



# Finance Act 1997

## 1997 CHAPTER 16

### PART V

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

##### *Income tax charge, rates and reliefs*

#### **54 Charge and rates of income tax for 1997-98.**

- F1(1) .....
- F1(2) .....
- F1(3) .....
- F1(4) .....
- F2(5) .....

##### **Textual Amendments**

- F1** S. 54(1)-(4) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F2** S. 54(5) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

#### **F3 55 Modification of indexed allowances.**

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##### **Textual Amendments**

- F3** S. 55 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1997, Part V. (See end of Document for details)*

**56 Blind person’s allowance.**

- (1) In subsection (1) of section 265 of the Taxes Act 1988 (blind person’s allowance), for “£1,250” there shall be substituted “ £1,280 ”.
- (2) After that subsection there shall be inserted the following subsection—  
  - “(1A) Section 257C (indexation) shall have effect (using the rounding up rule in subsection (1)(b) of that section) for the application of this section for the year 1998-99 and any subsequent year of assessment as it has effect for the application of sections 257 and 257A.”
- (3) Subsection (1) above shall apply for the year 1997-98 and, subject to subsection (2) above, for subsequent years of assessment.

<sup>F4</sup>**57 Limit on relief for interest.**

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**Textual Amendments**  
**F4** S. 57 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Corporation tax charge and rate*

<sup>F5</sup>**58** .....

**Textual Amendments**  
**F5** S. 58 repealed (31.7.1997) by [1997 c. 58](#), s. 52, [Sch. 8 Pt. II\(3\)](#) (with s. 3(3))

**59 Small companies.**

For the financial year 1997—

- <sup>F6</sup>(a) .....
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

**Textual Amendments**  
**F6** S. 59(a) repealed (31.7.1997) by [1997 c. 58](#), s. 52, [Sch. 8 Pt. II\(3\)](#) (with s. 3(3))

*Payments for wayleaves*

**60 Wayleaves for electricity cables, telephone lines, etc.**

- (1) Section 120 of the Taxes Act 1988 (payments for wayleaves for electricity cables, telephone lines, etc.) shall be amended as follows.

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- (2) In subsection (1) (payments charged under Schedule D subject to deduction of tax)—
- (a) at the beginning there shall be inserted “ Subject to subsection (1A) below, ”; and
  - (b) the words from “and, subject to” onwards (which provide for the deduction of tax) shall be omitted.
- (3) After subsection (1) there shall be inserted the following subsection—
- “(1A) If—
- (a) the profits and gains arising to any person for any chargeable period include both rent in respect of any such easement as is mentioned in subsection (1) above and amounts which are charged to tax under Schedule A, and
  - (b) some or all of the land to which the easement relates is included in the land by reference to which the amounts charged under Schedule A arise,
- then, for that period, that rent shall be charged to tax under Schedule A, instead of being charged under Schedule D.”
- (4) Subsections (2) to (4) and, in subsection (5), paragraph (c) and the word “and” immediately preceding it shall cease to have effect.
- (5) This section has effect in relation to payments made on or after 6th April 1997.

#### *Schedule E*

### **61 Phasing out of relief for profit-related pay.**

- (1) Chapter III of Part V of the Taxes Act 1988 (profit-related pay) shall have effect as if, in section 171(4) (£4,000 limit on relief for profit period of twelve months), for “£4,000” there were substituted—
- (a) in relation to profit-related pay paid by reference to profit periods beginning on or after 1st January 1998 and before 1st January 1999, “ £2,000 ”; and
  - (b) in relation to profit-related pay paid by reference to profit periods beginning on or after 1st January 1999 and before 1st January 2000, “ £1,000 ”.
- (2) That Chapter shall not have effect in relation to any payment made by reference to a profit period beginning on or after 1st January 2000.
- (3) Accordingly—
- (a) a scheme shall not be registered under that Chapter if the only payments for which it provides are payments by reference to profit periods beginning on or after 1st January 2000; and
  - (b) registration under that Chapter shall end on 31st December 2000.

### **<sup>F7</sup>62 Travelling expenses etc.**

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

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1997, Part V. (See end of Document for details)*

**Textual Amendments**

- F7** S. 62 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)

**F8 63 Work-related training.**

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**Textual Amendments**

- F8** S. 63 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)

*Relieved expenditure, losses etc.*

**64 Postponed company donations to charity.**

- (1) In section 339 of the Taxes Act 1988 (company donations to charity), after subsection (7) there shall be inserted the following subsections—

“(7AA) Where—

- (a) a covenanted donation to a charity is made by a company which is wholly owned by a charity,
- (b) the requirements of subsection (7) above for that donation to be regarded as a charge on income are satisfied,
- (c) the disposition or covenant under which the donation is made required it to be made in an accounting period of the company which ended before the time when it is in fact made, and
- (d) the donation is made within nine months of the end of that period,

the donation shall be deemed for the purposes of section 338 to be a charge on income paid in the accounting period in which it was required to be made, and not in any later period.

