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## SCHEDULES

### SCHEDULE 7

#### RELIEF ON RETIREMENT OR RE-INVESTMENT

##### PART II

##### ROLL-OVER RELIEF ON RE-INVESTMENT

3 After Chapter I of Part V of that Act there shall be inserted the following Chapter—

##### “CHAPTER IA

##### ROLL-OVER RELIEF ON RE-INVESTMENT

##### **Relief on re-investment for individuals.**

164A) Subject to the following provisions of this Chapter, roll-over relief under this section shall be available where—

- (a) a chargeable gain would (apart from this section) accrue to any individual (“the re-investor”) on any material disposal by him of shares in or other securities of any company (“the initial holding”); and
- (b) that individual acquires a qualifying investment at any time in the qualifying period.

(2) Subject to section 164C, where roll-over relief under this section is available, the re-investor shall, on making a claim as respects the qualifying investment, be treated—

- (a) as if the consideration for the disposal of the initial holding were reduced by whichever is the smallest of the following, that is to say—
  - (i) the amount of the chargeable gain which apart from this subsection would accrue on the disposal of the initial holding, so far as that amount has not already been held over by way of reductions under this subsection,
  - (ii) the actual amount or value of the consideration for the acquisition of the qualifying investment,
  - (iii) in the case of a qualifying investment acquired otherwise than by a transaction at arm’s length, the market value of that investment at the time of its acquisition, and
  - (iv) the amount specified for the purposes of this subsection in the claim;

and

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- (b) as if the amount or value of the consideration for the acquisition of the qualifying investment were reduced by the amount of the reduction made under paragraph (a) above,  
but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the initial holding or of the other party to the transaction involving the qualifying investment.
- (3) Subject to subsections (5) and (6) below, the disposal of shares in or other securities of a company is a material disposal for the purposes of this section if the conditions specified in subsection (4) below are satisfied in relation to a period of one year ending with—
- (a) the date of the disposal; or
  - (b) if the company ceased at any time in the permitted period before the disposal to be a trading company or the holding company of a trading group, that time.
- (4) The conditions mentioned in subsection (3) above are satisfied in relation to any period if throughout that period—
- (a) the company has been a trading company or the holding company of a trading group;
  - (b) the company has been an unquoted company;
  - (c) the company has been the re-investor's personal company; and
  - (d) the re-investor has been a full-time working officer or employee of the company or, if that company is a member of a group or commercial association of companies, of one or more companies which are members of the group or association.
- (5) Where, throughout a period ending at the same time as the period mentioned in subsection (3) above and beginning at a time ("the time of partial retirement") when the re-investor ceased to be such a full-time working officer or employee as is mentioned in subsection (4)(d) above—
- (a) the conditions specified in subsection (4)(a) to (c) above were satisfied in relation to any company,
  - (b) the re-investor was an officer or employee of that company or, as the case may be, of one or more members of the group or association in question, and
  - (c) in that capacity, the re-investor devoted at least 10 hours per week (averaged over the period) to the service of the company or companies in a technical or managerial capacity,
- the disposal of shares in or other securities of that company is a material disposal for the purposes of this section if the conditions specified in subsection (4) above were satisfied in relation to the period of one year ending with the time of partial retirement.
- (6) Where—
- (a) any company has ceased to be an unquoted company, and
  - (b) in the case of that company, all the conditions specified in subsection (4) above were satisfied in relation to the period of one year ending with the time when the company so ceased,

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this section shall have effect in relation to an initial holding acquired by the re-investor at a time when the company in question was an unquoted company as if the company continued to be an unquoted company after that time until the disposal of that holding and as if the period mentioned in subsection (3) above included all such time (if any) as falls after the company's ceasing to be an unquoted company and before what would, apart from this subsection, have been the beginning of that period.

- (7) Any question for the purposes of subsection (6) above as to when the shares or other securities comprised in the initial holding were acquired shall be determined by assuming, in relation to any disposals of shares or other securities regarded as forming part of a single asset, that shares or other securities acquired later are disposed of before those acquired earlier.
- (8) For the purposes of this section a person shall be regarded as acquiring a qualifying investment where he acquires any eligible shares in a qualifying company if—
- (a) he holds 5 per cent. or more of the eligible shares in that company—
    - (i) at any time after making the acquisition and in the period of 3 years after the disposal of the initial holding, or
    - (ii) at such time after the end of that period as the Board may by notice allow;
  - (b) that company has not ceased to be a qualifying company between the acquisition of those shares and that time; and
  - (c) that company is neither the company in which the initial holding has subsisted nor a company that was a member of the same group of companies as that company at the time of the disposal of the initial holding or of the acquisition of the qualifying investment.
- (9) For the purposes of this section the acquisition of a qualifying investment shall be taken to be in the qualifying period if, and only if, it takes place—
- (a) at any time in the period beginning 12 months before and ending 3 years after the disposal of the initial holding, or
  - (b) at such time before the beginning of that period or after it ends as the Board may by notice allow.
- (10) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied; and, without prejudice to the generality of this subsection, section 42(5) shall apply in relation to an adjustment under this section of the consideration for the acquisition of any shares as it applies in relation to an adjustment under any enactment to secure that neither a gain nor a loss accrues on a disposal.
- (11) The provisions of this section for making any reduction shall apply before any provisions for calculating the amount of, or giving effect to, any relief under section 163 of 164, and references in this section to chargeable gains shall be construed accordingly.
- (12) Without prejudice to section 52(4), where consideration is given for the acquisition or disposal of any assets some of which are shares or other securities to the acquisition or disposal of which a claim under this section

