



# Finance Act 1998

## 1998 CHAPTER 36

### PART III

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

### CHAPTER I

#### INCOME TAX AND CORPORATION TAX

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

#### **25 Charge and rates for 1998-99.**

Income tax shall be charged for the year 1998-99, and for that year—

- (a) the lower rate shall be 20 per cent.;
- (b) the basic rate shall be 23 per cent.; and
- (c) the higher rate shall be 40 per cent.

**F1**26 .....

#### **Textual Amendments**

**F1** S. 26 repealed (27.7.1999 with effect for the year 2000-01 and subsequent years of assessment) by 1999 c. 16, s. 139, Sch. 20 Pt. III(4), Note

#### **27 Married couple's allowance etc. in and after 1999-00.**

- (1) The Taxes Act 1988 shall have effect for the year 1999-00 and subsequent years of assessment with the following amendments—

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- (a) in section 256(2)(a) of that Act (rate of reliefs given by way of income tax reduction under Chapter I of Part VII), for “15 per cent.” there shall be substituted “ 10 per cent. ”; and
  - (b) in section 347B(5A)(a) of that Act (rate of relief for qualifying maintenance payments), for “the appropriate percentage” there shall be substituted “ 10 per cent. ”.
- (2) For the purposes only of applying section 257C of the Taxes Act 1988 (indexation) for the year 1999-00, the amounts specified for the year 1998-99 in subsections (2) and (3) of section 257A of that Act (married couple’s allowance for persons of 65 or more) shall be taken to have been £4,965 and £5,025, respectively.

*Corporation tax charge and rates*

**28 Charge and rates for financial year 1998.**

- (1) Corporation tax shall be charged for the financial year 1998 at the rate of 31 per cent.
- (2) For that year—
- (a) the small companies’ rate shall be 21 per cent.; and
  - (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

**29 Charge and rates for financial year 1999.**

- (1) Corporation tax shall be charged for the financial year 1999 at the rate of 30 per cent.
- (2) For that year—
- (a) the small companies’ rate shall be 20 per cent.; and
  - (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fortieth.

*Corporation tax: periodic payments etc*

**30 Corporation tax: due and payable date.**

- (1) After section 59DA of the <sup>M1</sup>Taxes Management Act 1970 there shall be inserted—

**“59E Further provision as to when corporation tax is due and payable.**

- (1) The Treasury may by regulations make provision, in relation to companies of such descriptions as may be prescribed, for or in connection with treating amounts of corporation tax for an accounting period as becoming due and payable on dates which fall on or before the date on which corporation tax for that period would become due and payable apart from this section.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
- (a) for or in connection with the determination of amounts of corporation tax which are treated as becoming due and payable under the regulations;

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- (b) for or in connection with the determination of the dates on which amounts of corporation tax are treated as becoming due and payable under the regulations;
  - (c) for or in connection with the making of payments to the Board in respect of amounts of corporation tax which are treated as becoming due and payable under the regulations;
  - (d) for or in connection with the determination of the amount of any such payments as are mentioned in paragraph (c) above;
  - (e) for or in connection with the determination of the dates on which any such payments as are mentioned in paragraph (c) above become due and payable;
  - (f) for or in connection with any assumptions which are to be made for any purposes of the regulations;
  - (g) for or in connection with the payment to the Board of interest on amounts of corporation tax which are treated as becoming due and payable under the regulations;
  - (h) for or in connection with the repayment of amounts paid under the regulations;
  - (i) for or in connection with the payment of interest by the Board on amounts paid or repaid under the regulations;
  - (j) with respect to the furnishing of information to the Board;
  - (k) with respect to the keeping, production or inspection of any books, documents or other records;
  - (l) for or in connection with the imposition of such requirements as the Treasury think necessary or expedient for any purposes of the regulations;
  - (m) for or in connection with appeals in relation to questions arising under the regulations.
- (3) Regulations under this section may make provision—
- (a) for amounts of corporation tax for an accounting period to be treated as becoming due and payable on dates which fall within the accounting period;
  - (b) for payments in respect of any such amounts of corporation tax for an accounting period as are mentioned in paragraph (a) above to become due and payable on dates which fall within the accounting period.
- (4) Where interest is charged by virtue of regulations under this section on any amounts of corporation tax for an accounting period which are treated as becoming due and payable under the regulations, the company shall, in such circumstances as may be prescribed, be liable to a penalty not exceeding twice the amount of that interest.
- (5) Regulations under this section—
- (a) may make such modifications of any provisions of the Taxes Acts, or
  - (b) may apply such provisions of the Taxes Acts,
- as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (6) Regulations under this section which apply any provisions of the Taxes Acts may apply those provisions either without modifications or with

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such modifications as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.