(7AB) For the purposes of this section a company is wholly owned by a charity if it is either—

- (a) a company with an ordinary share capital every part of which is owned by a charity (whether or not the same charity); or
- (b) a company limited by guarantee in whose case every person who—
  - (i) is beneficially entitled to participate in the divisible profits of the company, or
  - (ii) will be beneficially entitled to share in any net assets of the company available for distribution on its winding up,
 is or must be a charity or a company wholly owned by a charity.

(7AC) For the purposes of subsection (7AB) above ordinary share capital of a company shall be taken to be owned by a charity if there is a charity which—

- (a) within the meaning of section 838 directly or indirectly owns that share capital; or

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- (b) would be taken so to own that share capital if references in that section to a body corporate included references to a charity which is not a body corporate.”
- (2) This section has effect in relation to donations made in accounting periods beginning on or after 1st April 1997.

**F<sup>9</sup>65 National Insurance contributions.**

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**Textual Amendments**

- F9** S. 65 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**F<sup>10</sup>66 Expenditure on production wells etc.**

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**Textual Amendments**

- F10** S. 66 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))

**67 Annuity business of insurance companies.**

- (1) In section 437 of the Taxes Act 1988 (extent to which payments in respect of new annuities are to be treated as charges on income), for subsections (1A) and (1B) there shall be substituted the following subsection—

“(1A) In the computation, otherwise than in accordance with the provisions applicable to Case I of Schedule D, of the profits for any accounting period of a company’s life assurance business, new annuities paid by the company in that period shall be brought into account by treating an amount equal to the income limit for that period as a sum disbursed as expenses of management of the company for that period.”

- (2) In subsection (1C) of that section (interpretation of section), after “this section” there shall be inserted “ (but subject to subsections (1CA) to (1CD) below) ”; and after that subsection there shall be inserted the following subsections—

“(1CA) Where a new annuity (“the actual annuity”) is a steep-reduction annuity, the income limit for an accounting period of the company paying the annuity shall be computed for the purposes of this section as if—

- (a) the contract providing for the actual annuity provided instead for the annuities identified by subsections (1CB) and (1CC) below; and
- (b) the consideration for each of those annuities were to be determined by the making of a just and reasonable apportionment of the consideration for the actual annuity.

(1CB) The annuities mentioned in subsection (1CA)(a) above are—

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- (a) an annuity the payments in respect of which are confined to the payments in respect of the actual annuity that fall to be made before the earliest time for the making in respect of the actual annuity of a reduced payment such as is mentioned in section 437A(1)(c); and
  - (b) subject to subsection (1CC) below, an annuity the payments in respect of which are all the payments in respect of the actual annuity other than those mentioned in paragraph (a) above.
- (1CC) Where an annuity identified by paragraph (b) of subsection (1CB) above (“the later annuity”) would itself be a steep-reduction annuity, the annuities mentioned in subsection (1CA)(a) above—
- (a) shall not include the later annuity; but
  - (b) shall include, instead, the annuities which would be identified by subsection (1CB) above (with as many further applications of this subsection as may be necessary for securing that none of the annuities mentioned in subsection (1CA)(a) above is a steep-reduction annuity) if references in that subsection to the actual annuity were references to the later annuity.
- (1CD) Subsections (1CA) to (1CC) above shall be construed in accordance with section 437A.”
- (3) After that section there shall be inserted the following section—

