

Status: Point in time view as at 01/12/2009.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1995, Part IV. (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 IV

INTERPRETATION

Relevant changes for purposes of paragraphs 1, 3, 6 and 7

- 14 (1) Any accounting change or change of business practice is a relevant change for the purposes of ^{F1}paragraphs 1, 3 and 7] above unless—
- (a) the change is made exclusively for bona fide commercial reasons; or
 - (b) the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the making of the change.
- (2) In this paragraph “accounting change”—
- (a) does not include any change of accounting date which brings the end of the basis period for the year 1996-97 closer to 5th April 1997; but
 - (b) subject to that, means any change of accounting date or other modification of an accounting policy or any substitution of one such policy for another.
- (3) In this paragraph “change of business practice” means any change in an established practice of trade, profession or vocation carried on by any person—
- (a) as to the timing of any of the following, namely—
 - (i) the supply of goods or services, the invoicing of customers or clients and the collection of outstanding debts; and
 - (ii) the obtaining of goods or services, the incurring of business expenses and the settlement of outstanding debts; or
 - (b) as to the obtaining or making of payments in advance or payments on account.

Textual Amendments

- F1** Words in Sch. 22 para. 14(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(9\)](#) (with Sch. 2)

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Relevant transactions for purposes of paragraphs 1, 3, 6 and 7

- 15 Any self-cancelling transaction or transaction with a connected person is a relevant transaction for the purposes of [^{F2}paragraphs 1, 3 and 7] above unless—
- (a) the transaction is entered into exclusively for bona fide commercial reasons; or
 - (b) the obtaining of a tax advantage is not the main benefit that could reasonably be expected to arise from the entering into of the transaction.

Textual Amendments

F2 Words in Sch. 22 para. 15(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(10\)](#) (with Sch. 2)

- 16 (1) An agreement by which the person by whom a trade, profession or vocation is carried on agrees to sell or transfer trading stock or work in progress is a self-cancelling transaction for the purposes of paragraph 15 above if by the same or any collateral agreement that person—
- (a) agrees to buy back or re-acquire the trading stock or work in progress; or
 - (b) acquires or grants an option, which is subsequently exercised, for him to buy back or re-acquire the trading stock or work in progress.
- (2) In sub-paragraph (1) above—
- “trading stock” has the same meaning as in section 100 of the Taxes Act 1988;
- “work in progress”, in relation to a profession or vocation, means—
- (a) any services performed in the ordinary course of the profession or vocation, the performance of which is wholly or partly completed at the time of the sale or transfer and for which it would be reasonable to expect that a charge would have been made on their completion if the sale or transfer had not been effected; and
 - (b) any article produced, and any such material as is used, in the performance of any such services,
- and references in that sub-paragraph to the sale or transfer of work in progress shall include references to the sale or transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.
- 17 (1) For the purposes of paragraph 15 above, any question whether the person by whom a trade, profession or vocation is carried on is connected with another person shall be determined in accordance with sub-paragraphs (2) to (5) below.
- (2) An individual carrying on a trade, profession or vocation is connected with another person if they are connected with each other within the meaning of [^{F3}section 993 of the Income Tax Act 2007 (but as if, in subsection (4) of that section, the words from “But this subsection” to the end were omitted).]
 - (3) Persons carrying on a trade or profession in partnership are connected with an individual if he controls the partnership.
 - (4) Persons carrying on a trade or profession in partnership are connected with a company if the company controls the partnership or the same person controls both the company and the partnership.

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- (5) Persons carrying on a trade or profession in partnership are connected with persons carrying on another trade or profession in partnership if the same person controls both partnerships.
- (6) In this paragraph—
- (a) “control” shall be construed—
- (i) in relation to a company, in accordance with section 416 of the Taxes Act 1988;
- (ii) in relation to a partnership, in accordance with [^{F4}section 995 of the Income Tax Act 2007]; and
- (b) any reference to a person controlling a company or partnership is a reference to his doing so either alone or with one or more persons connected with him.

Textual Amendments

- F3** Words in Sch. 22 para. 17(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 370\(3\)\(a\)](#) (with [Sch. 2](#))
- F4** Words in Sch. 22 para. 17(6)(a)(ii) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\), s. 1034\(1\), Sch. 1 para. 370\(3\)\(b\)](#) (with [Sch. 2](#))

Relevant arrangements for purposes of paragraph 9

^{F5}18

Textual Amendments

- F5** [Sch. 22 paras. 18-20](#) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(11\), Sch. 3](#) (with [Sch. 2](#))

Relevant arrangements for purposes of paragraph 10

^{F5}19

Textual Amendments

- F5** [Sch. 22 paras. 18-20](#) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(11\), Sch. 3](#) (with [Sch. 2](#))

Relevant transactions for purposes of paragraph 10

^{F5}20

Textual Amendments

- F5** [Sch. 22 paras. 18-20](#) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 484\(11\), Sch. 3](#) (with [Sch. 2](#))

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General

- 21 (1) In this Schedule “turnover”, in relation to a trade, profession or vocation, means the amounts derived from the provision of goods or services falling within its ordinary activities, after deduction of trade discounts and value added tax.
- (2) Obtaining a tax advantage shall not be regarded as a bona fide commercial reason for the purposes of this Schedule.

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