- (7) Regulations under this section—
- (a) may make different provision for different purposes, cases or circumstances;
  - (b) may make different provision in relation to companies or accounting periods of different descriptions;
  - (c) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (8) Subject to subsection (9) below, regulations under this section may make provision in relation to accounting periods beginning before (as well as accounting periods beginning on or after) the date on which the regulations are made.
- (9) Regulations under this section may not make provision in relation to accounting periods ending before the day appointed under section 199 of the <sup>M2</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).
- (10) In this section—
- “modifications” includes amendments, additions and omissions;
- “prescribed” means prescribed by regulations made under this section.
- (11) Any reference in this section to corporation tax includes a reference—
- (a) to any amount due from a company under section 419 of the principal Act (loans to participators etc) as if it were an amount of corporation tax chargeable on the company;
  - (b) to any sum chargeable on a company under section 747(4)(a) of the principal Act (controlled foreign companies) as if it were an amount of corporation tax.”
- (2) The Treasury may by regulations make provision for or in connection with the payment to the Board of an amount or amounts determined by or under the regulations in any case where, on or after 25th November 1997 and before 30th June 2002, a company takes any action specified in the regulations which has the effect—
- (a) of delaying the application, or
  - (b) of delaying or avoiding the full effect,
- in relation to the company of any regulations made under section 59E of the <sup>M3</sup>Taxes Management Act 1970.
- (3) Any amount determined by or under regulations under this section shall be computed as if it were interest on a sum determined by or under the regulations; and any amount so determined shall be treated for the purposes of the Tax Acts as if it were interest due to the Board.
- (4) The action which may be specified in regulations under this section includes—
- (a) a change by a company in the date or dates on which any of its accounting periods begin or end; or

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- (b) a transfer by a company of any property, rights or liabilities to a company which belongs to the same group as that company.
- (5) In subsection (4) above “group” means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.
- (6) Regulations under this section—
  - (a) may make different provision in relation to different cases or in relation to companies of different descriptions;
  - (b) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

#### Marginal Citations

- M1 1970 c. 9.
- M2 1994 c. 9.
- M3 1970 c. 9.

### 31 Abolition of advance corporation tax.

- (1) No company resident in the United Kingdom shall be liable to pay advance corporation tax in respect of any qualifying distribution made on or after 6th April 1999.
- (2) For the purposes of the Tax Acts, no distribution made on or after 6th April 1999 shall be treated as giving rise to the making of a franked payment.
- (3) No franked investment income which is attributable to a distribution made on or after 6th April 1999 shall be used to frank any distributions of a company.
- (4) Section 238(3) of the Taxes Act 1988 shall apply for the purposes of subsection (3) above as it applies for the purposes of Chapter V of Part VI of that Act.
- (5) Schedule 3 to this Act (which makes provision for and in connection with the abolition of advance corporation tax) shall have effect.

### 32 Unrelieved surplus advance corporation tax.

- (1) The Treasury may by regulations make provision for or in connection with enabling unrelieved surplus advance corporation tax to be set against liability to corporation tax on profits charged to corporation tax for accounting periods ending on or after 6th April 1999 (and thus to discharge a corresponding amount of any such liability).
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
  - (a) for or in connection with imposing a limit or limits on the amount of unrelieved surplus advance corporation tax which may be set against liability to corporation tax on profits charged to corporation tax for an accounting period;
  - (b) for or in connection with the carrying forward of unrelieved surplus advance corporation tax from earlier accounting periods to later accounting periods;
  - (c) for or in connection with the recovery of corporation tax from companies in prescribed circumstances where any such liability as is mentioned in

