act 1979” there shall be substituted “ 126 to 136 of the 1992 Act ”.
- (6) In section 135 for “section 78 of the Capital Gains Tax Act 1979”, “84”, “77(1)”, “82”, “85”, “86”, “78”, “93” and “77(1) of the Capital Gains Tax Act 1979” there

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shall be substituted respectively “ 127 of the 1992 Act ”, “ 134 ”, “ 126(1) ”, “ 132 ”, “ 135 ”, “ 136 ”, “ 127 ”, “ 99 ” and “ 126(1) ”.

- (7) In section 138 for “3 to the Capital Gains Tax Act 1979” there shall be substituted “ 8 to the 1992 Act ”.
- (8) In section 165 for “Capital Gains Tax Act 1979” and “59” shall be substituted “ 1992 Act ” and “ 282 ”.
- (9) In section 183 for “section 78 of the Capital Gains Tax Act 1979”, “77(1)”, “82”, “85”, “86”, “78”, “93” and “77(1) of the Capital Gains Tax Act 1979” there shall be substituted respectively “ 127 of the 1992 Act ”, “ 126(1) ”, “ 132 ”, “ 135 ”, “ 136 ”, “ 127 ”, “ 99 ” and “ 126(1) ”.
- (10) In section 187 for “153 of the Capital Gains Tax Act 1979” shall be substituted “ 274 of the 1992 Act ”.
- (11) In section 194 for “3 to the Capital Gains Tax Act 1979” there shall be substituted “ 8 to the 1992 Act ”.
- (12) In section 270 for “Capital Gains Tax Act 1979” and “63” there shall be substituted “ 1992 Act ” and “ 286 ”.
- (13) In section 272 at the end there shall be added “ and “the 1992 Act” means the Taxation of Chargeable Gains Act 1992. ”

*Finance Act 1985 c. 54*

- 9 In section 81 for “Capital Gains Tax Act 1979” there shall be substituted “ Taxation of Chargeable Gains Act 1992 ”.

*Trustee Savings Bank Act 1985 c. 58*

- 10 (1) In paragraph 2 of Schedule 2 to the Trustee Savings Bank Act 1985 —
  - (a) for “Capital Gains Tax Act 1979” there shall be substituted “ 1992 Act ”; and
  - (b) for “5 to the Act of 1979” there shall be substituted “ 2 to the 1992 Act ”.
- (2) In paragraph 3 of that Schedule —
  - (a) for “II of Part II of the Act of 1979” there shall be substituted “ III of Part II of the 1992 Act ”; and
  - (b) for “12 of Schedule 5 to the Act of 1979” there shall be substituted “ 16 of Schedule 2 to the 1992 Act ”.
- (3) In paragraph 4 of that Schedule —
  - (a) for “Act of 1979” (in three places) there shall be substituted “ 1992 Act ”;
  - (b) for “134” and “26” there shall be substituted respectively “ 251 ” and “ 30 ”; and
  - (c) for “278 of the Taxes Act” (in both places) there shall be substituted “ 178 or 179 of the 1992 Act ”.
- (4) In paragraph 9 —
  - (a) at the end of sub-paragraph (1) there shall be added— “the 1992 Act” means the Taxation of Chargeable Gains Act 1992; ” and
  - (b) in sub-paragraph (2) for “Capital Gains Tax Act 1979” there shall be substituted “ 1992 Act ”.

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*Transport Act 1985 c. 67*

- 11 In section 130—
  - (a) in subsection (3) for “Capital Gains Tax Act 1979” and “5” there shall be substituted “ Taxation of Chargeable Gains Act 1992 ”and “ 2 ”;and
  - (b) in subsection (4) for “278 of the Income and Corporation Taxes Act 1970” there shall be substituted “ 178 or 179 of the Taxation of Chargeable Gains Act 1992 ”.

*Airports Act 1986 c. 31*

- 12 In section 77(2) of the Airports Act 1986 for “272(5) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 170(12) of the Taxation of Chargeable Gains Act 1992 ”.

*Gas Act 1986 c. 44*

- 13 In section 60(2) of the Gas Act 1986 for “272(5) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 170(12) of the Taxation of Chargeable Gains Act 1992 ”.

*Income and Corporation Taxes Act 1988 c. 1*

- 14 (1) The Income and Corporation Taxes Act 1988 shall have effect subject to the following amendments
  - (2) In section 11(2) for paragraph (b) there shall be substituted—
    - “(b) such chargeable gains as are, by virtue of section 10(3) of the 1992 Act, to be, or be included in, the company's chargeable profits,”
  - (3) In section 56(5) for “82 of the 1979 Act” there shall be substituted “ 132 of the 1992 Act ”.
  - (4) In section 119(1) after “122” there shall be inserted “ and section 201 of the 1992 Act ”.

F398(5) .....

F399(6) .....

- (7) In section 128 for “72 of the Finance Act 1985” and “(2A)” there shall be substituted respectively “ 143 of the 1992 Act ”and “ (3) ”.

F400(8) .....

F401(9) .....

F401(10) .....

F401(11) .....

F401(12) .....

- (13) In section 187(2) for “1979 Act” (in the definition of “market value”) and “77(1) (b) of the 1979 Act” (in the definition of “new holding”) there shall be substituted respectively “ 1992 Act ”and “ 126(1)(b) of the 1992 Act ”.

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- (14) In section 220 for “52 of the 1979 Act” (in subsection (2)) and “1979” (in subsection (9)) there shall be substituted respectively “ 69 of the 1992 Act ”and “ 1992 ”.
- <sup>F402</sup>(15) .....
- <sup>F403</sup>(16) .....
- (17) In sections 299 and 305 for “77(2)(a) of the 1979 Act” and “78” there shall be substituted respectively “ 126(2)(a) of the 1992 Act ”and “ 127 ”.
- (18) In section 312 for “86(1) of the 1979 Act” and “150 of the 1979 Act” there shall be substituted respectively “ 136(1) of the 1992 Act ”and “ 272 of the 1992 Act ”.
- (19) In section 399—
- <sup>F404</sup>(a) .....
- (b) in subsection (5) for “72 of the Finance Act 1985” <sup>F405</sup>... there shall be substituted “143 of the 1992 Act”<sup>F405</sup>... .
- (20) In section 400—
- (a) in subsection (2)(e) for “345” there shall be substituted “ 8 of the 1992 Act ”; and
- (b) in subsection (6) for “42 of the 1979” there shall be substituted “ 50 of the 1992 ”.
- <sup>F406</sup>(21) .....
- (22) In section 440—
- (a) in subsection (3) for “273 or 274 of the 1970 Act” there shall be substituted “ 171 or 173 the 1992 Act ”; and
- <sup>F407</sup>(b) .....
- (23) In section 440A—
- (a) in subsection (5) for “66 of the 1979 Act” there shall be substituted “ 105 of the 1992 Act ”; and
- (b) for subsection (6) there shall be substituted—
- “(6) In this section—
- “1982 holding” has the same meaning as in section 109 of the 1992 Act;
- “new holding” has the same meaning as in section 104(3) of that Act; and
- “securities” means shares, or securities of a company, and any other assets where they are of a nature to be dealt in without identifying the particular assets disposed or or acquired.”
- (24) In section 442 for “1979 Act” there shall be substituted “ 1992 Act ”.
- <sup>F408</sup>(25) .....
- (26) In section 450(6) for “31 or 33 of the 1979” there shall be substituted “ 37 or 39 of the 1992 ”.

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(27) In section 473—

- (a) in subsections (2) <sup>F409</sup>... for “77 to 86 of the 1979” and “84” there shall be substituted respectively “ 126 to 136 of the 1992 ”and “ 134 ”;
- (b) in subsection (6) for “82 of the 1979 Act”, “86(7), 93 or 139” and “77 to 86” there shall be substituted respectively “ 132 of the 1992 Act ”, “ 136(3), 147 or 99 ”and “ 126 to 136 ”;
- (c) in subsection (7) for “85 or 86 of the 1979” and “87(1)” there shall be substituted “ 135 or 136 of the 1992 ”and “ 137(1) ”respectively.

(28) In section 477B(5) for “64(3E) of the Finance Act 1984” there shall be substituted “ 117(4) of the 1992 Act ”.

<sup>F410</sup>(29) .....

(30) In subsection (1) of section 502 in the definition of “ring fence profits” for “same meaning as in section 79(5) of the Finance Act 1984” there shall be substituted “ meaning given by subsection (1A) below ”and at the end of that subsection there shall be inserted—

“(1A) Where in accordance with section 197(3) of the 1992 Act a person has an aggregate gain for any chargeable period, that gain and his ring fence income (if any) for that period together constitute his ring fence profits for the purposes of this Chapter.”

(31) In section 505(3), (5)(b) and (6) for “145 of the 1979 Act” there shall be substituted “ 256 of the 1992 Act ”.

(32) In section 513(3) for “272(5) of the 1970 Act” there shall be substituted “ 170(12) of the 1992 Act ”.

(33) In section 574(1) for “1979” there shall be substituted “ 1992 ”.

(34) In section 575—

- (a) in subsection (1)(c) for “22(2) of the 1979 Act” there shall be substituted “ 24(2) of the 1992 Act ”;
- (b) in subsection (2) for “78 of the 1979 Act” , in both places, there shall be substituted “ 127 of the 1992 Act ”; and
- (c) in subsection (3) for “85 or 86 of the 1979 Act” and “87” there shall be substituted “ 135 or 136 of the 1992 Act ”and “ 137 ”.

<sup>F411</sup>(35) .....

<sup>F411</sup>(36) .....

<sup>F411</sup>(37) .....

<sup>F411</sup>(38) .....

<sup>F412</sup>(39) .....

<sup>F413</sup>(40) .....

<sup>F414</sup>(41) .....

<sup>F415</sup>(42) .....

