

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1992, SCHEDULE 12. (See end of Document for details)

SCHEDULES

SCHEDULE 12

Section 66.

BANKS ETC. IN COMPULSORY LIQUIDATION

Introductory

- 1 (1) This Schedule applies where—
- (a) a company is being, or has been, wound up by the court in the United Kingdom,
 - (b) the company was, at any time in the period mentioned in sub-paragraph (2) below, lawfully carrying on a [^{F1}business of accepting deposits as—
 - (i) a person falling within section 840A(1)(b) of the Taxes Act 1988, or
 - (ii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the Financial Services and Markets Act 2000 with permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation by virtue of paragraph 12 of that Schedule) to accept deposits,]
 - (c) the trade of the company that included the [^{F2}business of accepting deposits] (referred to in this Schedule as "the relevant trade") has been permanently discontinued, and
 - (d) the company is insolvent and either was so when the winding-up proceedings were commenced or became so at any time in the period of twelve months following the day on which they were commenced.
- (2) The period mentioned in sub-paragraph (1)(b) above is the period of twelve months ending with—
- (a) the day on which the winding-up proceedings were commenced, or
 - (b) the day on which the relevant trade was discontinued,
- whichever was the earlier.

Textual Amendments

- F1** Sch. 12 para. 1(1)(b): sub-paras. (i) and (ii) and preceding words substituted (1.12.2001 with effect as mentioned in art. 74(2) of the amending S.I.) for words by S.I. 2001/3629, art. 74(1)
- F2** Words in Sch. 12 para. 1(1)(c) substituted (1.12.2001 with effect as mentioned in art. 74(2) of the amending S.I.) by S.I. 2001/3629, art. 74(1)

- 2 (1) Sub-paragraphs (2) to (5) below apply for the purposes of this Schedule.
- (2) "Company" means—
- (a) any company as defined in section 735 of the ^{M1}Companies Act 1985 or Article 3 of the ^{M2}Companies (Northern Ireland) Order 1986, or

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- (b) any unregistered company as defined in section 220 of the ^{M3}Insolvency Act 1986 or Article 184 of the ^{M4}Insolvency (Northern Ireland) Order 1989.
- (3) Winding-up proceedings shall be taken to have been commenced against a company at the time of the presentation of the petition for its winding up by the court.
- (4) A company's ceasing to carry on a trade, or to be within the charge to corporation tax in respect of a trade, shall be treated as the permanent discontinuance of the trade, whether or not the trade is in fact discontinued.
- (5) A company shall be taken to be insolvent, or to have been insolvent at any time, if—
- (a) it is unable to pay its debts as they fall due, or was at that time unable to pay its debts as they fell due, or
 - (b) the value of the its assets is, or was at that time, less than the amount of its liabilities (taking into account its contingent and prospective liabilities).

Modifications etc. (not altering text)

- C1** Sch. 12 para. 2 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), arts. 1, 4

Marginal Citations

- M1** 1985 c. 6.
M2 S.I. 1986/1032 (N.I. 6).
M3 1986 c. 45.
M4 S.I. 1989/2405 (N.I. 19).

[^{F3}Taxation of certain receipts]

Textual Amendments

- F3** Sch. 12 para. 3 cross-heading substituted (1.4.2009) (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 390(6)** (with Sch. 2 Pts. 1, 2)

- 3 (1) Tax shall be charged ^{F4}... in respect of any sums within sub-paragraph (2) below that are received by the company or its liquidator after—
- (a) the commencement of the winding-up proceedings, or
 - (b) the discontinuance of the relevant trade,
- whichever was the later.
- ^{F5}(1A) So far as relating to corporation tax, the charge to tax under sub-paragraph (1) has effect as an application of the charge to corporation tax on income.]
- (2) Subject to sub-paragraph (3) below, any sum arising from the carrying on of the relevant trade is within this sub-paragraph, in so far as its value was not brought into account in computing the profits or gains of the trade for any period before the discontinuance.
- (3) The following are not within sub-paragraph (2) above—
- (a) any sum received on behalf of a person who is entitled to it to the exclusion of the company and its liquidator;

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(b) any sum realised by the transfer of an asset required to be valued under ^{F6} ... [^{F7}section 173 of the Income Tax (Trading and Other Income) Act 2005][^{F8}or section 162 of the Corporation Tax Act 2009] (valuation of trading stock at discontinuance);

^{F9}(c)

(4) Where tax is chargeable in respect of any sum by virtue of this paragraph, any other provision charging that sum to tax shall not apply.