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- paragraph (a) above is or has been discharged by the set-off of unrelieved surplus advance corporation tax;
- (d) for or in connection with the reduction or extinguishment of unrelieved surplus advance corporation tax;
  - (e) for or in connection with treating notional amounts of advance corporation tax ("shadow ACT") as paid by companies in respect of distributions made on or after 6th April 1999;
  - (f) for or in connection with the determination of amounts of shadow ACT which are treated as paid by companies in respect of distributions made on or after 6th April 1999;
  - (g) in relation to the treatment of shadow ACT;
  - (h) in relation to the treatment of companies which have prescribed relationships or connections with each other;
  - (i) in relation to the treatment of prescribed events, arrangements or transactions involving companies with unrelieved surplus advance corporation tax.
- (3) The provision which may be made by regulations under this section includes provision—
- (a) for or in connection with treating shadow ACT as reducing any limit or limits on the amount of unrelieved surplus advance corporation tax which may be set against any such liability as is mentioned in subsection (2)(a) above;
  - (b) for or in connection with the carrying forward of shadow ACT from earlier accounting periods to later accounting periods;
  - (c) for or in connection with the carrying back of shadow ACT from later accounting periods to earlier accounting periods;
  - (d) for or in connection with the transfer of shadow ACT between companies;
  - (e) for or in connection with the reduction or extinguishment of shadow ACT.
- (4) The provision which may be made by virtue of subsection (2)(c) above includes provision for or in connection with the recovery of corporation tax from a company which has a prescribed relationship or connection with a company whose liability to corporation tax is or has been discharged by the set-off of unrelieved surplus advance corporation tax.
- (5) The provision which may be made by regulations under this section includes provision for or in connection with enabling unrelieved surplus advance corporation tax to be set against liability to a sum chargeable under section 747(4)(a) of the Taxes Act 1988 (controlled foreign companies) as if it were an amount of corporation tax for an accounting period.
- (6) In this section "unrelieved surplus advance corporation tax" means the advance corporation tax (if any) which, apart from sub-paragraph (3) of [F<sup>2</sup>paragraph 12] of Schedule 3 to this Act but otherwise in accordance with that paragraph, would be treated by virtue of section 239(4) of the Taxes Act 1988 as paid in respect of distributions made by a company in the first accounting period of the company to begin on or after 6th April 1999.
- (7) The reference in subsection (6) above to an accounting period beginning on or after 6th April 1999 includes a reference to a separate accounting period mentioned in section 245(2) of the Taxes Act 1988 which begins on 6th April 1999.
- (8) Regulations under this section—
- (a) may make such modifications of any provisions of the Tax Acts, or

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- (b) may apply such provisions of the Tax Acts,  
as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (9) Regulations under this section which apply any provisions of the Tax Acts may apply those provisions either without modifications or with such modifications as the Treasury think necessary or expedient for or in connection with giving effect to the provisions of this section.
- (10) Regulations under this section—
- (a) may make different provision for different purposes, cases or circumstances;
  - (b) may make different provision in relation to companies or accounting periods of different descriptions;
  - (c) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (11) Regulations under this section may make provision in relation to accounting periods beginning before (as well as accounting periods beginning on or after) the date on which the regulations are made.
- (12) In this section—
- “modifications” includes amendments, additions and omissions;
  - “prescribed” means prescribed by regulations made under this section.

#### Textual Amendments

**F2** Words in s. 32(6) substituted (*retrospective* to 31.7.1998) by 1999 c. 16, s. 91(4)(6)

### 33 Relief for interest payable under the Tax Acts.

- (1) Section 90 of the <sup>M4</sup>Taxes Management Act 1970 (interest on overdue tax to be paid without deduction of income tax and not to be allowed as a deduction in computing income, profits or losses) shall be amended as follows.
- (2) At the beginning there shall be inserted “(1)” and in the subsection (1) so formed—
- (a) after “Interest payable under this Part of this Act” there shall be inserted “ (a) ”; and
  - (b) after “and” there shall be inserted “ (b) ”.
- (3) At the beginning of the paragraph (b) formed by subsection (2)(b) above (disallowance of relief for interest) there shall be inserted “subject to subsection (2) below,”.
- (4) At the end of the section there shall be added—
- “(2) Paragraph (b) of subsection (1) above does not apply in relation to interest under section 87 or 87A of this Act payable by a company within the charge to corporation tax.”
- (5) The amendments made by subsections (3) and (4) above have effect in relation to—
- (a) interest on corporation tax for accounting periods ending on or after the day appointed under section 199 of the <sup>M5</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment); and

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- (b) interest on tax assessable in accordance with Schedule 13 or 16 to the Taxes Act 1988 for return periods in accounting periods ending on or after that day.