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- (43) In section 757—
- (a) in subsection (1) for “78 of the 1979” there shall be substituted “ 127 of the 1992 ”;
  - (b) in subsection (2) for “1979” there shall be substituted “ 1992 ”;
  - (c) in subsections (3) and (4) for “49 of the 1979” there shall be substituted “ 62 of the 1992 ”;
  - (d) in subsection (5) for “85”, “1979” and “86” there shall be substituted respectively “ 135 ”, “ 1992 ” and “ 136 ”;
  - (e) in subsection (6) for “85(3) of the 1979” there shall be substituted “ 135(3) of the 1992 ”; and
  - (f) in subsection (7) for “Chapter II of Part II of the 1979” there shall be substituted “ Chapter III of Part II of the 1992 ”.
- (44) In section 758—
- (a) in subsection (5) for “78 of the 1979” there shall be substituted “ 127 of the 1992 ”; and
  - (b) in subsection (6) for “78 of the 1979”, “85”, “78 as” and “82” there shall be substituted respectively “ 127 of the 1992 ”, “ 135 ”, “ 127 as ” and “ 132 ”.
- (45) In section 759(9) for “1979” and “150(4)” there shall be substituted “ 1992 ” and “ 272(5) ”.
- <sup>F416</sup>(46) . . . . .
- (47) In section 761—
- (a) in subsection (2) for “2 and 12 of the 1979 Act” there shall be substituted “ 2(1) and 10 of the 1992 Act ”;
  - (b) in subsection (3) for “12 of the 1979 Act” there shall be substituted “ 10 of the 1992 Act ” and at the end of that subsection there shall be inserted “ and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words “situated in the United Kingdom ”;
  - <sup>F417</sup>(c) . . . . .
  - (d) in subsections (6) and (7)(a) and (b) for “1979” there shall be substituted “ 1992 ”.
- (48) In section 762—
- (a) in subsection (1) for “15 of the 1979 Act” there shall be substituted “ 13 of the 1992 Act ”;
  - <sup>F418</sup>(b) . . . . .
  - <sup>F418</sup>(c) . . . . .
  - <sup>F418</sup>(d) . . . . .
- (49) In section 763—
- (a) for “the 1979 Act disposal”, in each place, there shall be substituted “ the 1992 Act disposal ”;
  - (b) in subsections (1) and (6) for “1979” there shall be substituted “ 1992 ”;
  - (c) in subsection (2) for “31(1)” there shall be substituted “ 37(1) ”;
  - (d) in subsection (3) for “computation under Chapter II of Part II of the 1979 Act of any gain” there shall be substituted “ computation of the gain ”;

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- (e) in subsection (4) for “35” there shall be substituted “ 42 ”;
- (f) in subsection (5) for “123” there shall be substituted “ 162 ”; and
- (g) in subsection (6) for “79” there shall be substituted “ 128 ”.

<sup>F419</sup>(50) .....

(51) In section 777 in subsections (11) and (12) for “122 of the 1979” and “31 and 33 of the 1979” there shall be substituted “ 161 of the 1992 ”and “ 37 and 39 of the 1992 ”respectively.

<sup>F420</sup>(52) .....

(53) In section 831—

- (a) at the end of subsection (3) there shall be inserted— “the 1992 Act” means the Taxation of Chargeable Gains Act 1992. ”; and
- (b) in subsection (5) for “1979” there shall be substituted “ 1992 ”.

(54) In section 832(1) in the definition of “chargeable gain” for “1979” there shall be substituted “ 1992 ”.

(55) In section 842(4) for “64, 93 and 155(1) of the 1979 Act” there shall be substituted “ 99 and 288 of the 1990 Act ”.

(56) In section 843(2) for “10 of the 1979 Act” there shall be substituted “ 277 of the 1990 Act ”.

<sup>F421</sup>(57) .....

(58) In paragraph 5(7) of Schedule 10 for “1979” there shall be substituted “ 1992 ”.

(59) In paragraph 12(2) of Schedule 20 for “145 of the 1979” there shall be substituted “ 256 of the 1992 ”.

(60) In paragraph 7 of Schedule 22 for “149B(1)(g) of the 1979” there shall be substituted “ 271(1)(g) of the 1992 ”.

<sup>F422</sup>(61) .....

(62) In paragraph 3 of Schedule 26 for “II of Part II of the 1979” there shall be substituted “ III of Part II of the 1992 ”.

(63) In Schedule 28—

- (a) in paragraph 2 for “1979” and “Chapter III of Part III of the Finance Act 1982” there shall be substituted respectively “ 1992 ”and “ the 1992 Act ”;
- (b) in paragraph 3—

(i) for “paragraph 2 of Schedule 13 to the Finance Act 1982” there shall be substituted “ section 56(2) of the 1992 Act ”;

(ii) for “123 of the 1979 Act” there shall be substituted “ 162 of the 1992 Act ”;

(iii) in sub-paragraph (3) for the words from “section” to “shall” there shall be substituted “ section 165 or 260 of the 1992 Act (relief for gifts) the claim shall ”;

<sup>F423</sup>(iv) .....

(v) for “29 of the 1979 Act” there shall be substituted “ 16 of the 1992 Act ”;



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- (c) in paragraphs 4(3)(b) and 8(3) for “86(5) of or Schedule 13 to the Finance Act 1982” and “86(5)(b) of or Schedule 13 to the Finance Act 1982” there shall be substituted “ 56, 57, 131 or 145 of the 1992 Act ”and for “1979” there shall be substituted “ 1992 ”.

#### Textual Amendments

- F398** Sch. 10 para. 14(5) repealed (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F399** Sch. 10 para. 14(6) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))
- F400** Sch. 10 para. 14(8) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 18 Pt. VI\(10\)](#)
- F401** Sch. 10 para. 14(9)-(12) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))
- F402** Sch. 10 para. 14(15) repealed (with effect in accordance with Sch. 3 of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. III\(2\)](#)
- F403** Sch. 10 para. 14(16) repealed (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F404** Sch. 10 para. 14(19)(a) repealed (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F405** Words in Sch. 10 para. 14(19)(b) repealed (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F406** Sch. 10 para. 14(21) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#) (with [Sch. 36](#))
- F407** Sch. 10 para. 14(22)(b) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(10\)](#)
- F408** Sch. 10 para. 14(25) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(9\)](#)
- F409** Words in Sch. 10 para. 14(27)(a) repealed (with effect in accordance with s. 164(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(24\)](#)
- F410** Sch. 10 para. 14(29) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))
- F411** Sch. 10 para. 14(35)-(38) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F412** Sch. 10 para. 14(39) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [Sch. 18 Pt. VI\(10\)](#)
- F413** Sch. 10 para. 14(40) omitted (with effect in accordance with s. 66(8) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 66(4)(d)
- F414** Sch. 10 para. 14(41) omitted (with effect in accordance with s. 66(8) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 66(4)(d)
- F415** Sch. 10 para. 14(42) repealed (with effect in accordance with Sch. 40 Pt. II(10) Note 1 of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. II\(10\)](#)
- F416** Sch. 10 para. 14(46) repealed (with effect in accordance with s. 145(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(18\)](#)
- F417** Sch. 10 para. 14(47)(c) omitted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 95](#)
- F418** Sch. 10 para. 14(48)(b)-(d) omitted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 95](#)
- F419** Sch. 10 para. 14(50) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F420** Sch. 10 para. 14(52) repealed (with effect in accordance with s. 883(1) of the amending Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F421** Sch. 10 para. 14(57) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))

*Status: Point in time view as at 21/07/2008.*

**Changes to legislation:** Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F422** Sch. 10 para. 14(61) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), **Sch. 18 Pt. VI(10)**
- F423** Sch. 10 para. 14(63)(b)(iv) repealed (with effect in accordance with Sch. 8 para. 55 of the amending Act) by [Finance Act 1995 \(c. 4\)](#), **Sch. 29 Pt. VIII(5)**

*British Steel Act 1988 c. 35*

- 15 In section 11(2) of the British Steel Act 1988 for “272(5) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 170(12) of the Taxation of Chargeable Gains Act 1992 ”.

*Finance Act 1988 c. 39*

- 16 (1) The Finance Act 1988 shall have effect subject to the following amendments.
- (2) In section 50(4) for “3 to the Capital Gains Tax Act 1979” there shall be substituted “ 8 to the Taxation of Chargeable Gains Act 1992 ”.
- <sup>F424</sup>(3) .....
- <sup>F424</sup>(4) .....
- <sup>F424</sup>(5) .....
- (6) In section 132(6) for “272 of the Taxes Act 1970” there shall be substituted “ 170 of the Taxation of Chargeable Gains Act 1992 ”.
- (7) In paragraph 6(2) of Schedule 12 for “72 of the Capital Gains Tax Act 1979” there shall be substituted “ 122 of the Taxation of Chargeable Gains Act 1992 ”.

**Textual Amendments**

- F424** Sch. 10 para. 16(3)-(5) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

*Health and Medicines Act 1988 c. 49*

- 17 In section 6(2) of the Health and Medicines Act 1988 for “272(5) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 170(12) of the Taxation of Chargeable Gains Act 1992 ”.

*Water Act 1989 c. 15*

- 18 In section 95 of the Water Act 1989—
- (a) in subsection (4) for “Capital Gains Tax Act 1979 (“the 1979 Act”)” there shall be substituted “ Taxation of Chargeable Gains Act 1992 (“the 1992 Act”) ”;
- (b) in subsection (5) for “1979” there shall be substituted “ 1992 ”; and
- (c) in subsection (6) for “134 of the 1979” there shall be substituted “ 251 of the 1992 ”.

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*Finance Act 1989 c. 26*

- 19 (1) In section 69(9) of the Finance Act 1989 for “85(1) of the Capital Gains Tax Act 1979” and “77” there shall be substituted “ 135(1) of the Taxation of Chargeable Gains Act 1992 ”and “ 126 ”.
- (2) In section 70(2) of that Act for “Capital Gains Tax Act 1979” and “32(1)(a)” there shall be substituted “ Taxation of Chargeable Gains Act 1992 ”and “ 38(1)(a) ”.
- (3) In section 158(2) of that Act in paragraph (a) for “section 47(1) of the Finance (No.2) Act 1975” there shall be substituted “ section 283(1) of the Taxation of Chargeable Gains Act 1992 ”.
- (4) In section 178(2) of that Act for paragraph (i) there shall be substituted—  
“(i) section 283 of the Taxation of Chargeable Gains Act 1992”;
- (5) In Schedule 5 to that Act in paragraphs 8 and 11 for “85(1) of the Capital Gains Tax Act 1979” and “77” there shall be substituted “ 135(1) of the Taxation of Chargeable Gains Act 1992 ”and “ 126 ”.
- <sup>F425</sup>(6) .....

**Textual Amendments**

**F425** Sch. 10 para. 19(6) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))

*Electricity Act 1989 c. 29*

- 20 (1) In paragraph 2 of Schedule 11 to the Electricity Act 1989 for “278 of the Income and Corporation Taxes Act 1970” and “272 of the Income and Corporation Act 1970” there shall be substituted respectively “ 178 or 179 of the 1992 Act ”and “ 170 of the 1992 Act ”; and at the end of that paragraph there shall be added—  
“(2A) In this Schedule “the 1992 Act” means the Taxation of Chargeable Gains Act 1992.”
- (2) In paragraph 3 of that Schedule for “117 of the Capital Gains Tax Act 1979” and “117” (where it secondly appears) there shall be substituted “ 154 of the 1992 Act ”and “ 154 ”.
- (3) In paragraphs 4 and 5 of that Schedule for “Capital Gains Tax Act 1979” (in each place) there shall be substituted “ 1992 Act ”.

*Capital Allowances Act 1990 c. 1*

<sup>F426</sup>21 .....