**“437A Meaning of “steep-reduction annuity” etc.**

- (1) For the purposes of section 437 an annuity is a steep-reduction annuity if—
- (a) the amount of any payment in respect of the annuity (but not the term of the annuity) depends on any contingency other than the duration of a human life or lives;
  - (b) the annuitant is entitled in respect of the annuity to payments of different amounts at different times; and
  - (c) those payments include a payment (“a reduced payment”) of an amount which is substantially smaller than the amount of at least one of the earlier payments in respect of that annuity to which the annuitant is entitled.
- (2) Where there are different intervals between payments to which an annuitant is entitled in respect of any annuity, the question whether or not the conditions in subsection (1)(b) and (c) above are satisfied in the case of that annuity shall be determined by assuming—
- (a) that the annuitant’s entitlement, after the first payment, to payments in respect of that annuity is an entitlement to payments at yearly intervals on the anniversary of the first payment; and
  - (b) that the amount to which the annuitant is assumed to be entitled on each such anniversary is equal to the annuitant’s assumed entitlement for the year ending with that anniversary.
- (3) For the purposes of subsection (2) above an annuitant’s assumed entitlement for any year shall be determined as follows—
- (a) the annuitant’s entitlement to each payment in respect of the annuity shall be taken to accrue at a constant rate during the interval between the previous payment and that payment; and

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- (b) his assumed entitlement for any year shall be taken to be equal to the aggregate of the amounts which, in accordance with paragraph (a) above, are treated as accruing in that year.
- (4) In the case of an annuity to which subsection (2) above applies, the reference in section 437(1CB)(a) to the making of a reduced payment shall be construed as if it were a reference to the making of a payment in respect of that annuity which (applying subsection (3)(a) above) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments in respect of that annuity is taken to accrue.
- (5) Where—
  - (a) any question arises for the purposes of this section whether the amount of any payment in respect of any annuity—
    - (i) is substantially smaller than the amount of, or
    - (ii) accrues at a rate substantially less than, an earlier payment in respect of that annuity, and
  - (b) the annuitant or, as the case may be, every annuitant is an individual who is beneficially entitled to all the rights conferred on him as such an annuitant,that question shall be determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of the occurrence of a death.
- (6) Where the amount of any one or more of the payments to which an annuitant is entitled in respect of an annuity depends on any contingency, his entitlement to payments in respect of that annuity shall be determined for the purposes of section 437(1CA) to (1CC) and this section according to whatever (applying any relevant actuarial principles) is the most likely outcome in relation to that contingency.
- (7) Where any agreement or arrangement has effect for varying the rights of an annuitant in relation to a payment in respect of any annuity, that payment shall be taken, for the purposes of section 437(1CA) to (1CC) and this section, to be a payment of the amount to which the annuitant is entitled in accordance with that agreement or arrangement.
- (8) References in this section to a contingency include references to a contingency that consists wholly or partly in the exercise by any person of any option.”
- (4) Section 434B(2) of that Act (treatment of annuities paid by an insurance company) shall cease to have effect and accordingly—
  - <sup>F11</sup>(a) .....
  - (b) in section 337(2B) of that Act, for “the references in sections 338(2) and 434B(2)” there shall be substituted “ the reference in section 338(2) ”.
- <sup>F12</sup>(5) .....
- (6) In sub-paragraph (1) of paragraph 16 of Schedule 7 to the <sup>M1</sup>Finance Act 1991 (which makes transitional provision for annuities under contracts made in accounting periods beginning before 1st January 1992), for the words before paragraph (a) there shall be substituted—

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“(1) In the computation, otherwise than in accordance with the provisions applicable to Case I of Schedule D, of the profits for any accounting period of an insurance company’s life assurance business, an amount equal to the lesser of the following amounts shall be treated (if it is not nil) as a sum disbursed as expenses of management of the company for that period, that is to say—”.

(7) Subsections (1) and (4) to (6) above have effect in relation to accounting periods beginning after 5th March 1997.

(8) Subsections (2) and (3) above have effect in relation to accounting periods ending on or after 5th March 1997 but do not affect the computation of the capital elements contained in any annuity payments made before that date.

#### Textual Amendments

**F11** S. 67(4)(a) repealed (with effect in accordance with s. 42 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(3\)](#)

**F12** S. 67(5) 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](#)

#### Marginal Citations

**M1** 1991 c. 31.

## 68 Consortium claims for group relief.

In section 410 of the Taxes Act 1988 (group relief not available in certain cases including those where a person, either alone or with connected persons, controls 75% or more of the voting rights in a company owned by a consortium), in the definition of “connected persons” in subsection (5) after “in accordance with section 839” there shall be inserted “ but as if subsection (7) of that section (persons acting together to control a company are connected) were omitted ”.

*Distributions etc.*

## 69 Special treatment for certain distributions.

Schedule 7 to this Act (which makes provision for the treatment of distributions arising on the purchase etc. by a company of its own shares and for cases where a distribution has a connection with a transaction in securities) shall have effect.