**Marginal Citations**

**M4** 1970 c. 9.

**M5** 1994 c. 9.

**34 Charge to tax on interest payable under the Tax Acts.**

- (1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) shall be amended as follows.
- (2) In subsection (5) (interest on overpaid tax to be paid without deduction of income tax and not to be brought into account in computing profits or income)—
  - (a) after “Interest paid under this section” there shall be inserted “ (a) ”; and
  - (b) after “and” there shall be inserted “ (b) ”.
- (3) At the beginning of the paragraph (b) formed by subsection (2)(b) above (interest not to be brought into account in computing profits or income) there shall be inserted “subject to subsection (5A) below,”.
- (4) After subsection (5) there shall be inserted—
 

“(5A) Paragraph (b) of subsection (5) above does not apply in relation to interest payable to a company within the charge to corporation tax.”
- (5) The amendments made by subsections (3) and (4) above have effect in relation to interest payable by virtue of any paragraph of section 826(1) of the <sup>M6</sup>Taxes Act 1988 if the accounting period mentioned in that paragraph is one which ends on or after the day appointed under section 199 of the Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

**Marginal Citations**

**M6** 1994 c. 9.

**35 Further provision about interest payable under the Tax Acts.**

Schedule 4 to this Act (which makes further amendments relating to interest payable under the Tax Acts by or to companies) shall have effect.

**36 Arrangements with respect to payment of corporation tax.**

- (1) The Board may enter into arrangements with some or all of the members of a group of companies for one of those members to discharge any liability of each of those members to pay corporation tax for the accounting periods to which the arrangements relate.
- (2) Any such arrangements—
  - (a) may make provision in relation to cases where companies become or cease to be members of a group of companies;



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- (b) may make provision in relation to the discharge of liability to pay interest or penalties;
  - (c) may make provision in relation to the discharge of liability to pay any amount treated as corporation tax;
  - (d) may make provision for or in connection with the termination of the arrangements;
  - (e) may make such supplementary, incidental, consequential or transitional provision as is necessary or expedient for the purposes of the arrangements.
- (3) Any such arrangements—
- (a) shall not affect the liability to corporation tax, or to pay corporation tax, of any company to which the arrangements relate; and
  - (b) shall not affect any other liability of any such company under the Tax Acts.
- (4) For the purposes of this section a company and all its 51 per cent. subsidiaries form a group of companies and, if any of those subsidiaries have 51 per cent. subsidiaries, the group of companies includes them and their 51 per cent. subsidiaries, and so on.
- (5) The reference in subsection (2)(c) above to any amount treated as corporation tax is a reference—
- (a) to any amount due from a company under section 419 of the Taxes Act 1988 (loans to participators etc) as if it were an amount of corporation tax chargeable on the company;
  - (b) to any sum chargeable on a company under section 747(4)(a) of the Taxes Act 1988 (controlled foreign companies) as if it were an amount of corporation tax.

*Gilt-edged securities*

**37 Abolition of periodic accounting.**

- (1) Section 51B of the Taxes Act 1988 (which enables provision to be made requiring tax on interest on gilt-edged securities to be accounted for periodically) shall cease to have effect.

<sup>F3</sup>(2) .....

- (3) The preceding provisions of this section have effect in relation only to payments of interest falling due on or after such day as the Treasury may by order appoint.

**Subordinate Legislation Made**

**P1** [S. 37\(3\)](#) power exercised (9.3.1999): 1.4.1999 appointed by [S.I. 1999/619](#), [art. 2](#)

**Textual Amendments**

**F3** [S. 37\(2\)](#) repealed (11.5.2001 with effect as mentioned in [s. 87](#) of the amending Act) by [2001 c. 9](#), [ss. 87, 110](#), [Sch. 33 Pt. II\(12\)](#) Note

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### *Rents and other receipts from land*

#### **38 Taxation of rents and other receipts from land.**

- (1) The provisions of Schedule 5 to this Act have effect with respect to tax on rents and other receipts from land.

Part I contains amendments relating to the charge to tax under Schedule A or Case V of Schedule D on rents and other receipts from land.

Part II contains amendments about relief for losses incurred in a Schedule A business or overseas property business, and the relationship between such relief and other reliefs.

Part III contains minor and consequential amendments.

- (2) So far as relating to income tax, the provisions of Parts I to III of that Schedule have effect for the year 1998-99 and subsequent years of assessment.
- (3) So far as relating to corporation tax, the provisions of Parts I to III of that Schedule come into force on 1st April 1998, subject to the transitional provisions in Part IV of the Schedule.