**Textual Amendments**

**F426** Sch. 10 para. 21 repealed (22.3.2001) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 4](#)

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*Finance Act 1990 c. 29*

- 22 (1) The Finance Act 1990 shall have effect subject to the following amendments.
- (2) In section 116(5) for “150(1) to (3) and 152 of the Capital Gains Tax Act 1979” there shall be substituted “ 272(1) to (4) and 273 of the Taxation of Chargeable Gains Act 1992 ”.
- (3) In section 120 for “27 of the Capital Gains Tax Act 1979” there shall be substituted “ 28 of the Taxation of Chargeable Gains Act 1992 ”.
- <sup>F427</sup>(4) .....
- (5) In Schedule 12—
- (a) in paragraph 2—
- (i) for “the Capital Gains Tax Act 1979 (“the 1979 Act”)” there shall be substituted “ the Taxation of Chargeable Gains Act 1992 (“the 1992 Act”) ”;
- (ii) for “5” there shall be substituted “ 2 ”; and
- (iii) for “134 of the 1979” there shall be substituted “ 251 of the 1992 ”;
- (b) in paragraphs 4, 5 and 6 for “1979” there shall be substituted “ 1992 ”;
- (c) in paragraph 7 for “115 to 119 of the 1979” there shall be substituted “ 152 to 156 of the 1992 ”; and
- (d) in paragraph 10 for the definition of “the 1979 Act” there shall be substituted — “the 1992 Act” means the Taxation of Chargeable Gains Act 1992. ”

**Textual Amendments**

**F427** Sch. 10 para. 22(4) repealed (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 41 Pt. V\(3\)](#) (with [Sch. 15](#))

*Finance Act 1991 c. 31.*

- 23 In section 72(4) of the Finance Act 1991 for “5(1) of the Capital Gains Tax Act 1979” there shall be substituted “ 3(1) of the Taxation of Chargeable Gains Act 1992 ”.

*Ports Act 1991 c. 52*

- 24 (1) In section 16 of the Ports Act 1991 for “Capital Gains Tax Act 1979” and “29A(1)” there shall be substituted respectively “ 1992 Act ” and “ 17(1) ”.
- (2) In section 17 of that Act—
- (a) for “1979” (wherever it occurs) there shall be substituted “ 1992 ”;
- (b) in subsection (6) for “278(3) or (3C) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 178(3) or (5) or 179(3) or (6) of the 1992 Act ”;
- (c) in subsection (7)—
- (i) for paragraph (a) there shall be substituted—
- “(a) “the relevant six-year limit” means in relation to section 178(3) or 179(3) the six year period mentioned in section 178(1) or

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- 179(1) and in relation to section 178(5) or 179(6) the six year period mentioned in 178(5)(a) or 179(6)(a); and”;
- (ii) in paragraph (b) for “278(3)”, “278(3C)” and “subsection (3D) of that section” there shall be substituted “ 178(3) or 179(3) ”, “ 178(5) or 179(6) ”and “ section 178(6) or 179(7) ”respectively; and
- (d) in subsection (13) for “272 to 281 of the Income and Corporation Taxes Act 1970”, “(1E) and (1F) of section 272” and “(1E)” there shall be substituted “ 170 to 181 of the 1992 Act ”, “ (7) and (8) of section 170 ”and “ (7) ”respectively.
- (3) In section 18 of that Act—
- (a) in subsections (2) and (8) for “1979” there shall be substituted “ 1992 ”;
- (b) in subsection (4) for “267(1) or 273(1) of the Income and Corporation Taxes Act 1970” there shall be substituted “ 139(1) or 171(1) of the 1992 Act ”.
- (4) In section 20 of that Act for “27 of the Capital Gains Tax Act 1979” there shall be substituted “ 28 of the 1992 Act ”.
- (5) In section 35 of that Act—
- (a) in subsection (3) for “Capital Gains Tax Act 1979” there shall be substituted “ 1992 Act ”; and
- (b) in subsection (6) for “278 of the Income and Corporation Taxes Act 1970” and “273 to 281” there shall be substituted “ 178 or 179 of the 1992 Act ”and “ 171 to 181 ”.
- (6) In section 40(1) of that Act there shall be added at the end “ and “the 1992 Act” means the Taxation of Chargeable Gains Act 1992. ”

*British Technology Group Act 1991 c. 66*

- 25 In section 12(2) of the British Technology Group Act 1991 for “345 of the Income and Corporation Taxes Act 1988” there shall be substituted “ 8 of the Taxation of Chargeable Gains Act 1992 ”.

SCHEDULE 11

Section 290.

TRANSITIONAL PROVISIONS AND SAVINGS

**PART I**

VALUATION

*Preliminary*

- 1 (1) This Part of this Schedule has effect in cases where the market value of an asset at a time before the commencement of this Act is material to the computation of a gain under this Act; and in this Part any reference to an asset includes a reference to any part of an asset.

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- (2) Where sub-paragraph (1) above applies, the market value of an asset (or part of an asset) at any time before the commencement of this Act shall be determined in accordance with sections 272 to 274 but subject to the following provisions of this Part.
- (3) In any case where section 274 applies in accordance with sub-paragraph (2) above the reference in that section to inheritance tax shall be construed as a reference to capital transfer tax.

*Gifts and transactions between connected persons before 20th March 1985*

- 2 (1) Where sub-paragraph (1) above applies for the purpose of determining the market value of any asset at any time before 20th March 1985 (the date when section 71 of the Finance Act 1985, now section 19, replaced section 151 of the 1979 Act, which is reproduced below) sub-paragraphs (2) to (4) below shall apply.
- (2) Except as provided by sub-paragraph (4) below section 19 shall not apply in relation to transactions occurring before 20th March 1985.
- (3) If a person is given, or acquires from one or more persons with whom he is connected, by way of 2 or more gifts or other transactions, assets of which the aggregate market value, when considered separately in relation to the separate gifts or other transactions, is less than their aggregate market value when considered together, then for the purposes of this Act their market value shall be taken to be the larger market value, to be apportioned rateably to the respective disposals.
- (4) Where—
  - (a) one or more transactions occurred on or before 19th March 1985 and one or more after that date, and
  - (b) had all the transactions occurred before that date sub-paragraph (3) above would apply, and had all the transactions occurred after that date section 19 would have applied,

then those transactions which occurred on or before that date and not more than 2 years before the first of those which occurred after that date shall be treated as material transactions for the purposes of section 19.

*Valuation of assets before 6th July 1973*

- 3 Section 273 shall apply for the purposes of determining the market value of any asset at any time before 6th July 1973 (the date when the provisions of section 51(1) to (3) of the Finance Act 1973, which are now contained in section 273, came into force) notwithstanding that the asset was acquired before that date or that the market value of the asset may have been fixed for the purposes of a contemporaneous disposal, and in paragraphs 4 and 5 below a “section 273 asset” is an asset to which section 273 applies.
- 4 (1) This paragraph applies if, in a case where the market value of a section 273 asset at the time of its acquisition is material to the computation of any chargeable gain under this Act—
  - (a) the acquisition took place on the occasion of a death occurring after 30th March 1971 and before 6th July 1973, and
  - (b) by virtue of paragraph 9 below, the principal value of the asset for the purposes of estate duty on that death would, apart from this paragraph, be

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taken to be the market value of the asset at the date of the death for the purposes of this Act.

- (2) If the principal value referred to in sub-paragraph (1)(b) above falls to be determined as mentioned in section 55 of the Finance Act 1940 or section 15 of the Finance (No.2) Act (Northern Ireland) 1946 (certain controlling shareholdings to be valued on an assets basis), nothing in section 273 shall affect the operation of paragraph 9 below for the purpose of determining the market value of the asset at the date of the death.
  - (3) If sub-paragraph (2) above does not apply, paragraph 9 below shall not apply as mentioned in sub-paragraph (1)(b) above and the market value of the asset on its acquisition at the date of the death shall be determined in accordance with sections 272 (but with the same modifications as are made by paragraphs 7 and 8 below) and 273.
- 5 (1) In any case where—
- (a) before 6th July 1973 there has been a part disposal of a section 273 asset (“the earlier disposal”), and
  - (b) by virtue of any enactment, the acquisition of the asset or any part of it was deemed to be for a consideration equal to its market value, and
  - (c) on or after 6th July 1973 there is a disposal (including a part disposal) of the property which remained undisposed of immediately before that date (“the later disposal”),
- sub-paragraph (2) below shall apply in computing any chargeable gain accruing on the later disposal.
- (2) Where this sub-paragraph applies, the apportionment made by virtue of paragraph 7 of Schedule 6 to the Finance Act 1965 (corresponding to section 42 of this Act) on the occasion of the earlier disposal shall be recalculated on the basis that section 273(3) of this Act was in force at the time and applied for the purposes of the determination of—
    - (a) the market value referred to in sub-paragraph (1)(b) above, and
    - (b) the market value of the property which remained undisposed of after the earlier disposal, and
    - (c) if the consideration for the earlier disposal was, by virtue of any enactment, deemed to be equal to the market value of the property disposed of, that market value.

#### *Valuation of assets on 6th April 1965*

- 6 (1) For the purpose of ascertaining the market value of any shares or securities in accordance with paragraph 1(2) of Schedule 2, section 272 shall have effect subject to the provisions of this paragraph.
- (2) Subsection (3)(a) shall have effect as if for the words, “one-quarter” there were substituted the words “one-half”, and as between the amount under paragraph (a) and the amount under paragraph (b) of that subsection the higher, and not the lower, amount shall be chosen.
  - (3) Subsection (5) shall have effect as if for the reference to an amount equal to the buying price there were substituted a reference to an amount halfway between the buying and selling prices.

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- (4) Where the market value of any shares or securities not within section 272(3) falls to be ascertained by reference to a pair of prices quoted on a stock exchange, an adjustment shall be made so as to increase the market value by an amount corresponding to that by which any market value is increased under subparagraph (2) above.

*References to the London Stock Exchange before 25th March 1973 and Exchange Control restrictions before 13th December 1979*

- 7 (1) For the purposes of ascertaining the market value of an asset before 25th March 1973 section 272(3) and (4) shall have effect subject to the following modifications—
- (a) for “[<sup>F428</sup>quoted] in The Stock Exchange Daily Official List” and “quoted in that List” there shall be substituted respectively “ quoted on the London Stock Exchange ”and “ so quoted ”;
  - (b) for “The Stock Exchange Daily Official List” there shall be substituted “ the Stock Exchange Official Daily List ”;
  - (c) for “The Stock Exchange provides a more active market elsewhere than on the London trading floor” there shall be substituted “ some other stock exchange in the United Kingdom affords a more active market ”; and
  - (d) for “if the London trading floor is closed” there shall be substituted “ if the London Stock Exchange is closed ”.
- (2) For the purposes of ascertaining the market value of an asset before 13th December 1979 section 272 shall have effect as if the following subsection were inserted after subsection (5)—
- “(5A) In any case where the market value of an asset is to be determined at a time before 13th December 1979 and the asset is of a kind the sale of which was (at the time the market value is to be determined) subject to restrictions imposed under the Exchange Control Act 1947 such that part of what was paid by the purchaser was not retainable by the seller, the market value, as arrived at under subsection (1), (3), (4) or (5) above, shall be subject to such adjustment as is appropriate having regard to the difference between the amount payable by a purchaser and the amount receivable by a seller.”