## <sup>F13</sup>70 Distributions of exempt funds.

(1) In subsection (5) of section 236 of the Taxes Act 1988 (meaning of “relevant profits”)

- (a) in paragraph (a), after “franked investment income” there shall be inserted “ and foreign income dividends ”; and
- (b) in paragraph (b), for “and franked investment income” there shall be substituted “ , franked investment income and foreign income dividends ”.

(2) After subsection (7) of that section there shall be inserted the following subsection—



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“(8) In this section “foreign income dividends” shall be construed in accordance with Chapter VA of Part VI.”

- (3) This section has effect (subject to subsection (4) below) for the purposes of computing the relevant profits (within the meaning of section 236 of the Taxes Act 1988) arising to a company in any period falling wholly or partly after 7th October 1996.
- (4) No foreign income dividend paid before 8th October 1996 shall be included or, as the case may be, excluded by virtue of this section from any such profits as are mentioned in subsection (3) above.]

#### Textual Amendments

- F13** S. 70 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(9)** Note 3

#### [<sup>F14</sup>71 Set-off against franked investment income.

Section 242 of the Taxes Act 1988 (set-off of losses against surplus franked investment income) shall have effect, and be deemed always to have had effect, as if at the end of paragraph (c) of subsection (6) (power to carry set-off forward) there were inserted

- (d) in relation to relief given in respect of amounts available to be set against profits under section 83 of the <sup>M2</sup>Finance Act 1996 or paragraph 4 of Schedule 11 to that Act or under section 131(4) of the <sup>M3</sup>Finance Act 1993 (which are provisions relating to deficits on loan relationships, foreign exchange losses and losses on certain financial instruments);”.]

#### Textual Amendments

- F14** S. 71 repealed (31.7.1997 with effect in accordance with s. 20 of the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(4)** Note

#### Marginal Citations

- M2** 1996 c. 8.  
**M3** 1993 c. 34.

#### [<sup>F15</sup>72 FIDs paid to unauthorised unit trusts.

- (1) In section 246D(5) of the Taxes Act 1988 (section 233(1) and (1A) of that Act not to apply to FIDs paid to individuals, personal representatives or certain trustees), after “representatives” there shall be inserted “, a foreign income dividend paid to the trustees of a unit trust scheme to which section 469 applies”.
- (2) This section has effect in relation to distributions made on or after 26th November 1996.]

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*Changes to legislation: There are currently no known outstanding effects  
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**Textual Amendments**

**F15** S. 72 repealed (31.7.1997 with effect in accordance with s. 36 and Sch. 6 to the amending Act) by 1997 c. 58, s. 52, **Sch. 8 Pt. II(11)** Note

**F16<sup>73</sup> Tax advantages to include tax credits.**

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**Textual Amendments**

**F16** S. 73 omitted (with effect in accordance with s. 66(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), s. **66(3)(a)**

*Investments etc.*

**F17<sup>74</sup> Enterprise investment scheme.**

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**Textual Amendments**

**F17** S. 74 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

**F18<sup>75</sup> Venture capital trusts.**

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**Textual Amendments**

**F18** S. 75 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

**76 Stock lending and manufactured payments.**

Schedule 10 to this Act (which makes provision for the treatment for the purposes of income tax, corporation tax and capital gains tax of stock lending arrangements and manufactured payments) shall have effect.

**F19<sup>77</sup> Bond washing and repos.**

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**Textual Amendments**

**F19** S. 77 omitted (with effect in accordance with s. 66(8) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), s. **66(4)(h)**

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**F2078 National Savings Bank interest.**

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**Textual Amendments**

**F20** S. 78 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F2179 Payments under certain life insurance policies.**

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**Textual Amendments**

**F21** S. 79 omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 14 para. 17\(f\)](#)

**80 Futures and options: transactions with guaranteed returns.**

- F22(1) .....
- F22(2) .....
- F22(3) .....
- F22(4) .....
- F23(5) .....
- F23(6) .....
- F24(7) .....

**Textual Amendments**

- F22** S. 80(1)-(4) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F23** S. 80(5)(6) repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F24** S. 80(7) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Transfer of assets abroad*

**F2581 Transfer of assets abroad.**

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**Textual Amendments**

**F25** S. 81 repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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*Leasing and loan arrangements*

**82 Finance leases and loans.**

Schedule 12 to this Act (which makes provision about arrangements such as are treated for certain accounting purposes as finance leases or loans) shall have effect.

**83 Loan relationships: transitions.**

- F26(1) .....
- F26(2) .....
- F26(3) .....
- F26(4) .....
- F26(5) .....