#### **39 Land managed as one estate and maintenance funds for historic buildings.**

Sections 26 and 27 of the Taxes Act 1988 (deductions from rent: land managed as one estate and maintenance funds for historic buildings) shall cease to have effect—

- (a) for income tax purposes, on and after 6th April 2001;
- (b) for corporation tax purposes, for accounting periods beginning on or after 1st April 2001.

#### **40 Treatment of premiums as rent.**

- (1) Section 34 of the Taxes Act 1988 (treatment of premiums, etc. as rent) is amended as follows.
- (2) In subsection (1) for “becoming entitled when the lease is granted to” substitute “receiving when the lease is granted”.
- (3) In subsection (4)—
- (a) in paragraph (a), for the words from “in computing” to “in lieu of rent” substitute “in computing the profits of the Schedule A business of which the sum payable in lieu of rent is by virtue of this subsection to be treated as a receipt”; and
  - (b) in paragraph (b), for “deemed to become due” substitute “deemed to be received”.
- (4) In subsection (5)—
- (a) in paragraph (a), for “tax chargeable by virtue of this subsection” substitute “the profits of the Schedule A business of which that sum is by virtue of this subsection to be treated as a receipt”; and
  - (b) in paragraph (b), for “deemed to become due” substitute “deemed to be received”.
- (5) The above amendments have effect in relation to amounts treated as received under section 34 of the Taxes Act 1988 on or after 17th March 1998.

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#### **41 Tied premises: receipts and expenses treated as those of trade.**

(1) For section 98 of the Taxes Act 1988 (tied premises) substitute—

##### **“98 Tied premises: receipts and expenses treated as those of trade.**

(1) This section applies where a person (“the trader”)—

- (a) carries on a trade,
- (b) in the course of the trade supplies, or is concerned in the supply of, goods sold or used on premises occupied by another person,
- (c) has an estate or interest in those premises, and
- (d) deals with that estate or interest as property employed for the purposes of the trade.

(2) Where this section applies the receipts and expenses in connection with the premises that would otherwise fall to be brought into account in computing the profits of a Schedule A business carried on by the trader shall instead be brought into account in computing the profits of the trade.

(3) Any necessary apportionment shall be made on a just and reasonable basis of receipts or expenses—

- (a) which do not relate only to the premises concerned, or
- (b) where the conditions in subsection (1) are met only in relation to part of the premises.

(4) This section applies to premises outside the United Kingdom as if the premises were in the United Kingdom.”.

(2) In section 156 of the <sup>M7</sup>Taxation of Chargeable Gains Act 1992 (replacement of business assets: buildings and land), for subsection (4) substitute—

“(4) Where section 98 of the Taxes Act applies (tied premises: receipts and expenses treated as those of trade), the trader shall be treated, to the extent that the conditions in subsection (1) of that section are met in relation to premises, as occupying as well as using the premises for the purposes of the trade.”.

(3) The above amendments have effect on and after 17th March 1998, subject to the following transitional provisions.

In those provisions—

“before commencement” and “after commencement” mean, respectively, before 17th March 1998 and on or after that date; and

“the new section 98” means the section as substituted by subsection (1) above.

(4) To the extent that receipts or expenses have been taken into account before commencement, they shall not be taken into account again under the new section 98 after commencement.

(5) To the extent that receipts or expenses would under the new section 98 have been brought into account before commencement, and were not so brought into account, they shall be brought into account immediately after commencement.

(6) If any estate, interest or rights in or over land is or are transferred from one person to another, the references in subsections (4) and (5) above to receipts or expenses being

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taken into account shall be construed as references to their being taken into account in relation to either of those persons.

- (7) For the purposes of those subsections an amount is “taken into account” if—
- (a) it is brought into account for tax purposes, or
  - (b) it would have been so brought into account if the person concerned were chargeable to tax.

#### Marginal Citations

M7 1992 c. 12.