**Textual Amendments**

**F428** Word in Sch. 11 para. 7(1)(a) substituted (with effect in accordance with Sch. 38 para. 12(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 38 para. 12\(2\)](#)

*Depreciated valuations referable to deaths before 31st March 1973*

- 8 In any case where this Part applies, section 272(2) shall have effect as if the following proviso were inserted at the end—

Provided that where capital gains tax is chargeable, or an allowable loss accrues, in consequence of a death before 31st March 1973 and the market value of any property on the date of death taken into account for the purposes of that tax or loss has been depreciated by reason of the death, the estimate of the market value shall take that depreciation into account.



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### *Estate duty*

- 9 (1) Where estate duty (including estate duty leviable under the law of Northern Ireland) is chargeable in respect of any property passing on a death after 30th March 1971 and the principal value of an asset forming part of that property has been ascertained (whether in any proceedings or otherwise) for the purposes of that duty, the principal value so ascertained shall, subject to paragraph 4(3) above, be taken for the purposes of this Act to be the market value of that asset at the date of the death.
- (2) Where the principal value has been reduced under section 35 of the Finance Act 1968 or section 1 of the Finance Act (Northern Ireland) 1968 (tapering relief for gifts inter vivos etc.), the reference in sub-paragraph (1) above to the principal value as ascertained for the purposes of estate duty is a reference to that value as so ascertained before the reduction.

## **PART II**

### **OTHER TRANSITORY PROVISIONS**

#### *Value-shifting*

- 10 (1) Section 30 applies only where the reduction in value mentioned in subsection (1) of that section (or, in a case within subsection (9) of that section, the reduction or increase in value) is after 29th March 1977.
- (2) No account shall be taken by virtue of section 31 of any reduction in the value of an asset attributable to the payment of a dividend before 14th March 1989.
- (3) No account shall be taken by virtue of section 32 of any reduction in the value of an asset attributable to the disposal of another asset before 14th March 1989.
- (4) Section 34 shall not apply where the reduction in value, by reason of which the amount referred to in subsection (1)(b) of that section falls to be calculated, occurred before 14th March 1989.

#### *Assets acquired on disposal chargeable under Case VII of Schedule D*

- 11 (1) In this paragraph references to a disposal chargeable under Case VII are references to cases where the acquisition and disposal was in circumstances that the gain accruing on it was chargeable under Case VII of Schedule D, or where it would have been so chargeable if there were a gain so accruing.
- (2) The amount or value of the consideration for the acquisition of an asset by the person acquiring it on a disposal chargeable under Case VII shall not under any provision of this Act be deemed to be an amount greater than the amount taken into account as consideration on that disposal for the purposes of Case VII.
- (3) Any apportionment of consideration or expenditure falling to be made in relation to a disposal chargeable under Case VII in accordance with section 164(4) of the Income and Corporation Taxes Act 1970, and in particular in a case where section 164(6) of that Act (enhancement of value of land by acquisition of adjoining land) applied, shall be followed for the purposes of this Act both in relation to a disposal of the assets acquired on the disposal chargeable under Case VII and, where the disposal

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chargeable under Case VII was a part disposal, in relation to a disposal of what remains undisposed of.

- (4) Sub-paragraph (3) above has effect notwithstanding section 52(4).

*Unrelieved Case VII losses*

- 12 Where no relief from income tax (for a year earlier than 1971-72) has been given in respect of a loss or part of a loss allowable under Case VII of Schedule D, the loss or part shall, notwithstanding that the loss accrued before that year, be an allowable loss for the purposes of capital gains tax, but subject to any restrictions imposed by section 18.

*Devaluation of sterling: securities acquired with borrowed foreign currency*

- 13 (1) This paragraph applies where, in pursuance of permission granted under the Exchange Control Act 1947, currency other than sterling was borrowed before 19th November 1967 for the purpose of investing in foreign securities (and had not been repaid before that date), and it was a condition of the permission—
- (a) that repayment of the borrowed currency should be made from the proceeds of the sale in foreign currency of the foreign securities so acquired or out of investment currency, and
  - (b) that the foreign securities so acquired should be kept in separate accounts to distinguish them from others in the same ownership,
- and securities held in such a separate account on 19th November 1967 are in this paragraph referred to as “designated securities” .
- (2) In computing the gain accruing to the borrower on the disposal of any designated securities or on the disposal of any currency or amount standing in a bank account on 19th November 1967 and representing the loan, the sums allowable as a deduction under section 38(1)(a) shall, subject to sub-paragraph (3) below, be increased by multiplying them by seven-sixths.
- (3) The total amount of the increases so made in computing all gains (and losses) which are referable to any one loan (made before 19th November 1967) shall not exceed one-sixth of the sterling parity value of that loan at the time it was made.
- (4) Designated securities which on the commencement of this paragraph constitute a separate 1982 holding (within the meaning of section 109), shall continue to constitute a separate 1982 holding until such time as a disposal takes place on the occurrence of which sub-paragraph (3) above operates to limit the increases which would otherwise be made under sub-paragraph (2) in allowable deductions.
- (5) In this paragraph and paragraph 14 below, “foreign securities” means securities expressed in a currency other than sterling, or shares having a nominal value expressed in a currency other than sterling, or the dividends on which are payable in a currency other than sterling.

*Devaluation of sterling: foreign insurance funds*

- 14 (1) The sums allowable as a deduction under section 38(1)(a) in computing any gains to which this paragraph applies shall be increased by multiplying by seven-sixths.
- (2) This paragraph applies to gains accruing—

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- (a) to any underwriting member of Lloyd's, or
- (b) to any company engaged in the business of marine protection and indemnity insurance on a mutual basis, on the disposal by that person after 18th November 1967 of any foreign securities which on that date formed part of a trust fund—
  - (i) established by that person in any country or territory outside the United Kingdom, and
  - (ii) representing premiums received in the course of that person's business, and
  - (iii) wholly or mainly used for the purpose of meeting liabilities arising in that country or territory in respect of that business.

*Gilt-edged securities past redemption date*

- 15 So far as material for the purposes of this or any other Act, the definition of “gilt-edged securities” in Schedule 9 to this Act shall include any securities which were gilt-edged securities for the purposes of the 1979 Act, and the redemption date of which fell before 1st January 1992.

*Qualifying corporate bonds, company reorganisations, share conversions etc.*

- 16 (1) Part IV of this Act has effect subject to the provisions of this paragraph.
- (2) The substitution of Chapter II of that Part for the enactments repealed by this Act shall not alter the law applicable to any reorganisation or reduction of share capital, conversion of securities or company amalgamation taking place before the coming into force of this Act.
- (3) Sub-paragraph (2) above applies in particular to the law determining whether or not any assets arising on an event mentioned in that sub-paragraph are to be treated as the same asset as the original holding of shares, securities or other assets.
- (4) In relation to a disposal or exchange on or after 6th April 1992, the following amendments shall be regarded as always having had effect, that is to say, the amendments to section 64 of, or Schedule 13 to, the Finance Act 1984 made by section 139 of, or paragraph 6 of Schedule 14 to, the Finance Act 1989, paragraph 28 of Schedule 10 to the Finance Act 1990 or section 98 of, or paragraph 1 of Schedule 10 to, the Finance Act 1991, or by virtue of the amendments to paragraph 1 of Schedule 18 to the Taxes Act made by section 77 of the Finance Act 1991.

*Land: allowance for betterment levy*

- 17 (1) Where betterment levy charged in the case of any land in respect of an act or event which fell within Case B or Case C or, if it was the renewal, extension or variation of a tenancy, Case F—
- (a) has been paid, and
  - (b) has not been allowed as a deduction in computing the profits or gains or losses of a trade for the purposes of Case I of Schedule D;
- then, if the person by whom the levy was paid disposes of the land or any part of it and so claims, the following provisions of this paragraph shall have effect.

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*Status: Point in time view as at 21/07/2008.*

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- (2) Paragraph 9 of Schedule 2 shall apply where the condition stated in sub-paragraph (1) (a) of that paragraph is satisfied, notwithstanding that the condition in sub-paragraph (1)(b) of that paragraph is not satisfied.
- (3) Subject to the following provisions of this paragraph, there shall be ascertained the excess, if any, of—
  - (a) the net development value ascertained for the purposes of the levy, over
  - (b) the increment specified in sub-paragraph (6) below;and the amount of the excess shall be treated as an amount allowable under section 38(1)(b).
- (4) Where the act or event in respect of which the levy was charged was a part disposal of the land, section 38 shall apply as if the part disposal had not taken place and sub-paragraph (5) below shall apply in lieu of sub-paragraph (3) above.
- (5) The amount or value of the consideration for the disposal shall be treated as increased by the amount of any premium or like sum paid in respect of the part disposal, and there shall be ascertained the excess, if any, of—
  - (a) the aggregate specified in sub-paragraph (7) below, over
  - (b) the increment specified in sub-paragraph (6) below;and the amount of the excess shall be treated as an amount allowable under section 38(1)(b).
- (6) The increment referred to in sub-paragraphs (3)(b) and (5)(b) above is the excess, if any, of—
  - (a) the amount or value of the consideration brought into account under section 38(1)(a), over
  - (b) the base value ascertained for the purposes of the levy.
- (7) The aggregate referred to in sub-paragraph (5)(a) above is the aggregate of—
  - (a) the net development value ascertained for the purposes of the levy, and
  - (b) the amount of any premium or like sum paid in respect of the part disposal, in so far as charged to tax under Schedule A (or, as the case may be, Case VIII of Schedule D), and
  - (c) the chargeable gain accruing on the part disposal.
- (8) Where betterment levy in respect of more than one act or event has been charged and paid as mentioned in sub-paragraph (1) above, sub-paragraphs (2) to (7) above shall apply without modifications in relation to the betterment levy in respect of the first of them; but in relation to the other or others sub-paragraph (3) or, as the case may be, (5) above shall have effect as if the amounts to be treated thereunder as allowable under section 38(1)(b) were the net development value specified in sub-paragraph (3)(a) or, as the case may be, the aggregate referred to in sub-paragraph (5) (a) of this paragraph.
- (9) Where the disposal is of part only of the land sub-paragraphs (2) to (8) above shall have effect subject to the appropriate apportionments.
- (10) References in this paragraph to a premium include any sum payable as mentioned in section 34(4) or (5) of the Taxes Act (sums payable in lieu of rent or as consideration for the surrender of lease or for variation or waiver of term) and, in relation to Scotland, a grassum.

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*Non-resident trusts*

- 18 Without prejudice to section 289 or Part III of this Schedule—
- (a) any tax chargeable on a person which is postponed under subsection (4)(b) of section 17 of the 1979 Act shall continue to be postponed until that person becomes absolutely entitled to the part of the settled property concerned or disposes of the whole or part of his interest, as mentioned in that subsection; and
  - (b) section 70 of and Schedule 14 to the Finance Act 1984 shall continue to have effect in relation to amounts of tax which are postponed under that Schedule, and accordingly in paragraph 12 of that Schedule the references to section 80 of the Finance Act 1981 and to subsections (3) and (4) of that section include references to section 87 of this Act and subsections (4) and (5) of that section respectively.

*Private residences*

- 19 The reference in section 222(5)(a) to a notice given by any person within 2 years from the beginning of the period mentioned in section 222(5) includes a notice given before the end of the year 1966-67, if that was later.

