

SCHEDULES

SCHEDULE 1

Section 1.

QUANTIFICATION OF A PRIVATISATION WINDFALL

The basic rule

- 1 (1) Subject to paragraph 7 below, where a company was benefitting on 2nd July 1997 from a windfall from the flotation of an undertaking whose privatisation involved the imposition of economic regulation, the amount of that windfall shall be taken for the purposes of this Part to be the excess (if any) of the amount specified in sub-paragraph (2)(a) below over the amount specified in sub-paragraph (2)(b) below.
- (2) Those amounts are the following amounts (determined in accordance with paragraphs 2 to 6 below), that is to say—
- (a) the value in profit-making terms of the disposal made on the occasion of the company's flotation; and
 - (b) the value which for privatisation purposes was put on that disposal.

Value of a disposal in profit-making terms

- 2 (1) Subject to paragraph 4 below, the value in profit-making terms of the disposal made on the occasion of a company's flotation is the amount produced by multiplying the average annual profit for the company's initial period by the applicable price-to-earnings ratio.
- (2) For the purposes of this paragraph the average annual profit for a company's initial period is the amount produced by the following formula—

$$A \div 365 \times \frac{P}{D}$$

Where—

A is the average annual profit for the company's initial period;
P is the amount, ascertained in accordance with paragraph 5 below, of the total profits for the company's initial period; and
D is the number of days in the company's initial period.

- (3) For the purposes of this paragraph the applicable price-to-earnings ratio is 9.

Value put on a disposal for privatisation purposes

- 3 (1) Subject to paragraph 4 below, the value which for privatisation purposes was put on the disposal made on the occasion of a company's flotation is the amount produced by multiplying the institutional price by the number of shares comprised in the ordinary share capital of the company at the time of its flotation.

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- (2) In this paragraph “the institutional price”, in relation to a company, means the highest fixed price per share at which publicly-owned shares in the company were offered for disposal on the occasion of the company’s flotation.
- (3) Subject to sub-paragraph (4) below, where publicly-owned shares in a company were offered for disposal in accordance with any arrangements for the payment of the price in two or more instalments, the price per share at which those shares were offered shall be ascertained by aggregating the instalments.
- (4) Where the arrangements under which any publicly-owned shares in a company were offered for disposal provided for any discount on the payment of the whole or any part of the price for those shares, that discount shall be disregarded for the purposes of this paragraph in determining the price per share at which those shares were offered.

Cases where company privatised in stages

- 4 (1) For the purposes of this Schedule, where the disposal percentage in the case of any company was 85 per cent. or less—
 - (a) the value in profit-making terms of the disposal made on the occasion of the company’s flotation, and
 - (b) the value which for privatisation purposes was put on that disposal,
 shall each be taken to be the disposal percentage of the amount which, under paragraph 2 or 3 above, would be the amount of that value but for this paragraph.
- (2) For the purposes of this paragraph “the disposal percentage”, in relation to any company, means the percentage which expresses (in terms of nominal value) how much of the ordinary share capital of the company at the time of its flotation was represented by the publicly-owned shares in the company offered for disposal on the occasion of the company’s flotation.

Total profits for the initial period

- 5 (1) For the purposes of paragraph 2 above the amount of the total profits for a company’s initial period is the sum of the amounts falling within sub-paragraph (2) below.
- (2) Subject to sub-paragraph (3) and paragraph 6(3) below, those amounts are every amount which, for a financial year of the company ending in or at the end of its initial period, is shown in the relevant accounts for that year—
 - (a) where those accounts are prepared in accordance with section 227 of the Companies Act 1985 (group accounts), as the profit of that company and its subsidiary undertakings for that year; and
 - (b) in any other case, as the profit of that company for that year.
- (3) Where—
 - (a) any profit shown in the relevant accounts of a company for any financial year has been computed using a current cost accounting method, but
 - (b) the information which was contained in those accounts, or which was provided to the registrar together with those accounts, included information from which it can be ascertained what that profit would have been if an historical cost accounting method had been used,

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the amount shown as that profit in those accounts shall be deemed to be the amount (as ascertained from that information) which would have been so shown if that historical cost accounting method had been used.