### *Computation of profits of trade, profession or vocation*

#### 42 Computation of profits of trade, profession or vocation.

- (1) For the purposes of Case I or II of Schedule D the profits of a trade, profession or vocation must be computed [<sup>F4</sup>in accordance with generally accepted accounting practice], subject to any adjustment required or authorised by law in computing profits for those purposes.
- (2) This does not—
- (a) require a person to comply with the requirements of the <sup>M8</sup>Companies Act 1985 or the <sup>M9</sup>Companies (Northern Ireland) Order 1986 except as to the basis of computation, or
  - (b) impose any requirements as to audit or disclosure.
- (3) This section applies to periods of account beginning after 6th April 1999.

A period of account beginning on or before 6th April 1999 which is still current on 7th April 2000 shall be treated for the purposes of this section as having ended on 6th April 1999 and a new period as having begun on 7th April 1999.

<sup>F5</sup>(4) .....

- (5) This section does not affect provisions of the [<sup>F6</sup>Corporation Tax Acts] relating to the computation of the profits of Lloyd’s underwriters or companies carrying on life insurance, or otherwise laying down special rules for the computation of the profits of a particular description of business.

#### Textual Amendments

- F4** Words in s. 42(1) substituted (24.7.2002) by 2002 c. 23, s. 103(5)
- F5** S. 42(4) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 500(a), Sch. 3 (with Sch. 2)
- F6** Words in s. 42(5) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 500(b) (with Sch. 2)

#### Modifications etc. (not altering text)

- C1** S. 42 excluded (24.7.2002 with application as mentioned in s. 65(1)(3)(4) of the amending Act) by 2002 c. 23, s. 65(2)(b)

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**Marginal Citations**

- M8** 1985 c. 6.
- M9** S.I. 1986/1032 (N.I. 6).

**F7 43 Barristers and advocates in early years of practice.**

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**Textual Amendments**

- F7** S. 43 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 501, Sch. 3](#) (with Sch. 2)

**F8 44** .....

**Textual Amendments**

- F8** S. 44 repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(8) Note 2 and Sch. 22 paras. 16, 17 of the amending Act) by [2002 c. 23, s. 141, Sch. 40 Pt. 3\(8\)](#) Note 2

**Modifications etc. (not altering text)**

- C2** S. 44 excluded (24.7.2002) by [2002 c. 23, s. 64\(6\)](#)

**F9 45** .....

**Textual Amendments**

- F9** S. 45 repealed (24.7.2002) by [2002 c. 23, s. 141, Sch. 40 Pt. 3\(16\)](#)

**46 Minor and consequential provisions about computations.**

- (1) In provisions of the [<sup>F10</sup>Corporation Tax Acts] relating to the computation of the profits of a trade, profession or vocation references to receipts and expenses are (except where otherwise expressly provided) to any items brought into account as credits or debits in computing such profits.

There is no implication that an amount has been actually received or expended.

- (2) Except where otherwise expressly provided, the same rules apply in computing losses of a trade, profession or vocation for [<sup>F11</sup>corporation tax purposes] as apply in computing profits.
- (3) In the provisions of the Tax Acts which refer to the subject of the charge under Case I or II of Schedule D as “profits or gains” or “profits and gains” of a trade, profession or vocation—
  - (a) for “profits or gains” or “profits and gains”, wherever occurring, substitute “profits”, and

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- (b) for “arising or accruing”, in reference to such profits or gains, substitute “arising”.

The provisions affected are listed in Schedule 7 to this Act.

**Textual Amendments**

- F10** Words in s. 46(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 502\(2\)](#) (with Sch. 2)
- F11** Words in s. 46(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 502\(3\)](#) (with Sch. 2)

*Gifts to charities*

**F12** 47 .....

**Textual Amendments**

- F12** S. 47 repealed (27.7.1999 with effect in relation to gifts made on or after 27.7.1999) by [1999 c. 16, ss. 55\(2\)\(3\), 139, Sch. 20 Pt. III\(12\)](#), Note

**48 Gifts of money for relief in poor countries.**

- (1) This section applies to any gift of a sum of money by an individual to a charity that has given the required notification to the Board if that gift is made—
  - (a) in the period beginning with [<sup>F13</sup>31st July 1998] and ending with 31st December 2000; and
  - (b) in circumstances giving rise to a reasonable expectation that the sum given will be applied for, or in connection with, [<sup>F14</sup>one or more] of the purposes specified in subsection (2) below.
- (2) Those purposes are—
  - (a) the relief of poverty in any one or more [<sup>F15</sup>countries or territories designated for the purposes of this paragraph,], <sup>F16</sup> . . .
  - (b) the advancement of education in any one or more [<sup>F15</sup>countries or territories designated for the purposes of this paragraph,][<sup>F17</sup>, and.
  - (c) the relief of poverty in the case of persons from any country or territory designated for the purposes of this paragraph who are refugees or who have suffered displacement as a result of organised intimidation or oppression or of war or other armed conflict.]