*Works of art etc.*

- 20 The repeals made by this Act do not affect the continued operation of sections 31 and 32 of the Finance Act 1965, in the form in which they were before 13th March 1975, in relation to estate duty in respect of deaths occurring before that date.

*Disposal before acquisition*

- 21 The substitution of this Act for the corresponding enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not there is a corresponding provision in this Act) so far as it relates to an asset which—
- (a) was disposed of before being acquired, and
  - (b) was disposed of before the commencement of this Act.

*Estate duty*

- 22 Nothing in the repeals made by this Act shall affect any enactment as it applies to the determination of any principal value for the purposes of estate duty.

*Validity of subordinate legislation*

- 23 So far as this Act re-enacts any provision contained in a statutory instrument made in exercise of powers conferred by any Act, it shall be without prejudice to the validity of that provision, and any question as to its validity shall be determined as if the re-enacted provision were contained in a statutory instrument made under those powers.

*Amendments in other Acts*

- 24 (1) The repeal by this Act of the Income and Corporation Taxes Act 1970 does not affect—

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- (a) the amendment made by paragraph 3 of Schedule 15 of that Act to section 26 of the Finance Act 1956, or
  - (b) paragraph 10 of that Schedule so far it applies in relation to the Management Act.
- (2) The repeal by this Act of Schedule 7 to the 1979 Act does not affect the amendments made by that Schedule to any enactment not repealed by this Act.

*Saving for Part III of this Schedule*

- 25 The provisions of this Part of this Schedule are without prejudice to the generality of Part III of this Schedule.

### PART III

#### ASSETS ACQUIRED BEFORE COMMENCEMENT

- 26 (1) The substitution of this Act for the enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not there is a corresponding provision in this Act) so far as it determines—
- (a) what amount the consideration is to be taken to be for the purpose of the computation under this Act of any chargeable gain; or
  - (b) whether and to what extent events in, or expenditure incurred in, or other amounts referable to, a period earlier than the chargeable periods to which this Act applies may be taken into account for any tax purposes in a chargeable period to which this Act applies.
- (2) Without prejudice to sub-paragraph (1) above, the repeals made by this Act shall not affect—
- (a) the enactments specified in Part V of Schedule 14 to the Finance Act 1971 (charge on death) so far as their operation before repeal falls to be taken into account in chargeable periods to which this Act applies,
  - (b) the application of the enactments repealed by the 1979 Act to events before 6th April 1965 in accordance with paragraph 31 of Schedule 6 to the Finance Act 1965.
- (3) This paragraph has no application to the law relating to the determination of the market value of assets.
- 27 Where the acquisition or provision of any asset by one person was, immediately before the commencement of this paragraph and by virtue of any enactment, to be taken for the purposes of Schedule 5 to the 1979 Act to be the acquisition or disposal of it by another person, then, notwithstanding the repeal by this Act of that enactment, Schedule 2 to this Act shall also have effect as if the acquisition or provision of the asset by the first-mentioned person had been the acquisition or provision of it by that other person.

*Status: Point in time view as at 21/07/2008.*

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## PART IV

### OTHER GENERAL SAVINGS

- 28 Where under any Act passed before this Act and relating to a country or territory outside the United Kingdom there is a power to affect Acts passed or in force before a particular time, or instruments made or having effect under such Acts, and the power would, but for the passing of this Act, have included power to change the law which is reproduced in, or is made or has effect under, this Act, then that power shall include power to make such provision as will secure the like change in the law reproduced in, or made or having effect under, this Act notwithstanding that this Act is not an Act passed or in force before that time.
- 29 (1) The continuity of the law relating to the taxation of chargeable gains shall not be affected by the substitution of this Act for the enactments repealed by this Act and earlier enactments repealed by and corresponding to any of those enactments (“the repealed enactments”).
- (2) Any reference, whether express or implied, in any enactment, instrument or document (including this Act or any Act amended by this Act) to, or to things done or falling to be done under or for the purposes of, any provision of this Act shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.
- (3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made after the passing of this Act) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

## SCHEDULE 12

Section 290.

### REPEALS

Chapter	Short title	Extent of Repeal
1968 c. 48	International Organisations Act 1968	In Schedule 1, paragraph 24(b).
1970 c. 10	Income and Corporation Taxes Act 1970	The whole Act.
1970 c. 24	Finance Act 1970	Sections 27 and 28. Section 29(3), (5), (6), (7) and (9).

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		Schedule 3.
		Schedule 6.
1971 c. 68	Finance Act 1971	Section 55.
1973 c. 51	Finance Act 1973	Section 38(1), (3) to (5) and (8).
1974 c. 30	Finance Act 1974	Section 29.
1974 c. 44	Housing Act 1974	Section 11.
1975 c. 45	Finance (No.2) Act 1975	Section 47.
		Section 58.
1976 c. 40	Finance Act 1976	Section 54.
		In section 131(2) the words "and capital gains tax".
1977 c. 36	Finance Act 1977	Sections 41 and 42.
1979 c. 14	Capital Gains Tax Act 1979	The whole Act.
1979 c. 47	Finance (No.2) Act 1979	Section 17.
1980 c. 48	Finance Act 1980	Section 61(2).
		Sections 77 to 84.
		Section 117.
		Schedule 18.
1981 c. 35	Finance Act 1981	Section 38(3) and (4).
		Sections 79 to 91.
		In section 135 the words "capital gains tax and".
1982 c. 39	Finance Act 1982	Section 80.
		Sections 83 to 88.
		Section 148.
		Schedule 13.
1982 c. 53	Administration of Justice Act 1982	Section 46(2)(f).
1983 c. 20	Mental Health Act 1983	In Schedule 4 paragraph 49.
1983 c. 28	Finance Act 1983	Section 34.
		Schedule 6.
1983 c. 49	Finance (No.2) Act 1983	Section 7.
1984 c. 32	London Regional Transport Act 1984	In Schedule 6 paragraphs 7 and 8.
1984 c. 43	Finance Act 1984	Section 44.
		Section 50.



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		Section 56(3) and (4).
		Sections 63 to 71.
		Section 79 to 81.
		In section 126(3)(b) the words “and capital gains tax”.
		Schedules 11, 13 and 14.
1984 c. 51	Inheritance Tax Act 1984	In Schedule 8 paragraphs 9 to 12 and 23.
1985 c. 54	Finance Act 1985	Sections 67 to 72.
		Section 95(1)(b).
		Schedules 19 to 21.
1985 c. 71	Housing (Consequential Provisions) Act 1985	In Schedule 2 paragraph 18.
1986 c. 41	Finance Act 1986	Sections 58, 59 and 60.
1986 c. 56	Parliamentary Constituencies Act 1986	In Schedule 3 paragraph 6.
1987 c. 16	Finance Act 1987	Section 40.
		Section 68(3).
1987 c. 51	Finance (No.2) Act 1987	Section 64.
		Section 73.
		Sections 79, 80 and 81.
		In Schedule 6, paragraphs 2, 4 and 5.
1988 c. 1	Income and Corporation Taxes Act 1988	Section 122(1)(b) (and the word “and” immediately preceding it), (3) and (8).
		Sections 345 to 347.
		Section 761(4).
		In Schedule 28, paragraph 8(4) and (5).
		In Schedule 29, paragraphs 10(4)(b), 12 and 15 to 28; in the Table in paragraph 32, the entries relating to the Income and Corporation Taxes Act 1970, the Finance Act 1970, the Finance (No.2) Act 1975, the Capital Gains Tax Act 1979, Schedule 18 to the Finance Act 1980, sections 83 and 84 of the Finance Act 1981, Schedule 6 to the

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		Finance Act 1983, section 50 of the Finance Act 1984, sections 68, 71 and 72 of, and Schedules 19 and 20 to, the Finance Act 1985 and section 58 of the Finance Act 1986.
1988 c. 39	Finance Act 1988	Section 62 to 64. Sections 96 to 104. Section 105(1) to (5). Sections 106 to 116. Section 118. In Schedule 6, paragraph 6(5). Schedules 8 to 11. In Schedule 12, paragraphs 4, 5 and 7(b). In Schedule 13, paragraphs 16, 17 and 18.
1988 c. 48	Copyright, Designs and Patents Act 1988	In Schedule 7 paragraph 26.
1989 c. 26	Finance Act 1989	Section 91(2). Section 92(3) and in subsection (4) the words "the Capital Gains Tax Act 1979 or any other enactment relating to capital gains tax". Section 96(3). Section 122. Section 123(1)(a). Section 124 to 141. Section 179(1)(a)(vi). In Schedule 12, paragraph 6. Schedules 14 and 15.
1989 c. 40	Companies Act 1989	In Schedule 18, paragraph 20.
1990 c. 1	Capital Allowances Act 1990	In Schedule 1, paragraphs 3 and 9(1) to (3).
1990 c. 29	Finance Act 1990	Section 28(3). Sections 31 to 40. Sections 46 and 47.

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		Section 54.
		Sections 63 to 65.
		Section 70.
		Section 72.
		Section 81(3) and (6).
		Section 83 to 86.
		Section 127(2).
		In Schedule 6, paragraph 10.
		Schedule 8.
		In Schedule 9, paragraphs 1 and 2.
		In Schedule 10, paragraphs 28 and 29(2) and (3).
		In Schedule 12, paragraph 2(2).
		In Schedule 14, paragraphs 17, 18 and 19(2), (3) and (4).
		In Schedule 18, paragraph 3.
1991 c. 21	Disability Living Allowance and Disability Working Allowance Act 1991	In Schedule 2 paragraph 9.
1991 c. 31	Finance Act 1991	Section 57(4).
		Section 67.
		Section 77(2).
		Section 78(2), (3), (6) and (7).
		Sections 83 to 102.
		In Schedule 6, paragraph 6.
		In Schedule 7, paragraphs 14 and 15.
		In Schedule 10, paragraphs 1 and 4.
		Schedules 16 to 18.
1991 c. 52	Ports Act 1991	Section 18(8)(a).
1992 c. 6	Social Security (Consequential Provisions) Act 1992	In Schedule 2, paragraph 51.

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## STATUTORY INSTRUMENTS

<b>Number</b>	<b>Title</b>	<b>Extent of Repeal</b>
S.I. 1979/1231	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1979	The whole Order.
S.I. 1979/1676	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1979	The whole Order.
S.I. 1980/507	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1980	The whole Order.
S.I. 1980/922	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1980	The whole Order.
S.I. 1980/1910	Capital Gains Tax (Gilt-edged Securities) (No. 3) Order 1980	The whole Order.
S.I. 1981/615	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1981	The whole Order.
S.I. 1981/1879	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1981	The whole Order.
S.I. 1982/413	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1982	The whole Order.
S.I. 1982/1774	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1982	The whole Order.
S.I. 1983/1774	Capital Gains Tax (Gilt-edged Securities) Order 1983	The whole Order.
S.I. 1984/1966	Capital Gains Tax (Gilt-edged Securities) Order 1984	The whole Order.
S.I. 1986/12	Capital Gains Tax (Gilt-edged Securities) Order 1986	The whole Order.
S.I. 1987/259	Capital Gains Tax (Gilt-edged Securities) Order 1987	The whole Order.
S.I. 1988/360	Capital Gains Tax (Gilt-edged Securities) Order 1988	The whole Order.
S.I. 1989/944	Capital Gains Tax (Gilt-edged Securities) Order 1989	The whole Order.
S.I. 1991/2678	Capital Gains Tax (Gilt-edged Securities) Order 1991	The whole Order.