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relates and some of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

**Roll-over relief on re-investment by trustees.**

164B) Subject to the following provisions of this section, section 164A shall apply, as it applies in such a case as is mentioned in subsection (1) of that section, where there is—

- (a) a disposal by the trustees of a settlement of any shares in or other securities of a company which are part of the settled property; and
- (b) such an acquisition by those trustees of eligible shares in a qualifying company as would for the purposes of that section be an acquisition of a qualifying investment at a time in the qualifying period,

but as if the disposal were a material disposal if, and only if, the conditions specified in subsection (2) below are satisfied in relation to the period of one year mentioned in section 164A(3).

(2) The conditions mentioned in subsection (1) above are satisfied in relation to any period if—

- (a) the company has been a trading company or the holding company of a trading group throughout that period;
- (b) the company has been an unquoted company throughout that period;
- (c) throughout that period the company has been a personal company of a relevant beneficiary; and
- (d) that relevant beneficiary has throughout that period been a full-time working officer or employee of the company or, if that company is a member of a group or commercial association of companies, of one or more companies which are members of the group or association.

(3) References in this section, in relation to the disposal of any shares or other securities by the trustees of any settlement, to a relevant beneficiary are references to any beneficiary who, under the settlement, has an interest in possession in the whole of the settled property or, as the case may be, in a part of it which consists of or includes the shares or securities, but excluding, for this purpose, an interest for a fixed term.

(4) If, in the case of a disposal by any trustees of any shares or other securities, there is, in addition to the beneficiary in relation to whom the requirements of subsection (2)(d) above are satisfied (“the qualifying beneficiary”), at least one other beneficiary who, at the relevant time, has an interest in possession in, the whole of the settled property or, as the case may be, in a part of it which consists of or includes the shares or securities—

- (a) 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 section 164A(2)(a)(i); and
- (b) no reduction under section 164A(2) shall be made in respect of the whole or any part of the balance of the gain.

(5) For the purposes of subsection (4) above the relevant proportion is the proportion which the interest specified in paragraph (a) below bears to the interests specified in paragraph (b) below, that is to say—

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- (a) the qualifying beneficiary's interest at the relevant time in the income of the part of the settled property comprising the shares or other securities in question; and
  - (b) the interests at that time in that income of all the beneficiaries (including the qualifying beneficiary) who at that time have interests in possession in that part.
- (6) The reference in subsection (5) above to the qualifying beneficiary's interest is a reference to the interest by virtue of which he is the qualifying beneficiary and not to any other interest he may hold.
- (7) Section 164A shall not apply by virtue of this section unless immediately after the acquisition mentioned in subsection (1)(b) above the qualifying beneficiary has an interest in possession in the whole of the settled property, or in the part of it in which the acquired shares are comprised, which is the same as or, as the case may be, is equivalent to the interest at the relevant time by virtue of which he is the qualifying beneficiary.
- (8) In this section "the relevant time", in relation to a disposal of any shares or other securities, means the time of the disposal or if, by virtue of paragraph (b) of subsection (3) of section 164A, the period mentioned in that subsection is treated in relation to that disposal as ending at any earlier time, that earlier time.

**Restriction applying to retirement relief and roll-over relief on re-investment.**

- 164(1) Subject to the following provisions of this section, in the case of any disposal of shares in or other securities of any company in relation to which a claim is made under section 164A—
- (a) the gains which (apart from sections 163 to 164B) would on the disposal accrue to the individual or, as the case may be, the trustees shall be aggregated,
  - (b) the amount available in respect of the disposal for relief under sections 163 and 164 and for the making of deductions under section 164A(2) above shall be deemed to be confined to the appropriate proportion of the aggregated gains, and
  - (c) so much of the aggregated gains as exceeds the amount so available shall be disregarded for the purposes of sections 163 to 164B and, accordingly, shall constitute chargeable gains.
- (2) Subject to subsection (4) below, in this section "the appropriate proportion", in relation to gains accruing on the disposal of shares in or other securities of a company that is not a holding company of a trading group, means the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is to say—
- (a) that part of the value of the company's chargeable assets at the relevant time which is attributable to the value of the company's chargeable business assets; and
  - (b) the whole of the value of the company's chargeable assets at that time.
- (3) Subject to subsection (4) below, in this section "the appropriate proportion", in relation to gains accruing on the disposal of shares in or other securities

