

Status: Point in time view as at 01/02/2016.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1995, Part I. (See end of Document for details)*

SCHEDULES

SCHEDULE 22

PREVENTION OF EXPLOITATION OF ^{F1}SCHEDULE 2 TO ITTOIA 2005 (SO FAR AS RELATING TO OVERLAP PROFIT)]

Textual Amendments

- F1** Words in Sch. 22 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005](#) (c. 5), s. 883(1), [Sch. 1 para. 484\(12\)](#) (with [Sch. 2](#))

PART I

CASES I AND II OF SCHEDULE D

Increase of profits or gains of transitional period

- 1 (1) This paragraph applies where, in the case of a trade, profession or vocation carried on by any person—
- (a) paragraph 2(2) of Schedule 20 to the ^{M1}Finance Act 1994 applies without the modification made by paragraph 2(3) of that Schedule; and
 - (b) any amount which is included in the profits or gains of the transitional period would not have been so included if—
 - (i) any relevant change made by that person had not been made; or
 - (ii) any relevant transaction entered into by that person had not been entered into.
- (2) Subject to sub-paragraph (3) below, the said paragraph 2(2) shall have effect as if the reference to the appropriate percentage of the aggregate of the amounts there mentioned were a reference to the aggregate of—
- (a) that percentage of each of those amounts; and
 - (b) 1.25 times the complementary percentage of each of the amounts falling within sub-paragraph (1)(b) above.
- (3) Sub-paragraph (2) above does not apply where—
- (a) the aggregate of the amounts falling within sub-paragraph (1)(b) above is less than such amount as may be prescribed by regulations made by the Board;
 - (b) the proportion which the aggregate of those amounts bears to the aggregate of the amounts mentioned in the said paragraph 2(2) is less than such proportion as may be so prescribed; or
 - (c) the appropriate percentage of the turnover for the transitional period is less than such amount as may be so prescribed;

Status: Point in time view as at 01/02/2016.

*Changes to legislation: There are currently no known outstanding effects
 for the Finance Act 1995, Part 1. (See end of Document for details)*

and regulations under this sub-paragraph may make as respects trades or professions carried on by persons in partnership provision different from that made as respects trades, professions or vocations carried on by individuals.

(4) In this paragraph—

“the appropriate percentage” means the following expressed as a percentage, that is, 365 divided by the number of days in the transitional period;

“the complementary percentage” means the difference between 100 per cent. and the appropriate percentage;

“the transitional period” means the basis period for the year 1996-97 and the relevant period (within the meaning of paragraph 2 of Schedule 20 to the ^{M2}Finance Act 1994) taken together.

Marginal Citations

M1 1994 c. 9.

M2 1994 c. 9.

^{F12}

Textual Amendments

F1 Sch. 22 para. 2 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(2\), Sch. 3](#) (with [Sch. 2](#))

Increase of profits or gains of transitional overlap period

3 (1) This paragraph applies where, in the case of a trade, profession or vocation carried on by any person—

(a) [^{F2}paragraph 52 of Schedule 2 to the Income Tax (Trading and Other Income) Act 2005 (“ITTOIA 2005”)] applies; and

(b) any amount which is included in the transitional overlap profit would not have been so included if—

(i) any relevant change made by that person had not been made; or

(ii) any relevant transaction entered into by that person had not been entered into.

(2) Subject to sub-paragraph (3) below, [^{F3}paragraph 52 of that Schedule] shall have effect as if the reference to the transitional overlap profit were a reference to the amount (if any) by which that profit exceeds 1.25 times the aggregate of the amounts falling within sub-paragraph (1)(b) above.

(3) Sub-paragraph (3) of paragraph 1 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph but subject to the following modifications, namely—

(a) the reference to the aggregate of the amounts mentioned in the said paragraph 2(2) shall have effect as a reference to the transitional overlap profit; and

Status: Point in time view as at 01/02/2016.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1995, Part 1. (See end of Document for details)*

- (b) the reference to the appropriate percentage of the turnover for the transitional period shall have effect as a reference to the appropriate percentage of the turnover for the transitional overlap period.