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TABLE OF DERIVATIONS  
*NOTE: THE FOLLOWING ABBREVIATIONS ARE USED IN THIS TABLE:*

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1970	= Income and Corporation Taxes Act 1970 c. 10.
1970(F)	= Finance Act 1970 c. 24.
1973	= Finance Act 1973 c. 51.
HA1974	= Housing Act 1974 c. 44.
1975(2)	= Finance (No. 2) Act 1975 c. 45.
1976	= Finance Act 1976 c. 40.
1977	= Finance Act 1977 c. 36.
1979	= Capital Gains Tax Act 1979 c. 14.
1979(2)	= Finance (No. 2) Act 1979 c. 47.
1980	= Finance Act 1980 c. 48.
1981	= Finance Act 1981 c. 35.
1982	= Finance Act 1982 c. 39
AJA1982	= Administration of Justice Act 1982 c. 53.
1983(2)	= Finance (No. 2) Act 1983 c. 49.
LRTA1984	= London Regional Transport Act 1984 c. 32.
1984	= Finance Act 1984 c. 43.
ITA	= Inheritance Tax Act 1984 c. 51.
CCCPA	= Companies Consolidation (Consequential Provisions) Act 1985 c. 9.
1985	= Finance Act 1985 c. 54.
HCPA	= Housing (Consequential Provisions) Act 1985 c. 71.
1986	= Finance Act 1986 c. 41.
PCA	= Parliamentary Constituencies Act 1986 c. 56.
1987	= Finance Act 1987 c. 16.
1987(2)	= Finance (No. 2) Act 1987 c. 51.
ICTA	= Income and Corporation Taxes Act 1988 c. 1.
1988	= Finance Act 1988 c. 39.
CDPA1988	= Copyright, Designs and Patents Act 1988 c. 48.
HA1988	= Housing Act 1988 c. 50.

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1989	= Finance Act 1989 c. 26.
CAA	= Capital Allowances Act 1990 c. 1.
1990	= Finance Act 1990 c. 29.
DLA1991	= Disability Living Allowance and Disability Working Allowance Act 1991 c. 21 Sch. 2 §9; Disability Living Allowance and Disability Working Allowance (Northern Ireland Consequential Amendments) Order 1991 Art. 2.
1991	= Finance Act 1991 c. 31.
SSCP	= Security Security (Consequential Provisions) Act 1992 c. 6; Security Security (Consequential Provisions) Act (Northern Ireland) 1992 c. 9.
SI 1988/744	= The Finance (No. 2) Act 1987 (Commencement) Order 1988.
SI 1989/1299	= The Income Tax (Stock Lending) Regulations 1989.
SI 1989/1788	= The Finance Act 1989 (Repeal of Tithe Redemption Enactments) (Appointed Day) Order 1989.
SI 1991/736	= Capital Gains (Annual Exempt Amount) Order 1991.

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<b>Provision of Bill</b>	<b>Derivation</b>
1	1979 s. 1.
2(1)	1979 s. 2.
(2)	1979 s. 4(1).
(3)	1979 s. 29(5).
3(1)	1979 s. 5(1); 1980 s. 77(2); 1982 s. 80(1).
(2)-(4)	1979 s. 5(1A), (1B), (1C); 1982 s. 80(2); S.I. 1991/736.
(5), (6)	1979 s. 5(4), (5); 1982 s. 80(1).
(7)	1979 Sch. 1 §4.
(8)	1979 s. 5(6).
4	1988 s. 98.
5	1988 s. 100.
6	1988 s. 102; 1991 Sch. 6 §6.
7	1979 s. 7; 1980 s. 61(2).
8	ICTA s. 345, 834.

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9	1979 s. 18(1)-(3).
10(1)	1979 s. 12(1).
(2)	1979 s. 12(1A); 1989 s. 128(2).
(3)	ICTAs. 11(2)(b), 6(4).
(4)	1979 s. 12(2).
(5)	1979 s. 12(2A); 1989 s. 126(2).
(6)	1979 s. 12(3).
11	1979 s. 18(5)-(8); ICTA Sch. 29 §16.
12	1979 s. 14.
13(1)-(9)	1979 s. 15(1)-(9).
(10)	1981 s. 85.
(11)	1979 s. 15(10).
14	1979 s. 16.
15	1979 s. 28(1), (2), 30; 1982 s. 86.
16	1979 s. 29(1)-(4).
17	1979 s. 29A(1), (2); 1981 s. 90.
18	1979 s. 62; 1981 s. 90(3)(a), (b).
19	1985 s.71(1)-(4), (6), (7).
20	1985 Sch. 21.
21	1979 s. 19(1), (2).
22	1979 s. 20.
23	1979 s. 21.
24	1979 s. 22.
25	1989 s. 127; 1990 Sch. 9 §2.
26	1979 s. 23.
27	1979 s. 24.
28	1979 s. 27.
29	1979 s. 25.
30(1)	1979 s. 26(1); 1989 s. 135(1).
(2)	1979 s. 26(1A); 1989 s. 135(1).
(3)-(7)	1979 s. 26(2)-(6).
(8)	1979 s. 26(7); 1989 s. 135(2).
(9)	1979 s. 26(8); 1989 s. 135(3).
31	1979 s. 26A; 1989 s. 136.
32	1979 s. 26B; 1989 s. 136.

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33	1979 s. 26C; 1989 s. 136.
34	1979 s. 26D; 1989 s. 137.
35	1988 s. 96; Sch.8 §1(3); 1989 Sch. 15 §4(2); 1990 s. 70(7)(b), Sch. 12 §2(2); 1979 s. 28(3); 1991 s. 78(7).
36	1988 s. 97.
37(1)-(3)	1979 s. 31(1)-(3); CAA Sch. 1 §3.
(4)	1979 s. 31(4); ICTA Sch. 29 §17.
38	1979 s. 32.
39	1979 s. 33; ICTA Sch. 29 §19.
40	1970 s. 269; 1981 s. 38(3), (4).
41	1979 s. 34; 1988 Sch. 13 §16; CAA Sch. 1 §3.
42	1979 s. 35.
43	1979 s. 36.
44	1979 s. 37.
45	1979 s. 127.
46	1979 s. 38.
47	1979 s. 39.
48	1979 s. 40(2).
49	1979 s. 41.
50	1979 s. 42.
51	1979 s. 19(4), (5).
52	1979 s. 43.
53	1982 s. 86(2)-(4), (6); 1985 Sch. 19 §1.
54	1982 s. 87; 1985 Sch. 19 §2.
55(1)	1985 s. 68(4).
(2)	1985 s. 68(5); 1988 Sch. 8 §11.
(3)	1985 s. 68(5A); 1988 s. 118.
(4)	1985 s. 68(6).
(5)	1985 s. 68(7), (7A); 1988 s. 118; 1989 Sch. 15 §4; 1990 s. 70(7); 1991 s. 78(6), 99(1).
(6)	1985 s. 68(8).
56(1)	1982 Sch. 13 §1; 1985 Sch. 19 §5(1).
(2)	1982 Sch. 13 §2; 1985 Sch. 19 §5(2)(b).
57	1982 Sch. 13 §4.



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58	1979 s. 44.
59	1979 s. 60.
60	1979 s. 46.
61	1979 s. 99; AJA 1982 s. 46(2)(f).
62	1979 s. 49; 1981 s. 90(3)(a).
63	1979 s. 50.
64	1979 s. 47.
65	1979 s. 48.
66	1979 s. 61.
67	1980 s. 79; 1979 s. 56A; 1982 s. 84; 1989 s. 124(3).
68	1979 s. 51.
69	1979 s. 52.
70	1979 s. 53; 1981 s. 86.
71	1979 s. 54; 1981 s. 87.
72	1979 s. 55(1),(3)-(6); 1982 s. 84.
73(1)	1979 s. 56(1); 1981 s. 87.
(2), (3)	1979 s. 56(1A), (1B); 1982 s. 84(2).
74	1979 s. 56A; 1982 s. 84; 1989 Sch. 14 §6(1).
75	1979 s. 57.
76	1979 s. 58.
77	1988 Sch. 10 §1-4.
78(1), (2)	1988 Sch. 10 §5(1), (2).
(3)	1988 Sch. 10 §5(3); 1991 s. 89(3).
79	1988 Sch. 10 §6-9.
80	1991 s. 83.
81	1991 s. 84.
82	1991 s. 85.
83	1991 s. 86.
84	1991 s. 87.
85(1)	1981 s. 88(1).
(2)-(9)	1991 s. 88(1)-(8).
86(1)-(3)	1991 Sch. 16 §1(1)-(3).
(4)	1991 Sch. 16 §2.
(5)	

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87(1), (2)	1981 s. 80(1), (2).
(3)	1980 s. 80(2A); 1991 s. 89(2).
(4)-(7)	1981 s. 80(3)-(6).
(8)	1981 s. 80(6A); 1991 Sch. 18 §1.
(9)	1981 s. 80(7).
(10)	1981 s. 80(1), (8); 1984 s. 70(3).
88	1981 s. 80A; 1991 Sch. 18 §2.
89	1981 s. 81; 1991 Sch. 18 §3.
90	1981 s. 82.
91	1991 Sch. 17 §4.
92(1)	1991 Sch. 17 §2(3).
(2)	1991 Sch. 17 §2(2), (4), (5).
(3)	1991 Sch. 17 §3(1), (2).
(4)-(6)	1991 Sch. 17 §3(3)-(5).
93(1)	1991 Sch. 17 §5(1)(a), (b), (d), 6(1)(a), (b), (d).
(2)	1991 Sch. 17 §5(1)(c), (2), (3).
(3)	1991 Sch. 17 §6(1)(c), (2), (3).
(4)	1991 Sch. 17 §7.
94	1991 Sch. 17 §8.
95	1991 Sch. 17 §9.
96	1981 s. 82A; 1991 Sch. 18 §4.
97(1)(a)	1981 s. 83(1), (11); 1991 Sch. 17 §1(c), 18 §6(2).
(b)	1981 s. 83(1A); 1991 Sch. 18 §6(3).
(2)-(6)	1981 s. 83(2)-(6); 1990 Sch. 14 §18; 1991 Sch. 18 §6(4), (5).
(7)	1981 s. 83(7); 1984 s. 71; 1991 Sch. 18 §6(5).
(8)-(10)	1981 s. 83(8)-(10); 1991 Sch. 18 §5.
98	1981 s. 84.
99(1)	1979 s. 93.
(2)	1979 s. 92(1)(a), (b); 1987 s. 40(3).
(3)	1979 s. 92(2), (3)(a); 1987 s. 40(4).
100(1)	1980 s. 81(1).
(2)	1979 s. 96.