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of a holding company of a trading group, means the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is to say—

- (a) that part of the value of the trading group’s chargeable assets at the relevant time which is attributable to the value of the trading group’s chargeable business assets; and
  - (b) the whole of the value of the trading group’s chargeable assets at that time.
- (4) Where a company or trading group has no chargeable assets, “the appropriate proportion”, in relation to the gains accruing on the disposal of shares in or other securities of that company or, as the case may be, of the holding company of that group, means the whole of those gains.
- (5) Subject to subsection (6)(b) below, every asset of a company is for the purposes of this section a chargeable asset of that company except one, on the disposal of which by the company at the relevant time, no gain accruing to the company would be a chargeable gain.
- (6) For the purposes of this section—
- (a) any reference, in relation to a trading group, to the trading group’s chargeable assets or chargeable business assets is a reference to the chargeable assets or, as the case may be, chargeable business assets of every member of the trading group; and
  - (b) a holding by one member of the trading group of the ordinary share capital of another member of the group is not a chargeable asset.
- (7) Where the whole of the ordinary share capital of a 51 per cent. subsidiary of a holding company is not owned directly or indirectly by that company, then, for the purposes of this section, the value of the chargeable assets and of the chargeable business assets of that subsidiary shall be taken to be reduced according to the formula—

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- (8) In subsection (7) above—
- A is the value falling to be reduced of the chargeable assets or chargeable business assets of the subsidiary;
  - B is the amount of the ordinary share capital of the subsidiary owned, directly or indirectly, by the holding company;
  - C is the whole of the ordinary share capital of the subsidiary;

and section 838 of the Taxes Act (definition of expressions in relation to subsidiaries) shall apply for construing that subsection and this subsection.

- (9) In this section “chargeable business asset”, in relation to any company, means a chargeable asset (including goodwill but not including any shares or other securities or any assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by—
- (a) the individual concerned,
  - (b) any personal company of that individual,

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- (c) a member of a trading group of which the holding company is a personal company of that individual, or
  - (d) a partnership of which that individual is a member.
- (10) For the purposes of the application of this section to a case in which trustees dispose of any shares or other securities, the references in subsection (9) above to the individual concerned are references to the qualifying beneficiary.
- (11) In this section “the relevant time” has the same meaning as in section 164B.
- (12) This section shall be without prejudice to the provisions of paragraphs 7 to 11 of Schedule 6.

### **Relief carried forward into replacement shares.**

164D) This section shall apply where a person has acquired any eligible shares in a qualifying company (“the acquired holding”) for a consideration which is treated as reduced, under section 164A or the following provisions of this section, by any amount (“the held-over gain”).

(2) If—

- (a) the person who acquired the acquired holding disposes of eligible shares in the company in question (“the acquired shares”),
- (b) that person at any time in the relevant period acquires other eligible shares (“the replacement shares”) in a qualifying company which is not a relevant company;
- (c) the acquisition of the replacement shares would, in relation to the disposal of the acquired shares, be treated (were the disposal a material disposal) as an acquisition of a qualifying investment for the purposes of section 164A, and
- (d) roll-over relief is not available under section 164A in relation to the acquisition of the replacement shares,

that person shall, on making a claim as respects the acquisition of the replacement shares, be treated in relation to that acquisition in accordance with subsection (3) below.

(3) Where a person falls to be treated in accordance with this subsection in relation to the acquisition of the replacement shares, he shall be treated—

- (a) as if the consideration for the disposal of the acquired shares were reduced by whichever is the smallest of the following, that is to say—
  - (i) the amount of the held-over gain on the acquisition of the acquired holding, so far as that amount has not already been carried forward under this section from any disposal of eligible shares in the company in question or been charged on a disposal or under section 164F,
  - (ii) the actual amount or value of the consideration for the acquisition of the replacement shares,
  - (iii) in the case of replacement shares acquired otherwise than by a transaction at arm’s length, the market value of the replacement shares at the time of their acquisition, and