(6) Schedule 13 to this Act (which contains amendments of the transitional provisions in Schedule 15 to the Finance Act 1996) shall have effect.

**Textual Amendments**

**F26** S. 83(1)-(5) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

*Capital allowances*

F27**84** .....

**Textual Amendments**

**F27** S. 84 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by [2001 c. 2, s. 580](#), [Sch. 4](#)

**85 Schedule A cases etc.**

Schedule 15 to this Act (which makes provision in relation to capital allowances for cases where persons have income chargeable to tax under Schedule A or make lettings of furnished holiday accommodation in the United Kingdom) shall have effect.

F28**86** .....

**Textual Amendments**

**F28** S. 86 repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by [2001 c. 2, s. 580](#), [Sch. 4](#)

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## Chargeable gains

### 87 Re-investment relief.

Schedule 17 to this Act (which amends Chapter IA of Part V of the <sup>M4</sup>Taxation of Chargeable Gains Act 1992) shall have effect.

#### Marginal Citations

M4 1992 c. 12.

### 88 Conversion of securities: QCBs and debentures.

- (1) The Taxation of Chargeable Gains Act 1992 shall be amended as follows.
- (2) In paragraph (a) of subsection (3) of section 132 (meaning of conversion of securities)
  - (a) after “includes” there shall be inserted “ any of the following, whether effected by a transaction or occurring in consequence of the operation of the terms of any security or of any debenture which is not a security, that is to say ”;
  - (b) after sub-paragraph (i) there shall be inserted the following sub-paragraphs—
    - “(ia) a conversion of a security which is not a qualifying corporate bond into a security of the same company which is such a bond, and
    - (ib) a conversion of a qualifying corporate bond into a security which is a security of the same company but is not such a bond, and”.
- (3) After that subsection there shall be inserted the following subsections—
  - “(4) In subsection (3)(a)(ia) above the reference to the conversion of a security of a company into a qualifying corporate bond includes a reference to—
    - (a) any such conversion of a debenture of that company that is deemed to be a security for the purposes of section 251 as produces a security of that company which is a qualifying corporate bond; and
    - (b) any such conversion of a security of that company, or of a debenture that is deemed to be a security for those purposes, as produces a debenture of that company which, when deemed to be a security for those purposes, is such a bond.
  - (5) In subsection (3)(a)(ib) above the reference to the conversion of a qualifying corporate bond into a security of the same company which is not such a bond includes a reference to any conversion of a qualifying corporate bond which produces a debenture which—
    - (a) is not a security; and
    - (b) when deemed to be a security for the purposes of section 251, is not such a bond.”
- (4) In section 116(2) (qualifying corporate bonds), after the word “section”, in the first place where it occurs, there shall be inserted “ references to a transaction include references to any conversion of securities (whether or not effected by a transaction) within the meaning of section 132 and ”.

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(5) In section 251(6) (deemed securities), after paragraph (d) there shall be inserted—

“and any debenture which results from a conversion of securities within the meaning of section 132, or is issued in pursuance of rights attached to such a debenture, shall be deemed for the purposes of this section to be a security (as defined in that section).”

(6) This section has effect for the purposes of the application of the <sup>M5</sup>Taxation of Chargeable Gains Act 1992 in relation to any disposal on or after 26th November 1996 and shall so have effect, where a conversion took place at a time before that date, as if it had come into force before that time.

#### Marginal Citations

M5 1992 c. 12.

## 89 Earn-out rights.

(1) After section 138 of the Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

### “138A Use of earn-out rights for exchange of securities.

(1) For the purposes of this section an earn-out right is so much of any right conferred on any person (“the seller”) as—

- (a) constitutes the whole or any part of the consideration for the transfer by him of shares in or debentures of a company (“the old securities”);
- (b) consists in a right to be issued with shares in or debentures of another company (“the new company”);
- (c) is such that the value or quantity of the shares or debentures to be issued in pursuance of the right (“the new securities”) is unascertainable at the time when the right is conferred; and
- (d) is not capable of being discharged in accordance with its terms otherwise than by the issue of the new securities.

(2) Where—

- (a) there is an earn-out right,
- (b) the exchange of the old securities for the earn-out right is an exchange to which section 135 would apply, in a manner unaffected by section 137, if the earn-out right were an ascertainable amount of shares in or debentures of the new company, and
- (c) the seller elects under this section for the earn-out right to be treated as a security of the new company,

this Act shall have effect, in the case of the seller and every other person who from time to time has the earn-out right, in accordance with the assumptions specified in subsection (3) below.