^{F10}(5) This paragraph and paragraph 4 below have effect for the purposes of corporation tax notwithstanding anything in [^{F11}section 464(1) of the Corporation Tax Act 2009 (matters to be brought into account in the case of loan relationships only under Part 5 of that Act)].

Textual Amendments

- F4** Words in Sch. 12 para. 3(1) repealed (1.4.2009) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 390(2), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)
- F5** Sch. 12 para. 3(1A) inserted (1.4.2009) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 390(3) (with Sch. 2 Pts. 1, 2)
- F6** Words in Sch. 12 para. 3(3) repealed (1.4.2009) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 390(4)(a), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)
- F7** Words in Sch. 12 para. 3(3)(b) inserted (30.3.2006) (with effect in accordance with art. 1(3)(4) of the amending S.I.) by The Income Tax (Trading and Other Income) Act 2005 (Consequential Amendments) Order 2006 (S.I. 2006/959), arts. 1(2), 4(3)
- F8** Words in Sch. 12 para. 3(3) inserted (1.4.2009) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 390(4)(b) (with Sch. 2 Pts. 1, 2)
- F9** Sch. 12 para. 3(3)(c) repealed (24.7.2002 with effect as mentioned in s. 107(5) of the amending Act) by 2002 c. 23, ss. 107(2), 141, Sch. 40 Pt. 3(18)
- F10** Sch. 12 para. 3(5) inserted (24.7.2002 with effect as mentioned in s. 107(5) of the amending Act) by 2002 c. 23, s. 107(3)
- F11** Words in Sch. 12 para. 3(5) substituted (1.4.2009) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 390(5) (with Sch. 2 Pts. 1, 2)

Relief from tax

- 4 (1) In computing the tax that is chargeable by virtue of paragraph 3 above for any chargeable period, there shall be deducted from the amount that would otherwise be chargeable to tax the aggregate amount of all losses, expenses and debits within sub-paragraph (2) below incurred in that chargeable period or before it, in so far as relief (whether under this sub-paragraph, sub-paragraph (3) below or any other provision of the Tax Acts) has not been given in respect of them already.
- (2) Any loss, expense or debit (other than a loss, expense or debit arising directly or indirectly from the discontinuance itself) incurred—
- (a) after the later of the two events mentioned in paragraph 3(1) above, or
 - (b) in the case of a loss, at or before the discontinuance of the relevant trade,

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is within this sub-paragraph if it would have been deducted in computing for tax purposes the [^{F12}profits] of the trade for any period, or deducted from or set off against those [^{F12}profits] as so computed, had the trade continued.

^{F13}(3)

Textual Amendments

F12 Word in *Sch. 12 para. 4(2)* substituted (31.7.1998) by *1998 c. 36, s. 46(3), Sch. 7 para. 8*

F13 *Sch. 12 para. 4(3)* repealed (24.7.2002 with effect as mentioned in *s. 107(5)* of the amending Act) by *2002 c. 23, ss. 107(4), 141, Sch. 40 Pt. 3(18)*

Application of charge etc. where rights to payments transferred

- 5 Where the right of the company or its liquidator to receive any sum which is within paragraph 3(2) above (or which would be, if the right to receive it were not transferred) is transferred for value, any tax chargeable by virtue of paragraph 3 above shall be charged in respect of the amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length); and references in this Schedule to sums received shall be construed accordingly.

Election for carry-back

- 6 (1) Where any sum is—
- (a) chargeable to tax by virtue of paragraph 3 above, and
 - (b) received in any chargeable period beginning in the period of six years following the day on which the relevant trade was discontinued,
- the company or its liquidator may, by notice sent to the inspector within two years after that chargeable period, elect that the tax so chargeable shall be charged as if the sum in question were received on the day on which the trade was discontinued.
- (2) Where such an election has been made, an assessment shall (notwithstanding anything in the Tax Acts) be made accordingly.

Commencement

- 7 This Schedule shall have effect in relation to chargeable periods ending after 10th March 1992.

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