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(3)	1979 s. 92(1)(d).
101	1979 s. 98; 1980 s. 81.
102	1989 s. 140.
103	1990 s. 54.
104(1), (2)	1985 Sch. 19 §8, 9(1), 17(1).
(3)	1979 s. 66(3), (4); 1985 s. 68(9), (10), Sch. 19 §8(1)(c), 9(3).
(4)	1985 Sch. 19 §8(2).
(5)	1985 Sch. 19 §8(3).
(6)	1985 Sch. 19 §10.
105	1979 s. 66(1), (2); 1985 Sch. 19 §17(2).
106	1975(2) s. 58; 1979 Sch. 7.
107(1), (2)	1985 Sch. 19 §16(1), (2).
(3)-(6)	1985 Sch. 19 §18
(7)-(9)	1985 Sch. 19 §19.
108	1982 s. 88; 1985 Sch. 19 §3.
109(1)-(3)	1982 Sch. 13 §6(1), (2), 7(1), 8(1), (2)(a), (3), 9, 10.
(4), (5)	1985 Sch. 19 §6(3), (4).
(6)	1985 Sch. 19 §7(2), (3).
110(1)-(3)	1985 Sch. 19 §11.
(4)	1985 Sch. 19 §12.
(5)-(9)	1985 Sch. 19 §13.
(10), (11)	1985 Sch. 19 §14.
111	1988 s. 113.
112	1985 Sch. 19 §21(2), (3), 20.
113	1982 Sch. 13 §6, 1985 Sch. 19 §5(5).
114	1985 Sch. 19 §15.
115	1979 s. 67; 1986 s. 59.
116(1)	1984 s. 64(7)
(2)-(4)	1984 Sch. 13 §7.
(5)-(8)	1984 Sch. 13 §8.
(9)	1984 Sch. 13 §9.
(10), (11)	1984 Sch. 13 §10; 1985 s. 67(2)(c); 1989 s. 139; 1990 s. 70(6).
(12)-(14)	1984 Sch. 13 §11.

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(15)	1984 Sch. 13 §12; 1990 s. 85.
117(1)	1984 s. 64(2)(b), (c), (2A); 1991 s. 98.
(2)	1984 s. 64(3).
(3)	1984 s. 64(3A)-(3D); 1989 s. 139; 1990 Sch. 10 §28.
(4)-(6)	1984 s. 64(3E)-(3G); 1991 Sch. 10 §1.
(7), (8)	1984 s. 64(4), (5); 1989 Sch. 14 §6(4).
(9)	1984 s. 64(5A)-(5D); 1989 s. 139; 1990 Sch. 10 §28.
(10)	1984 s. 64(6); 1989 s. 139.
(11)(a)	1984 s. 64(8).
(11)(b), (12)	1984 s. 64(9)-(11); 1991 Sch. 10 §1.
(13)	1991 Sch. 10 §1(5).
118	1979 s. 132A; ICTA Sch. 29 §23; 1989 s. 96(3).
119	1979 s. 33A; ICTA Sch. 29 §20.
120(1)	1988 s. 84.
(2)-(7)	1979 s. 32A; ICTA Sch. 29 §18.
121	1979 s. 71.
122	1979 s. 72.
123	1979 s. 73.
124	1979 s. 74.
125	1979 s. 75; 1988 Sch. 8 §7.
126	1979 s. 77; 1982 Sch. 13 §5(3).
127	1979 s. 78.
128(1)	1979 s. 79(1).
(2)	1979 s. 79(1), first and second provisos; 1981 s. 91.
(3), (4)	1979 s. 79(2), (3).
129	1979 s. 80.
130	1979 s. 81.
131	1982 Sch. 13 §5(1), (2).
132	1979 s. 82; 1982 Sch. 13 §5(3).
133	1979 s. 83.
134(1)	1979 s. 84(1).
(2)	1979 s. 84(2), (3).

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(3)	1979 s. 84(4); 1985 s. 67(2).
(4)-(6)	1979 s. 84(5)-(7).
135	1979 s. 85; 1982 Sch. 13 §5(3).
136	1979 s. 86.
137	1979 s. 87; 1987(2) Sch. 6 §5.
138	1979 s. 88.
139(1), (2)	1970 s. 267(1), (2); 238(4).
(3)	1970 s. 267(2A); 1990 s. 65(1).
(4)	1970 s. 267(3); 1980 s. 81(2).
(5)-(7)	1970 s. 267(3A)-(3C); 1977 s. 41.
(8)	1987(2) Sch. 6 §2.
(9)	1970 s. 267(4).
140	1970 s. 268A; 1977 s. 42.
141	1979 s. 89; 1981 s. 91(2).
142	1979 s. 90; 1981 s. 90(3).
143(1), (2)	1985 s. 72(1), (2); 1987(2) s. 81(1), (2).
(3), (4)	1985 s. 72(2A), (2B); 1987(2) s. 81(3).
(5), (6)	1985 s. 72(3), (4).
144(1)-(4)	1979 s. 137(1)-(4); 1987(2) s. 81.
(5)-(9)	1979 s. 137(6)-(10); 1987(2) s. 81.
145	1982 Sch. 13 §7.
146	1979 s. 138; 1980 s. 84(5), (6); 1987(2) s. 81.
147	1979 s. 139.
148	1991 s. 102.
149	1991 Sch. 10 §4.
150	1979 s. 149C; 1985 Sch. 19 §16(3); ICTA Sch. 29 §26; 1990 Sch. 14 §17; 1991 s. 99(2).
151(1), (2)	1979 s. 149D(1), (2); ICTA Sch. 29 §26.
(3)	1979 s. 149D(2A); 1988 s. 116.
152(1), (2)	1979 s. 115(1), (2).
(3), (4)	1979 s. 115(3).
(5)-(8)	1979 s. 115(4)-(7).
(9)	1979 s. 115(7A); 1988 Sch. 8 §9.
(10), (11)	1979 s. 115(8), (9).
153	1979 s. 116.

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154(1), (2)	1979 s. 117(1), (2); 1990 s. 40(2).
(3), (4)	1979 s. 117(2A), (3); 1990 s. 40(3), (4).
(5)-(7)	1979 s. 117(4)-(6).
155	1979 s. 118; 1988 s. 112.
156	1979 s. 119.
157	1979 s. 120; 1985 s. 70(9).
158	1979 s. 121.
159	1989 s. 129.
160	1989 s. 133.
161	1979 s. 122.
162	1979 s. 123.
163	1985 s. 69; 1991 s.100.
164	1985 s. 70(1)-(8); 1991 s. 100.
165(1), (2)	1979 s. 126(1), (1A); 1989 Sch. 14 §1.
(3)	1979 s. 126(2); 1985 s. 70(9); 1989 Sch. 14 §1(3).
(4)-(6)	1979 s. 126(3)-(5).
(7)-(9)	1979 s. 126(6)-(8); 1981 s. 90(3)(a); 1985 s. 70(9).
(10), (11)	1979 s. 126(9), (10); 1989 Sch. 14 §1.
166	1979 s. 126A; 1989 Sch. 14 §2.
167	1979 s. 126B; 1989 Sch. 14 §2.
168	1981 s. 79; 1989 Sch. 14 §6; 1991 s. 92(2).
169	1986 s. 58; 1989 Sch. 14 §6.
170(1)	1970 s. 238(4); 1988 Sch. 14 Part V Note 3
(2)	1970 s. 272(1); 1989 s. 138(1); 1990 s. 70(2).
(3)-(8)	1970 s. 272(1A)-(1F); 1989 s. 138(2); 1990 s. 86.
(9)	1970 s. 272(2); 1987(2) s. 79; CCCPA Sch. 2.
(10), (11)	1970 s. 272(3), (4); 1989 s. 138(3), (4).
(12), (13)	1970 s. 272(5).
(14)	1970 s. 272(6); LRTA 1984 Sch. 6 §7.
171(1)	1970 s. 273(1).
(2)	1970 s. 273(2); 1980 s. 81(4); 1987(2) s. 64(3); 1990 s. 65(2).
(3)	1970 s. 273(2A); 1988 s. 115.

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(4)	1970 s. 273(3).
172	1970 s. 273A; 1990 s. 70.
173	1970 s. 274.
174(1)-(3)	1970 s. 275(1), (1A), (1B); 1990 s. 70(3).
(4)	1970 s. 275(2).
(5)	1970 s. 275(3); 1980 s. 81(5).
175(1)	1970 s. 276(1); 1987(2) s. 64(4).
(2)	1970 s. 276(1A); 1987(2) s. 64(4); 1990 s. 65(3).
(3)	1970 s. 276(2).
(4)	1990 s. 65(6).
176	1970 s. 280; CCCPA Sch. 2; 1988 Sch. 8 §6.
177	1970 s. 281; 1990 s. 70(4).
178(1)-(3)	1970 s. 278(1)-(3).
(4)-(6)	1970 s. 278(3B)-(3D); 1989 s. 138(5).
(7)	1970 s. 278(3F); 1989 s. 138(5).
(8)-(10)	1970 s. 278(4)-(6).
179(1)-(3)	1970 s. 278(1)-(3); 1987(2) Sch. 6 §4(2).
(4)	1970 s. 278(3A); 1987(2) Sch. 6 §4(2).
(5)-(9)	1970 s. 278(3B)-(3F); 1989 s. 138(5).
(10)	1970 s. 278(4).
(11)	1970 s. 278(5); 1987(2) Sch. 6 §4(3).
(12)	1970 s. 278(5A); 1987(2) Sch. 6 §4(4).
(13)	1970 s. 278(6).
180(1), (2)	1970 s. 278(8); 1987(2) s. 95(2); 1989 s. 138(7).
(3)-(7)	1989 s. 138(8)-(12).
181	1970 s. 278A; 1970(F) s. 27.
182	1988 Sch. 11 §1, 2.
183	1988 Sch. 11 §3.
184	1988 Sch. 11 §4, 5, 6; 1990 s. 70(8).
185	1988 s. 105(1)-(5).
186	1988 s. 106.
187	1988 s. 107.
188	1989 s. 132.
189	ICTA s. 346.

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190	ICTA s. 347.
191	1989 s. 134.
192	1980 s. 117, Sch. 18 §9, 10, 15, 23.
193	1987(2) s. 80.
194	1988 s. 62.
195	1988 s. 63.
196	1988 s. 64.
197	1984 s. 79.
198	1984 s. 80.
199	1989 s. 131.
200	1990 s. 64.
201(1), (2)	ICTAs. 122(1).
(3)	ICTAs. 122(3).
(4)	ICTAs. 122(8).
202(1), (2)	1970(F) s. 29(5), Sch. 6 §3.
(3), (4)	1970(F) Sch. 6 §4.
(5), (6)	1970(F) Sch. 6 §5.
(7), (8)	1970(F) Sch. 6 §6.
(9)-(11)	1970(F) Sch. 6 §7.
203	1970(F) s. 29(6), (7), (9), Sch. 6 §8, 9.
204	1979 s. 140, 149A(2).
205	1979 s. 141.
206	1979 s. 142; 1988 s. 101.
207(1)-(3)	1979 s. 142A(1)-(3); ICTA Sch. 29 §24.
(4), (5)	1979 s. 142A(4A), (4B); 1989 s. 91; S.I. 1989/1299.
(6)	1979 s. 142A(4).
208	1985 Sch. 19 §22, 23.
209	1979 s. 142A(5-7); 1989 s. 92.
210	1979 s. 143.
211	1970 s. 267A; 1990 Sch. 9 §1.
212	1990 s. 46; 1991 Sch. 7 §14.
213	1990 s. 47.
214	1990 Sch. 8; 1991 Sch. 7 §15.
215	1979 s. 149A(1); ICTA Sch. 29 §26.