(3) Those assumptions are—

- (a) that the earn-out right is a security within the definition in section 132;

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- (b) that the security consisting in the earn-out right is a security of the new company and is incapable of being a qualifying corporate bond for the purposes of this Act;
  - (c) that references in this Act (including those in this section) to a debenture include references to a right that is assumed to be a security in accordance with paragraph (a) above; and
  - (d) that the issue of shares or debentures in pursuance of such a right constitutes the conversion of the right, in so far as it is discharged by the issue, into the shares or debentures that are issued.
- (4) For the purposes of this section where—
- (a) any right which is assumed, in accordance with this section, to be a security of a company (“the old right”) is extinguished,
  - (b) the whole of the consideration for the extinguishment of the old right consists in another right (“the new right”) to be issued with shares in or debentures of that company,
  - (c) the new right is such that the value or quantity of the shares or debentures to be issued in pursuance of the right (“the replacement securities”) is unascertainable at the time when the old right is extinguished,
  - (d) the new right is not capable of being discharged in accordance with its terms otherwise than by the issue of the replacement securities, and
  - (e) the person on whom the new right is conferred elects under this section for it to be treated as a security of that company,
- the assumptions specified in subsection (3) above shall have effect in relation to the new right, in the case of that person and every other person who from time to time has the new right, as they had effect in relation to the old right.
- (5) An election under this section in respect of any right must be made, by a notice given to an officer of the Board—
- (a) in the case of an election by a company within the charge to corporation tax, within the period of two years from the end of the accounting period in which the right is conferred; and
  - (b) in any other case, on or before the first anniversary of the 31st January next following the year of assessment in which that right is conferred.
- (6) An election under this section shall be irrevocable.
- (7) Subject to subsections (8) to (10) below, where any right to be issued with shares in or debentures of a company is conferred on any person, the value or quantity of the shares or debentures to be issued in pursuance of that right shall be taken for the purposes of this section to be unascertainable at a particular time if, and only if—
- (a) it is made referable to matters relating to any business or assets of one or more relevant companies; and
  - (b) those matters are uncertain at that time on account of future business or future assets being included in the business or assets to which they relate.
- (8) Where a right to be issued with shares or debentures is conferred wholly or partly in consideration for the transfer of other shares or debentures or the extinguishment of any right, the value and quantity of the shares or

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debentures to be issued shall not be taken for the purposes of this section to be unascertainable in any case where, if—

- (a) the transfer or extinguishment were a disposal, and
- (b) a gain on that disposal fell to be computed in accordance with this Act, the shares or debentures to be issued would, in pursuance of section 48, be themselves regarded as, or as included in, the consideration for the disposal.

(9) Where any right to be issued with shares in or debentures of a company comprises an option to choose between shares in that company and debentures of that company, the existence of that option shall not, by itself, be taken for the purposes of this section either—

- (a) to make unascertainable the value or quantity of the shares or debentures to be issued; or
- (b) to prevent the requirements of subsection (1)(b) and (d) or (4)(b) and (d) above from being satisfied in relation to that right.

(10) For the purposes of this section the value or quantity of shares or debentures shall not be taken to be unascertainable by reason only that it has not been fixed if it will be fixed by reference to the other and the other is ascertainable.

(11) In subsection (7) above “relevant company”, in relation to any right to be issued with shares in or debentures of a company, means—

- (a) that company or any company which is in the same group of companies as that company; or
- (b) the company for whose shares or debentures that right was or was part of the consideration, or any company in the same group of companies as that company;

and in this subsection the reference to a group of companies shall be construed in accordance with section 170(2) to (14).”

(2) Subject to subsections (3) to (8) below—

- (a) the section 138A inserted by subsection (1) above shall be deemed always to have been a section of the <sup>M6</sup>Taxation of Chargeable Gains Act 1992; and
- (b) the enactments applying to chargeable periods beginning before 6th April 1992 shall be deemed always to have included a corresponding section.

(3) Subject to subsections (4) to (6) below, an election under section 138A of the Taxation of Chargeable Gains Act 1992 in respect of a right conferred on any person before 26th November 1996 may be made at any time before the end of the period for the making of such an election in respect of a right conferred on that person on that date.

(4) An election in respect of a right conferred on any person shall not be made by virtue of subsection (3) above at any time after the final determination of his liability to corporation tax or capital gains tax for the chargeable period in which the right was in fact conferred on him.