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- (iv) the amount specified for the purposes of this subsection in the claim;
- and
- (b) as if the amount or value of the consideration for the acquisition of the replacement shares were reduced by the amount of the reduction made under paragraph (a) above,
- but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the acquired shares or of the other party to the transaction involving the replacement shares.
- (4) For the purposes of this section the whole or a part of any held-over gain on the acquisition of the acquired holding shall be treated—
- (a) in accordance with subsection (5) below as charged on any disposal in relation to which the whole or any part of the held-over gain falls to be taken into account in determining the chargeable gain or allowable loss accruing on the disposal; and
- (b) as charged under section 164F so far as it falls to be disregarded in accordance with subsection (11) of that section.
- (5) In the case of any such disposal as is mentioned in subsection (4)(a) above, the amount of the held-over gain charged on that disposal—
- (a) shall, except in the case of a part disposal, be so much of the amount taken into account as so mentioned as is not carried forward under this section from the disposal in question; and
- (b) in the case of a part disposal, shall be calculated by multiplying the following, that is to say—
- (i) so much of the amount of the held-over gain as is not carried forward under this section from the disposal in question and has not already been either charged on a previous disposal or carried forward under this section from a previous disposal; and
- (ii) the fraction used in accordance with section 42(2) for determining, subject to any deductions in pursuance of this Chapter, the amount allowable as a deduction in the computation of the gain accruing on the disposal in question.
- (6) Where section 58 applies to any disposal of the whole or any part of the acquired holding to any individual—
- (a) that individual shall not be treated for the purposes of subsection (1) above as a person who has acquired eligible shares for a consideration which is treated as reduced under section 164A or this section; and
- (b) the amount of the held-over gain which for the purposes of this section shall be treated as charged on the disposal shall be the amount that would have been charged on the disposal if it had been a disposal at market value.
- (7) References in this section to an amount being carried forward from a disposal are references, in relation to the disposal of any shares, to the reduction by



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that amount, in accordance with subsection (3)(a) above, of the amount of the consideration for the disposal of those shares.

- (8) Subsections (10) to (12) of section 164A shall apply in the case of any claim under this section as they apply in the case of a claim under that section.
- (9) For the purposes of this section a company is a relevant company if it is—
- (a) 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 the time of the disposal of the acquired holding or of the acquisition of the replacement shares;
  - (b) a company in relation to the disposal of any shares in which there has been a claim under this Chapter such that without that or an equivalent claim there would be no held-over gain in relation to the acquired holding; or
  - (c) 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.
- (10) In this section “the relevant period” means the period (not including any period before the acquisition of the acquired holding) which begins 12 months before and ends 3 years after the disposal of the acquired shares, together with any such further period after the disposal as the Board may by notice allow.

#### **Application of Chapter in cases of an exchange of shares.**

164E) Where—

- (a) there is a transaction involving the issue of any shares in or debentures of any company in exchange for any shares in or debentures of another company (“the exchanged securities”),
- (b) but for this section, section 127 would have effect in pursuance of section 135 for requiring the transaction to be treated for the purposes of this Act as one that does not involve a disposal of the exchanged securities,
- (c) any person would be entitled, if the transaction were treated as involving such a disposal, to make a claim for relief under this Chapter by reference to that disposal and an acquisition of eligible shares in a qualifying company, and
- (d) that person makes an election under this section for the transaction to be treated as involving the disposal of the exchanged securities and claims that relief,

this Chapter and the other provisions of this Act shall have effect as if section 127 did not apply in the case of that transaction and, accordingly, as if that transaction did involve such a disposal, together with an acquisition of the shares or debentures that are issued in exchange.

- (2) An election under this section shall be made by notice given to the Board not more than 2 years after the end of, as the case may be—
- (a) the qualifying period mentioned in section 164A; or
  - (b) the relevant period, within the meaning of section 164D;

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and an election made under this section in connection with a claim for relief under section 164B shall be made jointly by the trustees of the settlement and the qualifying beneficiary.

- (3) Where, in order to give effect (in pursuance of an election under this section) to subsection (1) above, it is necessary to make any adjustment by way of an assessment on any person, the assessment shall not be out of time if it is made within one year of the final determination of the claim for relief in connection with which the election is made.
- (4) For the purposes of subsection (3) above a claim for relief shall not be deemed to be finally determined until the amount of the relief allowed by virtue of the claim can no longer be varied, whether on appeal or by the order of any court or otherwise.

**Failure of conditions of relief.**

- 164F(1) This section shall apply in any such case as is mentioned in section 164D(1), and references in this section to the acquired holding and the held-over gain shall be construed accordingly.
- (2) Subject to the following provisions of this section, if at any time in the relevant period—
  - (a) the shares comprised in the acquired holding cease to be eligible shares,
  - (b) the company in which the acquired holding subsists ceases to be a qualifying company,
  - (c) the person who acquired the acquired holding becomes neither resident nor ordinarily resident in the United Kingdom, or
  - (d) any of the shares comprised in the acquired holding are included in the original shares (within the meaning of sections 127 to 130) in the case of any transaction with respect to which section 116 has effect,
 a chargeable gain equal to the appropriate proportion of the held-over gain shall be treated as accruing to that person immediately before that time or, in a case falling within paragraph (d) above, immediately before the disposal assumed for the purposes of section 116(10)(a).
- (3) For the purposes of this section the appropriate proportion of the held-over gain is so much, if any, of that gain as has not already been either—
  - (a) charged on any disposal or under this section; or
  - (b) carried forward under section 164D from any disposal;
 or, in a case to which subsection (2) above applies by virtue of paragraph (d) of that subsection or in accordance with subsection (7) below, such part of that proportion of that gain as is just and reasonable having regard to the extent to which the acquired holding comprises the original shares.
- (4) Subject to subsection (5) below, subsections (4), (5) and (7) of section 164D shall apply for the purposes of this section as they apply for the purposes of that section.
- (5) Where the acquired holding or any asset treated as comprised in a single asset with the whole or any part of that holding has been disposed of under