(4) In this paragraph—

“the appropriate percentage” means the following expressed as a percentage, that is, 365 divided by the number of days in the transitional overlap period;

“the transitional overlap period” means the period beginning immediately after the end of—

(a) the basis period for the year 1996-97 [^{F4}(determined in accordance with paragraph 1 of Schedule 20 to the Finance Act 1994 despite the repeal by ITTOIA 2005 of that paragraph)]; or

(b) in the case of a trade or profession carried on by any person in partnership with other persons, the basis period of the partnership for that year [^{F4}(as so determined)],

and (in either case) ending with 5th April 1997;

“the transitional overlap profit” means the amount mentioned in [^{F5}paragraph 52(2) of Schedule 2 to ITTOIA 2005].

Textual Amendments

- F2** Words in Sch. 22 para. 3(1)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(3\)\(a\)](#) (with Sch. 2)
- F3** Words in Sch. 22 para. 3(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(3\)\(b\)](#) (with Sch. 2)
- F4** Words in Sch. 22 para. 3(4) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(3\)\(c\)](#) (with Sch. 2)
- F5** Words in Sch. 22 para. 3(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(3\)\(d\)](#) (with Sch. 2)

^{F6}

Textual Amendments

- F6** Sch. 22 para. 4 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(4\), Sch. 3](#) (with Sch. 2)

5 (1) This paragraph applies where, in the case of a trade or profession carried on by any person in partnership with other persons—

- (a) [^{F7}paragraph 52 of Schedule 2 to ITTOIA 2005] applies with or without the modification made by paragraph 3(2) above;
- (b) a claim is made under [^{F8}section 383 of the Income Tax Act 2007 (relief for interest payments)] in respect of interest on a loan to defray money contributed or advanced by him (“the partner”) to the partnership; and
- (c) sub-paragraph (2) below applies to any of the money so contributed or advanced.

(2) This sub-paragraph applies to money so contributed or advanced unless it was contributed or advanced wholly or mainly—

Status: Point in time view as at 01/02/2016.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1995, Part I. (See end of Document for details)

- (a) for bona fide commercial reasons; or
 - (b) for a purpose other than the reduction of the partnership's borrowings for a relevant period.
- (3) Subject to sub-paragraph (4) below, [^{F9}paragraph 52 of Schedule 2 to ITTOIA 2005] shall have effect as if the reference to the transitional overlap profit were a reference to the difference between that profit and the amount of interest paid by the partner in respect of the transitional overlap period on money to which sub-paragraph (2) above applies.
- (4) Sub-paragraph (3) above does not apply where—
- (a) the loan was made before 1st April 1994; or
 - (b) the aggregate amount of interest paid as mentioned in that sub-paragraph is less than such amount as may be prescribed by regulations made by the Board.
- (5) In this paragraph—
- “relevant period” means a period the whole or part of which falls within the transitional overlap period;
 - “the transitional overlap period” has the same meaning as in paragraph 3 above;
 - “the transitional overlap profit” means the amount mentioned in [^{F10}paragraph 52(2) of Schedule 2 to ITTOIA 2005] (whether having effect with or without the modification made by paragraph 3(2) above).

Textual Amendments

- F7** Words in Sch. 22 para. 5(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(5\)\(a\)](#) (with Sch. 2)
- F8** Words in Sch. 22 para. 5(1)(b) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 370\(2\)](#) (with Sch. 2)
- F9** Words in Sch. 22 para. 5(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(5\)\(b\)](#) (with Sch. 2)
- F10** Words in Sch. 22 para. 5(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(5\)\(c\)](#) (with Sch. 2)

Status:

Point in time view as at 01/02/2016.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1995, Part I.