(5) A notice given to an officer of the Board before the day on which this Act is passed shall not have effect as an election under section 138A of the Taxation of Chargeable Gains Act 1992, or the corresponding provision applying to chargeable periods beginning before 6th April 1992, except in accordance with subsection (6) below.

(6) Where—



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- (a) any person has given a notification to an officer of the Board before the day on which this Act is passed, and
  - (b) that notification was given either—
    - (i) in anticipation of the right to make an election under section 138A of the Taxation of Chargeable Gains Act 1992, or
    - (ii) for the purposes of an extra-statutory concession available to be used by that person for purposes similar to those of that section, that notification shall, unless the Board otherwise direct, be treated as if it were a valid and irrevocable election made by that person for the purposes of that section or, as the case may be, the corresponding provision.
- (7) Where any notification given as mentioned in subsection (6)(b)(ii) above is treated as an election for the purposes of section 138A of the <sup>M7</sup>Taxation of Chargeable Gains Act 1992 or any corresponding provision, that section or, as the case may be, the corresponding provision shall be taken to have no effect by virtue of that election in relation to any disposal before 26th November 1996 of any asset which—
- (a) was issued to any person in pursuance of an earn-out right;
  - (b) was issued to any person in pursuance of any such right as is mentioned in subsection (4) of that section; or
  - (c) falls for the purposes of that Act to be treated as the same as an asset issued at any time to any person in pursuance of such a right as is mentioned in paragraph (a) or (b) above but is not an asset first held by that person before that time.
- (8) Subsection (7) above shall not prevent section 138A of the Taxation of Chargeable Gains Act 1992 from being taken, for the purposes of applying that Act to any disposal on or after 26th November 1996, to have had effect in relation to—
- (a) any disposal before that date on which, by virtue of any of the <sup>F29</sup>no gain/no loss provisions (within the meaning of that Act: see section 288(3A) of that Act)], neither a gain nor a loss accrued,
  - (b) any deemed disposal before that date by reference to which a gain or loss falls to be calculated in accordance with section 116(10)(a) of that Act, or
  - (c) any transaction before that date that would have fallen to be treated as a disposal but for section 127 of that Act.

#### Textual Amendments

**F29** Words in s. 89(8)(a) substituted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 69\(2\)](#)

#### Marginal Citations

**M6** 1992 c. 12.  
**M7** 1992 c. 12.

### *Double taxation relief*

#### **90 Restriction of relief for underlying tax.**

- (1) After section 801 of the Taxes Act 1988 there shall be inserted the following section—

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**“801A Restriction of relief for underlying tax.**

- (1) This section applies where—
  - (a) a company resident in the United Kingdom (“the United Kingdom company”) makes a claim for an allowance by way of credit in accordance with this Part;
  - (b) the claim relates to underlying tax on a dividend paid to that company by a company resident outside the United Kingdom (“the overseas company”);
  - (c) that underlying tax is or includes an amount in respect of tax (“the high rate tax”) payable by—
    - (i) the overseas company, or
    - (ii) such a third, fourth or successive company as is mentioned in section 801,
 at a rate in excess of the relievable rate; and
  - (d) the whole or any part of the amount in respect of the high rate tax which is or is included in the underlying tax would not be, or be included in, that underlying tax but for the existence of, or for there having been, an avoidance scheme.
- (2) Where this section applies, the amount of the credit to which the United Kingdom company is entitled on the claim shall be determined as if the high rate tax had been tax at the relievable rate, instead of at a rate in excess of that rate.
- (3) For the purposes of this section tax shall be taken to be payable at a rate in excess of the relievable rate if, and to the extent that, the amount of that tax exceeds the amount that would represent tax on the relevant profits at the relievable rate.
- (4) In subsection (3) above “the relevant profits”, in relation to any tax, means the profits of the overseas company or, as the case may be, of the third, fourth or successive company which, for the purposes of this Part, are taken to bear that tax.
- (5) In this section “the relievable rate” means the rate of corporation tax in force when the dividend mentioned in subsection (1)(b) above was paid.
- (6) In this section “an avoidance scheme” means any scheme or arrangement which—
  - (a) falls within subsection (7) below; and
  - (b) is a scheme or arrangement the purpose, or one of the main purposes, of which is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.
- (7) A scheme or arrangement falls within this subsection if the parties to it include both—
  - (a) the United Kingdom company, a company related to that company or a person connected with the United Kingdom company; and
  - (b) a person who was not under the control of the United Kingdom company at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