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- section 58 by the individual who acquired that holding to another person (“the spouse”)—
- (a) the spouse shall not (subject to the following provisions of this subsection) be treated for the purposes of this section as a person who has acquired eligible shares for a consideration which is treated as reduced under section 164A or 164D;
  - (b) the disposal shall not be included in the disposals on which the whole or any part of the held-over gain may be treated as charged for the purposes of this section;
  - (c) disposals by the spouse, as well as disposals by that individual, shall be taken into account for the purposes of section 164D(4) and (5) above, as applied for the purpose of this section;
  - (d) any charge under subsection (2) above (other than one by virtue paragraph (c) of that subsection) shall be apportioned between that individual and the spouse according to the extent to which the appropriate proportion of the held-over gain would be charged on the disposal by each of them of their respective holdings (if any);
  - (e) paragraph (c) of that subsection shall have effect as if the reference in that paragraph to that individual included a reference to the spouse;
  - (f) a charge by virtue of that paragraph shall be imposed only on a person who becomes neither resident nor ordinarily resident in the United Kingdom; and
  - (g) the amount of the charge imposed on any person by virtue of that paragraph shall be that part of the charge on the appropriate proportion of the held-over gain which would be apportioned to that person in a case to which paragraph (d) above applies.
- (6) Subject to subsection (7) below, where the qualifying company in which the acquired holding subsists ceases to be an unquoted company this section shall have effect as if the relevant period ended immediately before it so ceased.
- (7) Where there is a transaction by virtue of which any shares in a company are to be regarded under section 127 as the same asset as the acquired holding or the whole or any part of an asset comprising that holding, this section shall not apply by virtue of subsection (2)(a) or (b) above except where—
- (a) those shares are not, or cease to be, eligible shares in that company;
  - (b) neither that company nor (if different) the company in which the acquired holding subsisted —
    - (i) is or continues to be a qualifying company; or
    - (ii) would be or continue to be a qualifying company if it were an unquoted company;
  - (c) the transaction is one by virtue of which the shares comprised in the acquired holding cease to be eligible shares in pursuance of section 164L; or
  - (d) there is a transaction by virtue of which any shares at any time comprised in the acquired holding would have so ceased in pursuance of that section.
- (8) This section shall not apply by virtue of subsection (2)(a) or (b) above where the company in which the acquired holding subsists is wound up or dissolved without winding up and—

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- (a) it is shown that the winding up or dissolution is for bona fide commercial reasons and not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax; and
  - (b) the company's net assets (if any) are distributed to its members or dealt with as bona vacantia before the end of the period of 3 years from the commencement of the winding up or, as the case may be, from the dissolution.
- (9) This section shall not apply by virtue of subsection (2)(c) above in relation to any person if—
- (a) the reason for his becoming neither resident nor ordinarily resident in the United Kingdom 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 3 years from the time when he ceases to be so, without having meanwhile disposed of any eligible shares in the company in question;
- and, accordingly, no assessment shall be made by virtue of subsection (2)(c) above before the end of that period in any case where the condition in paragraph (a) above is satisfied and the condition in paragraph (b) above may be satisfied.
- (10) For the purposes of subsection (9) above a person shall be taken to have disposed of an asset if there has been such a disposal as would, if the person making the disposal had been resident in the United Kingdom, have been a disposal on which (within the meaning of section 164D) the whole or any part of the held-over gain would have been charged.
- (11) Gains on disposals made after a chargeable gain has under this section been deemed to accrue in respect of the acquired holding to any person shall be computed as if so much of the held-over gain as is equal to the amount of the chargeable gain were to be disregarded.
- (12) In this section “the relevant period” means (subject to subsection (6) above) the period of 3 years after the acquisition of the acquired holding.