<sup>F18</sup>(3) .....

- (4) Where—
  - (a) a relevant gift of less than £100 is made [<sup>F19</sup>before 6th April 2000]by an individual to a charity that has given the required notification to the Board,
  - (b) the aggregate of that gift and any one or more subsequent relevant gifts made by that individual to that charity is £100 or more,
  - [<sup>F20</sup>(bb) the subsequent gift, or at least one of the subsequent gifts, is made on or after 6th April 2000;]

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- (c) that individual gives an [<sup>F21</sup>appropriate declaration] in relation to that aggregate to that charity, and
- (d) the condition specified in paragraph (e) of subsection (2) of section 25 of the <sup>M10</sup>Finance Act 1990 (limit on benefit for the donor) would be satisfied if the aggregated gifts constituted a single gift by that individual to that charity made at the time of the making of the last of them to be made,

the aggregated gifts shall be treated for the purposes of that section [<sup>F22</sup>(but subject to subsection (4A) below)] as if they together constituted a single qualifying donation made by that individual to that charity at that time.

[<sup>F23</sup>(4A) Subsection (10) of section 25 of the <sup>M11</sup>Finance Act 1990 (receipts of gifts by a charity to be treated as payments of grossed-up amounts after deduction of basic rate income tax) shall have effect where—

- (a) any aggregated gifts are treated under this section as a single qualifying donation made to a charity, and
- (b) the aggregated gifts include gifts made in different years of assessment, as if that single qualifying donation had been received by the charity in the year of assessment in which the first of the aggregated gifts was made and as if that were the relevant year of assessment for the purposes of that subsection.]

(5) The gifts aggregated for the purposes of subsection (4) above must not include either—

- (a) a relevant gift of £250 or more; or
- (b) more than one relevant gift of £100 or more.

<sup>F18</sup>(6) .....

<sup>F18</sup>(7) .....

(8) In this section—

<sup>F24</sup>

[<sup>F25</sup>“relevant gift” means a gift to which this section applies—

- (a) which satisfies the requirements of subsection (2) of section 25 of the <sup>M12</sup>Finance Act 1990 (as amended by section 39 of the Finance Act 2000); or
- (b) which would satisfy those requirements if paragraph (e) of that subsection were disregarded.]

“required notification”, in relation to a charity, means a notification (including one given before the passing of this Act) which—

- (i) is in such form, and contains such information, as may have been required by the Board, and
- (ii) contains a statement to the effect that the charity proposes to accept gifts to which this section applies.

(9) A country or territory is a designated country or territory for the purposes of [<sup>F26</sup>paragraph (a), (b) or (c) of subsection (2) above] if—

- (a) it is designated as such by an order made for those purposes by the Treasury; or
- (b) it is of a description specified in an order so made;

and a description specified in such an order may be expressed by reference to the opinion of any person so specified or by reference to the contents from time to time of a document prepared by a person so specified.

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(10) Expressions used in this section and in section 25 of the <sup>M13</sup>Finance Act 1990 have the same meanings in this section as in that section.

#### Textual Amendments

- F13** Words in s. 48(1)(a) substituted (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 56(2)(a)(7)
- F14** Words in s. 48(1)(b) substituted (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 56(2)(b)(7)
- F15** Words in s. 48(2)(a)(b) substituted (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 56(3)(a)(7)
- F16** Word in s. 48(2)(a) repealed (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(13)**, Note
- F17** S. 48(2)(c) and word “and” immediately preceding it inserted (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 56(3)(b)(7)(8)
- F18** S. 48(3)(6)(7) repealed (28.7.2000) by 2000 c. 17, s. 42(1), 156, **Sch. 40 Pt. II(1)**
- F19** Words in s. 48(4)(a) inserted (28.7.2000) by 2000 c. 17, s. 42(2)(a)
- F20** S. 48(4)(bb) inserted (28.7.2000) by 2000 c. 17, s. 42(2)(b)
- F21** Words in s. 48(4)(c) substituted (28.7.2000) by 2000 c. 17, s. 42(2)(c)
- F22** Words in s. 48(4) inserted (*retrospective* to 31.7.1998) by 1999 c. 16, s. 57(1)(2)
- F23** S. 48(4A) inserted (*retrospective* to 31.7.1998) by 1999 c. 16, s. 57(1)(3)
- F24** Definition of “the first designation date” in s. 48(8) repealed (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(13)**, Note
- F25** S. 48(8): definition of “relevant gift” substituted (28.7.2000) by 2000 c. 17, s. 42(3)
- F26** Words in s. 48(9) substituted (27.7.1999 with effect in relation to gifts made on or after 6.4.1999) by 1999 c. 16, s. 56(4)(7)