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- (8) In this section “arrangement” means an arrangement of any kind, whether in writing or not.
- (9) Section 839 (meaning of “connected persons”) applies for the purposes of this section.
- (10) Subsection (5) of section 801 (meaning of “related company”) shall apply for the purposes of this section as it applies for the purposes of that section.
- (11) For the purposes of this section a person who is a party to a scheme or arrangement shall be taken to have been under the control of the United Kingdom company at all the following times, namely—
  - (a) any time when that company would have been taken (in accordance with section 416) to have had control of that person for the purposes of Part XI;
  - (b) any time when that company would have been so taken if that section applied (with the necessary modifications) in the case of partnerships and unincorporated associations as it applies in the case of companies; and
  - (c) any time when that person acted in relation to that scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of that company.”
- (2) This section has effect in relation to dividends paid to a company resident in the United Kingdom at any time on or after 26th November 1996.

## **91 Disposals of loan relationships with or without interest.**

- (1) Section 807A of the Taxes Act 1988 (disposals and acquisitions of company loan relationships with or without interest) shall be amended as follows.
- (2) At the beginning of subsection (2) there shall be inserted “ Subject to subsection (2A) below, ”.
- (3) After that subsection there shall be inserted the following subsection—

“(2A) Tax attributable to interest accruing to a company under a loan relationship does not fall within subsection (2) above if—

  - (a) at the time when the interest accrues, that company has ceased to be a party to that relationship by reason of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship; and
  - (b) that time falls during the period for which those arrangements have effect.”
- (4) In subsection (3)(b), after “related transaction” there shall be inserted “ other than the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship ”.
- <sup>F30</sup>(5) .....
- (6) Subsections (2) and (3) above have effect in relation to interest accruing on or after 1st April 1996.

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- (7) Subsection (4) above has effect in relation to transactions made on or after 26th November 1996.

#### Textual Amendments

**F30** S. 91(5) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 27 Pt. 2(14)

#### *Repayment supplement*

### 92 Time from which entitlement runs.

- (1) Section 824 of the <sup>M8</sup>Taxes Act 1988 (repayment supplements), where it has effect as amended by paragraph 41 of Schedule 19 to the Finance Act 1994, shall be amended in accordance with subsections (2) to (4) below.
- (2) For paragraphs (a) and (b) of subsection (3) there shall be substituted the following paragraphs—
- “*(a)* if the repayment is—
- (i) the repayment of an amount paid in accordance with the requirements of section 59A of the Management Act on account of income tax for a year of assessment, or
- (ii) the repayment of income tax for such a year which is not income tax deducted at source,
- the relevant time is the date of the payment that is being repaid;
- (b)* if the repayment is of income tax deducted at source for a year of assessment, the relevant time is the 31st January next following that year; and”.
- (3) In paragraph (c) of that subsection, for the words from “the relevant time” to the end of that paragraph there shall be substituted “the relevant time is the date on which the penalty or surcharge was paid”.
- (4) For subsection (4) there shall be substituted the following subsections—
- “(4) For the purposes of subsection (3) above, where a repayment in respect of income tax for a year of assessment is made to any person, that repayment—
- (a) shall be attributed first to so much of any payment made by him under section 59B of the Management Act as is a payment in respect of income tax for that year;
- (b) in so far as it exceeds the amount (if any) to which it is attributable under paragraph (a) above, shall be attributed in two equal parts to each of the payments made by him under section 59A of the Management Act on account of income tax for that year;
- (c) in so far as it exceeds the amounts (if any) to which it is attributable under paragraphs (a) and (b) above, shall be attributed to income tax deducted at source for that year; and
- (d) in so far as it is attributable to a payment made in instalments shall be attributed to a later instalment before being attributed to an earlier one.

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- (4A) In this section any reference to income tax deducted at source for a year of assessment is a reference to—
- (a) income tax deducted or treated as deducted from any income, or treated as paid on any income, in respect of that year, and
  - (b) amounts which, in respect of that year, are tax credits to which section 231 applies,
- but does not include a reference to amounts which, in that year, are deducted at source under section 203 in respect of previous years.”
- (5) In subsection (2) of section 283 of the <sup>M9</sup>Taxation of Chargeable Gains Act 1992 (repayment supplements), for the words from “the relevant time” to the end of that subsection there shall be substituted “ the relevant time is the date on which the tax was paid ”.
- (6) This section has effect as respects the year 1997-98 and subsequent years of assessment and shall be deemed to have had effect as respects the year 1996-97.

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**Marginal Citations**

**M8** 1994 c. 9.

**M9** 1992 c. 12.

**Status:**

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

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