**Meaning of “qualifying company”.**

- 164G) Subject to section 164H, a company is a qualifying company for the purposes of this Chapter if it complies with this section.
- (2) Subject to the following provisions of this section, a company complies with this section if it is—
- (a) an unquoted company which exists wholly for the purpose of carrying on one or more qualifying trades or which so exists apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company's activities;
  - (b) an unquoted company whose business consists entirely in the holding of shares in or other securities of, or the making of loans to, one or more qualifying subsidiaries of the company; or

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- (c) an unquoted company whose business consists entirely in—
    - (i) the holding of such shares or securities, or the making of such loans; and
    - (ii) the carrying on of one or more qualifying trades.
- (3) A company does not comply with this section if—
  - (a) it controls (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary or, without controlling it, has a 51 per cent. subsidiary which is not a qualifying subsidiary;
  - (b) it is under the control of another company (or of another company and a person connected with the other company) or, without being controlled by it, is a 51 per cent. subsidiary of another company; or
  - (c) arrangements are in existence by virtue of which the company could fall within paragraph (a) or (b) above;and in this subsection “51 per cent. subsidiary” has the meaning given by section 838 of the Taxes Act.
- (4) In this section “qualifying subsidiary”, in relation to a company (“the holding company”), means any company which is a member of a group of companies of which the holding company is the principal company, and of which each of the members, or each of the members other than the holding company, is a company falling within subsection (5) below.
- (5) A company falls within this subsection if—
  - (a) it is such a company as is mentioned in subsection (2)(a) above;
  - (b) it exists wholly for the purpose of holding and managing property used by the holding company or any of the holding company’s other subsidiaries for the purposes of—
    - (i) research and development from which it is intended that a qualifying trade to be carried on by the holding company or any of those other subsidiaries will be derived, or
    - (ii) one or more qualifying trades so carried on;
  - (c) it would exist wholly for such a purpose apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company’s activities; or
  - (d) it has no profits for the purposes of corporation tax and no part of its business consists in the making of investments.
- (6) Without prejudice to the generality of subsection (2) above or to section 164F(8), a company ceases to comply with this section if—
  - (a) a resolution is passed, or an order is made, for the winding up of the company;
  - (b) in the case of a winding up otherwise than under the <sup>M1</sup>Insolvency Act 1986 or the <sup>M2</sup>Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose; or
  - (c) the company is dissolved without winding up.

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**Property companies etc. not to be qualifying companies.**

- 164(1) For the purposes of this Chapter a company is not a qualifying company at any time when the value of the interests in land held by the company is greater than half the value of the company's chargeable assets within the meaning of section 164C.
- (2) For the purposes of this section the value of the interests in land held by a company at any time shall be arrived at by first aggregating the market value at that time of each of those interests and then deducting—
- (a) the amount of any debts of the company which are secured on any of those interests (including any debt secured by a floating charge on property which comprises any of those interests);
  - (b) the amount of any unsecured debts of the company which do not fall due for payment before the end of the period of 12 months beginning with that time; and
  - (c) the amount paid up in respect of those shares of the company (if any) which carry a present or future preferential right to the company's assets on its winding up.
- (3) In this section "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—
- (a) 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
  - (b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.
- (4) For the purposes of this section, the value of an interest in any building or other land shall be adjusted by deducting the market value of any machinery or plant which is so installed or otherwise fixed in or to the building or other land as, in law, to become part of it.
- (5) In arriving at the value of any interest in land for the purposes of this section—
- (a) it shall be assumed that there is no source of mineral deposits in the land of a kind which it would be practicable to exploit by extracting them from underground otherwise than by means of opencast mining or quarrying; and
  - (b) any borehole on the land shall be disregarded if it was made in the course of oil exploration.
- (6) Where a company is a member of a partnership which holds any interest in land—
- (a) that interest shall, for the purposes of this section, be treated as an interest in land held by the company; but
  - (b) its value at any time shall, for those purposes, be taken to be such fraction of its value (apart from this subsection) as is equal to the

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fraction of the assets of the partnership to which the company would be entitled if the partnership were dissolved at that time.

- (7) Where a company is a member of a group of companies all the members of the group shall be treated as a single company for the purposes of this section; but any debt owed by, or liability of, one member of the group to another shall be disregarded for those purposes.

### **Qualifying trades.**

164(1) For the purposes of this Chapter—

- (a) a trade is a qualifying trade if it complies with the requirements of this section; and
  - (b) the carrying on of any activities of research and development from which it is intended that a trade complying with those requirements will be derived shall be treated as the carrying on of a qualifying trade.
- (2) Subject to the following provisions of this section, a trade complies with this section if neither that trade nor a substantial part of it consists in one or more of the following activities, that is to say—
- (a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;
  - (b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;
  - (c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;
  - (d) leasing (including letting ships on charter or other assets on hire) or receiving royalties or licence fees;
  - (e) providing legal or accountancy services;
  - (f) providing services or facilities for any such trade carried on by another person as—
    - (i) consists, to a substantial extent, in activities within any of paragraphs (a) to (e) above; and
    - (ii) is a trade in which a controlling interest is held by a person who also has a controlling interest in the trade carried on by the company providing the services or facilities;
  - (g) property development;
  - (h) farming;

but this subsection shall have effect in relation to a qualifying trade carried on by a member of a group of companies, as if the reference in paragraph (f) above to another person did not include a reference to the principal company of the group.