- (4) In this paragraph references, in relation to any financial year of a company, to the relevant accounts are references to any such accounts for that year as have been or are delivered to the registrar under section 242 of the Companies Act 1985 and consist—
- (a) in the case of a financial year at the end of which the company was a parent undertaking, in consolidated group accounts prepared in accordance with section 227 of that Act (group accounts); and
 - (b) in any other case, in accounts prepared in accordance with section 226 of that Act (individual accounts).
- (5) Subject to sub-paragraph (6) below, references in this paragraph to the amount shown in any accounts as the profit for any financial year are references to the amount of the profit (if any) for that year which is set out in the profit and loss account comprised in those accounts as the item which is, or is the equivalent of, the final item of the statutory format which for that year was used for that profit and loss account.
- (6) Where any amount shown in any accounts is less than it would have been if no provision or other deduction had been made—
- (a) in relation to the windfall tax, or
 - (b) in anticipation of the imposition of a charge with characteristics similar to those of the windfall tax,

this Schedule shall have effect as if the amount shown were the amount it would have been if that provision or deduction had not been made.

- (7) Nothing in this paragraph shall, in the case of any company—
- (a) prevent any charge to windfall tax from being treated as having arisen on 2nd July 1997 by reference to accounts delivered to the registrar after that date; or
 - (b) prevent any requirement to pay an instalment of windfall tax, or any other liability under Schedule 2 to this Act, from arising before the delivery to the registrar of the accounts by reference to which the amount of that charge is computed;

and any power of the Board under that Schedule to make an assessment shall include power to make an assessment on the basis that accounts will be delivered to the registrar showing such amounts as may, to the best of their judgement, be determined by the Board.

- (8) Subject to sub-paragraph (9) below, this paragraph shall have effect in relation to any time at which the Companies Act 1985 had effect without the amendments made by the Companies Act 1989—
- (a) as if the references in sub-paragraphs (2) and (4) above to sections 226, 227 and 242 of the Companies Act 1985 were references, respectively, to sections 227, 229 and 241 of that Act, as it had effect without those amendments;
 - (b) as if the reference in sub-paragraph (2) above to a company's subsidiary undertakings were a reference to its subsidiaries (within the meaning of that Act as it so had effect); and
 - (c) as if the reference in sub-paragraph (4)(a) above to a company's being a parent undertaking were a reference to its having such subsidiaries.

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- (9) In relation to a company formed and registered in Northern Ireland, this paragraph shall have effect as if the references in sub-paragraphs (2) and (4) above to sections 226, 227 and 242 of the Companies Act 1985 were references, respectively, to Articles 234, 235 and 250 of the Companies (Northern Ireland) Order 1986.
- (10) In this paragraph—
- “the registrar” means—
- (a) except in relation to a company formed and registered in Northern Ireland, the registrar within the meaning of the Companies Act 1985; and
- (b) in relation to a company so formed and registered, the registrar within the meaning of the Companies (Northern Ireland) Order 1986;
- and
- “statutory format”, in relation to a profit and loss account, means a format set out in the provisions (as they had effect in relation to that account) of Schedule 4 to the Companies Act 1985 or Schedule 4 to the Companies (Northern Ireland) Order 1986.

Meaning of the initial period etc

- 6 (1) In this Schedule “initial period”, in relation to a company privatised by means of a flotation, means (subject to sub-paragraph (2) below) the period which—
- (a) begins with the first day of the first financial year of the company to begin after the time of its flotation; and
- (b) ends with the end of the fourth financial year of the company to begin after the time of its flotation.
- (2) Where the initial period of a company privatised by means of a flotation would (but for this sub-paragraph) include any time on or after 1st April 1997, sub-paragraph (1) above shall not apply and the initial period of that company shall be taken, instead, to be the period which—
- (a) begins with the day on which the time of its flotation falls; and
- (b) ends with the end of the last financial year of the company to end before 1st April 1997.
- (3) Where—
- (a) sub-paragraph (2) above applies for determining a company’s initial period, and
- (b) there is a financial year of that company beginning before but ending after the beginning of that initial period,
- the amount which for that year is shown as mentioned in paragraph 5(2) above shall be included in the sums added together for the purposes of paragraph 5(1) above to the extent only that that amount is attributable, on an apportionment made in accordance with the following provisions of this paragraph, to the part of that year falling within the company’s initial period.
- (4) Except in a case where sub-paragraph (5) below applies, an apportionment for the purposes of sub-paragraph (3) above shall be made on a time basis according to the respective lengths of—
- (a) the part of the financial year falling before the beginning of the company’s initial period; and

- (b) the remainder of that financial year.
- (5) Where the circumstances of a particular case are such that—
 - (a) the making of an apportionment on the basis mentioned in sub-paragraph (4) above would work in a manner that would be unjust or unreasonable, but
 - (b) it would be just and reasonable to make the apportionment on the alternative basis,the apportionment shall be made, instead, on the alternative basis.
- (6) For the purposes of this paragraph an apportionment in the case of any company of the amount shown for any financial year as a profit for that year is made on the alternative basis where it is made according to how much of that profit accrued in each of the two parts of that financial year that are mentioned in sub-paragraph (4) above.