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216	1988 Sch. 12 §1, 4.
217	1988 Sch. 12 §5.
218	1970 s. 342; HCPA Sch. 2 §18; 1991 s. 95, 96.
219	1970 s. 342A; HA 1974 s. 11; HCPA Sch. 2 §18; 1991 s. 95, 96.
220	1970 s. 342B; 1984 s. 56(3).
221	1979 s. 123A; ICTA Sch. 29 §22.
222	1979 s. 101; ICTA Sch. 29 §21; 1991 s. 93.
223(1)-(3)	1979 s. 102(1)-(3); 1991 s. 94.
(4)	1980 s. 80(1); 1991 s. 94.
(5), (6)	1979 s. 102(5), (6); 1991 s. 94.
(7)	1979 s. 102(3), (4); 1988 Sch. 8 §8.
224	1979 s. 103.
225	1979 s. 104.
226(1), (2)	1979 s. 105(1), (2); 1988 s. 111(1), (2).
(3)	1988 s. 111(3).
(4)-(7)	1979 s. 105(3)-(6).
227	1990 s. 31.
228	1990 s. 32.
229	1990 s. 33.
230	1990 s. 34.
231	1990 s. 35.
232	1990 s. 36.
233	1990 s. 37.
234	1990 s. 38.
235	1990 s. 39.
236	1990 s. 40(5)-(8).
237	1979 s. 144.
238	1979 s. 144A; ICTA Sch. 29 §25.
239	1979 s. 149; 1981 s. 90(3); ITA Sch. 8 §11; CCCPA Sch. 2.
240	1979 s. 106, 129.
241(1)	1984 s. 50(1).
(2)	1984 s. 50(2)-(9).
(3)	1984 Sch. 11 §1; 1985 s. 70(10).

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(4)-(8)	1984 Sch. 11 §4-7.
242	1979 s. 107; 1984 s. 63; 1986 s. 60.
243	1979 s. 108.
244	1979 s. 109.
245	1979 s. 110.
246	1979 s. 111.
247	1979 s. 111A; 1982 s. 83.
248	1979 s. 111B; 1982 s. 83.
249	1979 s. 112.
250	1979 s. 113; 1988 Sch. 6 §6(5).
251	1979 s. 134.
252	1979 s. 135.
253(1)-(5)	1979 s. 136(1)-(5).
(6)-(8)	1979 s. 136(5A)-(5C); 1990 s. 83.
(9)	1979 s. 136(6); 1990 s. 83.
(10)-(12)	1979 s. 136(7)-(9).
(13)	1979 s. 136(9A); 1990 s. 83.
(14), (15)	1979 s. 136(10), (11); 1989 Sch. 12 §6.
254	1979 s. 136A; 1990 s. 84.
255	1979 s. 136B; 1990 s. 84.
256	1979 s. 145.
257	1979 s. 146; 1981 s. 90; ITA Sch. 8 §9.
258	1979 s. 147; ITA Sch. 8 §10; 1985 s. 95(1)(b).
259	1979 s. 146A; 1989 s. 125.
260	1979 s. 147A; 1989 Sch. 14 §4.
261	1979 s. 147B; 1989 Sch. 14 §4.
262	1979 s. 128; 1989 s. 123.
263	1979 s. 130.
264	1983(2) s. 7; PCA Sch. 3 §6.
265	1984 s. 126; 1985 s. 96.
266	1976 s. 131.
267	1991 s. 78(1)-(3), (8).
268	1979 s. 131.
269	1979 s. 133.

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270	1981 s. 135.
271	1979 s. 149B; ICTA Sch. 29 §26; 1988 Sch. 12 §7(b), Sch. 13 §17; 1990 s. 28(3), 81, Sch. 18 §3; 1991 s. 57(4).
272	1979 s. 150(1)-(4), (6).
273	1979 s. 152.
274	1979 s. 153.
275	1979 s. 18(4); 1984 s. 69; CDPA 1988 Sch. 7 §26.
276(1)	1973 s. 38(1); ICTA s. 830(1).
(2), (3)	1973 s. 38(2), (3).
(4)-(6)	1973 s. 38(3A)-(3C); 1984 s. 81(2); 1989 s. 130(1).
(7)	1973 s. 38(4); ICTA Sch. 29 §12.
(8)	1973 s. 38(5); 1984 s. 81.
277	1979 s. 10.
278	1979 s. 11.
279(1)-(6)	1979 s. 13; 1991 s. 97.
(7)	1988 s. 104.
(8)	1991 s. 97.
280	1979 s. 40(1).
281	1979 s. 7A; 1989 Sch. 14 §5.
282	1979 s. 59.
283(1)	1975(2) s. 47(1); 1989 s. 179(1).
(2)	1975(2) s. 47(4).
(3)	1975(2) s. 47(8).
(4), (5)	1975(2) s. 47(11),(12).
284	1979 s. 154.
285	1987(2) s. 73; ICTA s. 841(3).
286	1979 s. 63 ICTA Sch. 29 §15.
287	1979 s. 5(1C), 92(3), 102(5), (7), 137(10), 142A(5), 149D(3), Sch. 2 §1; 1984 s. 64(3F), (12), 126(1), (4); 1985 s. 96(1), Sch. 19 §21(4); 1987(2) s. 73, 81, 95(2), Sch. 6 §2, 4, 5; ICTA s. 828, Sch. 29 §24, 26; 1989 s. 92(6); 1990 s. 46(9); 1991 s. 94, Sch. 10 §1, Sch. 17 §4(8).

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288	1979 s. 155; 1979 s. 64; 1984 s. 64; 1985 s. 72(6); ICTA Sch. 29 §27; 1988 Sch. 13 §18; 1989 Sch. 14 §6; 1990 s. 127(2).
289	
290	
291	
Sch. 1 §1(1)	1979 Sch. 1 §5(1); 1980 s. 77(4)(c); 1981 s. 89(2); DLA 1991.
(2)	1979 Sch. 1 §5(1A); 1981 s. 89(3).
(3)	1979 Sch. 1 §5(1B); 1981 s. 89(3); 1982 s. 80(3).
(4)	1979 Sch. 1 §5(1C); 1981 s. 89(3).
(5)	1979 Sch. 1 §5(1D); 1981 s. 89(3); 1982 s. 80(3).
(6)	1979 Sch. 1 §5(2); Mental Health Act 1983 Sch. 4 §49; 1981 s. 89(4); DLA 1991; SSCP.
(7)	1979 Sch. 1 §5(3); 1981 s. 89(5).
2(1)	1979 Sch. 1 §6(1); 1980 s. 78(2).
(2)	1979 Sch. 1 §6(2); 1980 s. 78(3); 1982 s. 80(3)(b), (d).
(3)	1979 Sch. 1 §6(3); 1980 s. 78(3); 1982 s. 80(3)(e).
(4)	1979 Sch. 1 §6(4); 1980 s. 78(3); 1982 s. 80(3)(c), (d).
(5)	1979 Sch. 1 §6(5); 1980 s. 78(3).
(6)	1979 Sch. 1 §6(6); 1980 s. 78(3); 1982 s. 80(3)(d).
(7)-(9)	1979 Sch. 1 §6(7)-(9); 1980 s. 78(3).
Sch. 2 §1-3	1979 Sch. 5 §1-3; 1982 Sch. 13 §11.
4(1)	
(2)	1979 Sch. 5 §4(1).
(3)-(7)	1979 s. 65.
(8)-(13).	1979 Sch. 5 §4(2)-(7).
5-8	1979 Sch. 5 §5-8.
9-15	1979 Sch. 5 §9, 10.
16	1979 Sch. 5 §11.
17	1979 Sch. 5 §12.
18	1979 Sch. 5 §13; 1982 Sch. 13 §11.

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*Changes to legislation: Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

19-23	1979 Sch. 5 §14-18.
Sch. 3 §1	1988 Sch. 8§1; 1989 Sch. 15§4(2); 1990 s. 70(7)(b),Sch. 12§2(2); 1991 s. 78(7).
2	1988 Sch. 8§2.
3	1988 Sch. 8§3.
4	1988 Sch. 8§4; 1989 Sch. 15§3.
5	1988 Sch. 8§5.
6	1988 Sch. 8§10.
7	1988 Sch. 8§12; 1990 s. 63.
8	1988 Sch. 8§13; 1989 Sch. 15§5.
9	1988 Sch. 8§14.
Sch. 4 §1	1988 Sch. 9§1; 1991 s. 101(2).
2	1988 Sch. 9§2; 1991 s. 101(3), (4).
3	1988 Sch. 9§2A; 1991 s. 101(5).
4(1)-(4)	1988 Sch. 9§3; 1989 Sch. 15§2; 1991 s. 101(6)-(8)
(5)	1989 Sch. 15§1.
5-8	1988 Sch. 9§4-7.
9	1988 Sch. 9§8; 1991 s. 101(9).
Sch. 5	1991 Sch. 16§3-16.
Sch. 6 §1-12	1985 Sch. 20§1-12; 1991 s. 100.
13	1985 Sch. 20§13; 1988 s. 110; 1991 s. 100.
14	1985 Sch. 20§14.
15	1985 Sch. 20§15; 1988 s. 110.
16	1985 Sch. 20§16; 1988 s. 110.
Sch. 7 §1	1979 Sch. 4§1; ITA 1984 Sch. 8§12; 1989 Sch. 14§3(2).
2	1979 Sch. 4§2; 1989 Sch. 14§3(3).
3	1979 Sch. 4§3; ITA 1984 Sch. 8§12; 1989 Sch. 14§3(4).
4	1979 Sch. 4§4; 1989 Sch. 14§3(5).
5, 6	1979 Sch. 4§5, 6; 1989 Sch. 14§3(6).
7	1979 Sch. 4§7; 1989 Sch. 14§3(7).
8	1979 Sch. 4§8; 1985 s. 70(9).
Sch. 8	1979 Sch. 3.
Sch. 9 §1-3	1979 Sch. 2§1-3.

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## Part II

1979 Sch. 2 Part II together with the securities specified in the Capital Gains Tax (Gilt-edged Securities) Orders 1979-1991 made under paragraph 1 of Schedule 2 to the 1979 Act; Gas Act 1986 (c. 44) s. 50(3).

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**Status:**

Point in time view as at 21/07/2008.

**Changes to legislation:**

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