(3) For the purposes of subsection (2)(b) above—

- (a) a trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption;

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- (b) a trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption; and
  - (c) a trade is not an ordinary trade of wholesale or retail distribution if—
    - (i) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or of that activity and any other activity of a kind falling within subsection (2) above, taken together; and
    - (ii) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.
- (4) In determining for the purposes of this Chapter whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features, that is to say—
- (a) the goods are bought by that person in quantities larger than those in which he sells them;
  - (b) the goods are bought and sold by that person in different markets;
  - (c) that person employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;
  - (d) there are purchases or sales from or to persons who are connected with that person;
  - (e) purchases are matched with forward sales or vice versa;
  - (f) the goods are held by that person for longer than is normal for goods of the kind in question;
  - (g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;
  - (h) that person does not take physical possession of the goods;
- and for the purposes of this subsection the features specified in paragraphs (a) to (c) above shall be regarded as indications that the trade is such an ordinary trade and those in paragraphs (d) to (h) above shall be regarded as indications of the contrary.
- (5) A trade shall not be treated as failing to comply with this section by reason only of its consisting, to a substantial extent, in receiving royalties or licence fees if—
- (a) the company carrying on the trade is engaged in—
    - (i) the production of films; or
    - (ii) the production of films and the distribution of films produced by it within the period of 3 years before their distribution;
- and
- (b) all royalties and licence fees received by it are in respect of films produced by it within the preceding 3 years or sound recordings in relation to such films or other products arising from such films.



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- (6) A trade shall not be treated as failing to comply with this section by reason only of its consisting, to a substantial extent, in receiving royalties or licence fees if—
- (a) the company carrying on the trade is engaged in research and development; and
  - (b) all royalties and licence fees received by it are attributable to research and development which it has carried out.
- (7) A trade shall not be treated as failing to comply with this section by reason only of its consisting in letting ships, other than oil rigs or pleasure craft, on charter if—
- (a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;
  - (b) every ship beneficially owned by the company is registered in the United Kingdom;
  - (c) the company is solely responsible for arranging the marketing of the services of its ships; and
  - (d) the conditions mentioned in subsection (8) below are satisfied in relation to every letting of a ship on charter by the company;
- but where any of the requirements mentioned in paragraphs (a) to (d) above are not satisfied in relation to any lettings, the trade shall not thereby be treated as failing to comply with this section if those lettings and any other activity of a kind falling within subsection (2) above do not, when taken together, amount to a substantial part of the trade.
- (8) The conditions are that—
- (a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;
  - (b) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;
  - (c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;
  - (d) under the terms of the charter the company is responsible as principal—
    - (i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and
    - (ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period;
- and
- (e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) above on behalf of the company;

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but this subsection shall have effect, in relation to any letting between a company and another company which is a member of the same group of companies as that company, as if paragraph (c) were omitted.

- (9) A trade shall not comply with this section unless it is conducted on a commercial basis and with a view to the realisation of profits.

#### **Provisions supplementary to section 164I.**

164I) For the purposes of section 164I, in the case of a trade carried on by a company, a person has a controlling interest in that trade if—

- (a) he controls the company;
- (b) the company is a close company and he or an associate of his is a director of the company and either—
  - (i) the beneficial owner of, or
  - (ii) able, directly or through the medium of other companies or by any other indirect means, to control, more than 30 per cent. of the ordinary share capital of the company;
- (c) not less than half of the trade could in accordance with section 344(2) of the Taxes Act be regarded as belonging to him;

and, in any other case, a person has a controlling interest in a trade if he is entitled to not less than half of the assets used for, or of the income arising from, the trade.

- (2) For the purposes of subsection (1) above, there shall be attributed to any person any rights or powers of any other person who is an associate of his.
- (3) References in section 164I(2)(f) or subsection (1) above to a trade carried on by a person other than the company in question shall be construed as including references to any business, profession or vocation.
- (4) In this section “director” shall be construed in accordance with section 417(5) of the Taxes Act.

#### **Foreign residents.**

164K) This Chapter shall not apply in relation to any person in respect of his acquisition of any eligible shares in a qualifying company if at the time when he acquires them he is neither resident nor ordinarily resident in the United Kingdom.

- (2) This Chapter shall not apply in relation to any person in respect of his acquisition of any eligible shares in a qualifying company if—
  - (a) though resident or ordinarily resident in the United Kingdom at the time when he acquires them, he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and
  - (b) by virtue of the arrangements, he would not be liable in the United Kingdom to tax on a gain arising on a disposal of those shares immediately after their acquisition.