Apportionment between demerged successors and predecessors

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- (1) This paragraph applies where—
 - (a) a company (“the predecessor company”) was benefitting on 2nd July 1997 from a windfall from the flotation of an undertaking whose privatisation involved the imposition of economic regulation; and
 - (b) another company which on that date was a demerged successor of the predecessor company is also taken for the purposes of this Part to have been benefitting from such a windfall on that date.
 - (2) Where this paragraph applies—
 - (a) the amount of the windfall from which the predecessor company was benefitting on 2nd July 1997 shall be equal to only the appropriate fraction of the amount (“the total windfall”) which (but for this paragraph) would have been the amount of that windfall under paragraphs 1 to 6 above; and
 - (b) the amount of the windfall from which the demerged successor shall be taken to have been benefitting on that date shall be equal to the remainder of the total windfall.

- (3) In this paragraph “the appropriate fraction” means the following fraction—

$$\frac{\mathbf{P}}{\mathbf{P} + \mathbf{S}}$$

Where—

P is the amount produced by multiplying the number of shares comprised at the end of the relevant day in the ordinary share capital of the predecessor company by the market price on that day of an ordinary share in that company; and

S is the amount produced by multiplying the number of shares comprised at the end of the relevant day in the ordinary share capital of the demerged successor by the market price on that day of an ordinary share in the demerged successor.

- (4) For the purposes of this paragraph references to the market price of shares on any day are references to the sum of—
 - (a) the lower of the two prices shown in the Stock Exchange Daily Official List for that day as the closing prices for the shares on that day; and
 - (b) one half of the difference between those two prices.

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- (5) In this paragraph “the relevant day” means the day on which shares in the demerged successor were first listed on the Official List of the Stock Exchange.

General interpretation of the Schedule

- 8 (1) In this Schedule “financial year”, in relation to a company, means (subject to sub-paragraph (2) below)—
- (a) a financial year of that company within the meaning of Part VII of the Companies Act 1985; or
 - (b) any period which—
 - (i) began before the coming into force of section 3 of the Companies Act 1989 (new definition of financial year); and
 - (ii) was a financial year of that company for the purposes of that Part, as it had effect without the amendments made by that section.
- (2) Sub-paragraph (1) above does not apply to a company formed and registered in Northern Ireland; and in relation to such a company, references in this Schedule to a financial year are references to a financial year within the meaning of Part VIII of the Companies (Northern Ireland) Order 1986.
- (3) In this Schedule references, in relation to a company privatised by means of a flotation, to the shares offered for disposal on the occasion of the company’s flotation are references to the following shares in that company, that is to say—
- (a) those that were the subject-matter of the offer to the public in respect of which that company is regarded for the purposes of this Part as having been so privatised; and
 - (b) any publicly-owned shares not falling within paragraph (a) above that were the subject-matter of an offer for disposal made on the same occasion as the offer mentioned in that paragraph.
- (4) References in this Schedule to an offer for the disposal of shares in a company include references to any offer to transfer or confer an immediate or contingent right to or interest in any such shares, whether or not for a consideration; and (subject to sub-paragraph (5) below) references to the shares that are the subject-matter of such an offer shall be construed accordingly.
- (5) For the purposes of sub-paragraph (3) above where—
- (a) an offer for the disposal of publicly-owned shares in a company contained provision for a person to become entitled to further shares in that company if he satisfied conditions specified in the offer, and
 - (b) those conditions included a condition as to the period for which shares in that company continued to be held by that person,
- shares which (apart from this sub-paragraph) would fall to be treated as the subject-matter of the offer by virtue only of that provision shall be treated as the subject-matter of the offer to the extent only that persons did in fact become entitled to them before 2nd July 1997 as a result of having satisfied the conditions in question.
- (6) In this Schedule a reference, in relation to any time, to the ordinary share capital of a company is a reference to the following, taken together, that is to say—
- (a) the shares comprised in the ordinary share capital of the company (within the meaning of the Tax Acts); and

- (b) any shares that would have been so comprised at that time if the issued share capital of the company at that time had included any shares in the company that had been allotted but not issued.