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### **Anti-avoidance provisions.**

- 164(1) For the purposes of this Chapter an acquisition of shares in a qualifying company shall not be treated as an acquisition of eligible shares if the arrangements for the acquisition of those shares, or any arrangements made before their acquisition in relation to or in connection with the acquisition, include—
- (a) arrangements with a view to the subsequent re-acquisition, exchange or other disposal of the shares;
  - (b) arrangements for or with a view to the cessation of the company's trade or the disposal of, or of a substantial amount of, its chargeable business assets; or
  - (c) arrangements for the return of the whole or any part of the value of his investment to the individual acquiring the shares.
- (2) If, after any eligible shares in a qualifying company have been acquired by any individual, the whole or any part of the value of that individual's investment is returned to him, those shares shall be treated for the purposes of this Chapter as ceasing to be eligible shares.
- (3) For the purposes of this section there shall be treated as being a return of the whole or a part of the value of the investment of an individual who is to acquire or has acquired any shares in a company if the company—
- (a) repays, redeems or repurchases any of its share capital or other securities which belong to that 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 any debt owed to that individual, other than a debt which was incurred by the company—
    - (i) on or after the acquisition of the shares; and
    - (ii) otherwise than in consideration of the extinguishment of a debt incurred before the acquisition of the shares;
  - (c) makes to that individual any payment for giving up his right to any debt on its extinguishment;
  - (d) releases or waives any liability of that individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;
  - (e) provides a benefit or facility for that individual;
  - (f) disposes of an asset to that individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
  - (g) acquires an asset from that individual for a consideration which is or the value of which is more than the market value of the asset; or
  - (h) makes any payment to that individual other than a qualifying payment.
- (4) For the purposes of this section there shall also be treated as being a return of the whole or a part of the value of the investment of an individual who is to acquire or has acquired any shares in a company if—
- (a) there is a loan made by any person to that individual; and

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- (b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not acquired those shares or had not been proposing to do so.
- (5) For the purposes of this section 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.
- (6) References in this section 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 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.
- (7) References in this section 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.
- (8) In this section “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) 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;
  - (g) 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; and
    - (ii) is taken into account in computing the profits or gains of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits or gains are assessed under that Schedule;
  - (h) a payment in discharge of an ordinary trade debt.
- (9) In this section—

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- (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; and
  - (b) any reference to an individual includes a reference to an associate of his and any reference to a company includes a reference to a person connected with the company.
- (10) This section shall have effect in relation to the acquisition of shares by the trustees of a settlement as if references to the individual acquiring the shares were references to those trustees or the individual who is the qualifying beneficiary by reference to whom this Chapter has or, as the case may be, would have effect in relation to that acquisition.
- (11) In this section—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - “chargeable business assets” has the same meaning as in section 164C; and
  - “ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given does not exceed six months and is not longer than that normally given to customers of the person carrying on the trade or business.

#### **Exclusion of double relief.**

164M Where a person acquires any shares in a company those shares shall not be eligible shares or, as the case may be, shall cease to be eligible shares if that person or any person connected with him has made or makes a claim for relief in relation to those shares under Chapter III of Part VII of the Taxes Act (business expansion scheme).

#### **Interpretation of Chapter IA.**

164N) In this Chapter—

“associate” has the meaning given in subsections (3) and (4) of section 417 of the Taxes Act, except that in those subsections, as applied for the purposes of this Chapter, “relative” shall not include a brother or sister;

“eligible shares” means (subject to sections 164L and 164M) any ordinary shares in a company which do not carry—

(a) any present or future preferential rights to dividends or to that company’s assets on its winding up; or

(b) any present or future preferential right to be redeemed;

“farming” has the same meaning as in the Taxes Act;

“film” means an original master negative of a film, an original master film disc or an original master film tape;

“oil exploration” means searching for oil (within the meaning of Chapter V of Part XII of the Taxes Act);

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“oil rig” means any ship which is an offshore installation for the purposes of the <sup>M3</sup>Mineral Workings (Offshore Installations) Act 1971;

“ordinary share capital” has the meaning given by section 832(1) of the Taxes Act;

“ordinary shares” means shares forming part of a company’s ordinary share capital;

“pleasure craft” means any ship of a kind primarily used for sport or recreation;

“property development” means the development of land, by a company which has, or at any time has had, an interest in the land (within the meaning of section 164H), with the sole or main object of realising a gain from disposing of the land when developed;

“research and development” means any activity which is intended to result in a patentable invention (within the meaning of the <sup>M4</sup>Patents Act 1977) or in a computer program;

“sound recording” in relation to a film, means its sound track, original master audio disc or original master audio tape; and

“unquoted company” means a company none of the shares in or other securities of which are quoted on any recognised stock exchange or are dealt in on the Unlisted Securities Market.

- (2) Section 170 shall apply for the interpretation of sections 164G and 164I as it applies for the interpretation of sections 171 to 181.
- (3) Subject to subsection (2) above, paragraph 1 of Schedule 6 shall have effect for the purposes of this Chapter as it has effect for the purposes of sections 163 and 164 and that Schedule.
- (4) References in this Chapter to the reduction of an amount include references to its reduction to nil.”

#### **Marginal Citations**

**M1** 1986 c. 45.

**M2** S.I. 1989/2405 (N.I. 19).

**M3** 1971 c. 61.

**M4** 1977 c. 37.

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