#### Marginal Citations

- M10** 1990 c. 29.  
**M11** 1990 c.29.  
**M12** 1990 c. 29.  
**M13** 1990 c. 29.

### *Employee share incentives*

<sup>F27</sup>**49** **Employee share options.**

.....

#### Textual Amendments

- F27** Ss. 49-53 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)

<sup>F27</sup>**50** **Conditional acquisition of shares.**

.....



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**Textual Amendments**

**F27** Ss. 49-53 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)

**F27 51 Convertible shares provided to directors and employees.**

.....

**Textual Amendments**

**F27** Ss. 49-53 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)

**F27 52 Information powers.**

.....

**Textual Amendments**

**F27** Ss. 49-53 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)

**F27 53 Provision supplemental to sections 50 to 52.**

.....

**Textual Amendments**

**F27** Ss. 49-53 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)

**54 Amendments consequential on sections 50 to 53.**

- (1) The <sup>M14</sup>Taxation of Chargeable Gains Act 1992 shall be amended as follows.
- (2) After subsection (5) of section 120 (increase of expenditure by reference to tax charged in relation to shares) there shall be inserted the following subsections—
  - “(5A) Where an amount is chargeable to tax under section 140A of the Taxes Act in respect of—
    - (a) the acquisition or disposal of any interest in shares, or
    - (b) any interest in shares ceasing to be only conditional,the relevant amount is a sum equal to the amount so chargeable.
  - (5B) Where an amount is chargeable to tax under section 140D of the Taxes Act in respect of the conversion of shares, the relevant amount is a sum equal to the amount so chargeable.”

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- (3) In subsection (7) of that section—
  - (a) after “(5),” there shall be inserted “, (5A), (5B) ”; and
  - (b) after “138” there shall be inserted “, 140A, 140D ”.
- (4) After that subsection there shall be inserted the following subsection—
  - “(8) For the purposes of subsection (5A) above this section shall have effect as if references in this section to shares included anything referred to as shares in section 140A of the Taxes Act.”
- (5) After section 149A there shall be inserted the following section—

**“149B Employee incentive schemes: conditional interests in shares.**

- (1) Where—
  - (a) an individual has acquired an interest in any shares or securities which is only conditional,
  - (b) that interest is one which for the purposes of section 140A of the Taxes Act is taken to have been acquired by him as a director or employee of a company, and
  - (c) by virtue of section 17(1)(b) the acquisition of that interest would, apart from this section, be an acquisition for a consideration equal to the market value of the interest,

section 17 shall not apply for calculating the consideration.
- (2) Instead, the consideration for the acquisition shall be taken (subject to section 120) to be equal to the actual amount or value of the consideration given for that interest as computed in accordance with section 140B of the Taxes Act.
- (3) This section shall apply in relation only to the individual making the acquisition and, accordingly, shall be disregarded in calculating the consideration received by the person from whom the interest is acquired.
- (4) Expressions used in this section and in section 140A of the Taxes Act have the same meanings in this section as in that section.”
- (6) This section has effect in relation to disposals on or after 17th March 1998 of interests and shares acquired on or after that date.

<p><b>Marginal Citations</b></p> <p>M14 1992 c. 12.</p>
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*Construction industry workers*

**55 Construction workers supplied by agencies.**

- F28(1) .....
- F29(2) .....

*Status: Point in time view as at 18/04/2005.*

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- (3) Subsections (1) and (2) above have effect in relation to—
- (a) any payments made on or after 6th April 1998 other than any made in respect of services rendered before that date; and
  - (b) any payments made before 6th April 1998 in respect of services to be rendered on or after that date.

#### Textual Amendments

- F28** S. 55(1) 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](#))
- F29** S. 55(2) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

## 56 Transitional provisions in connection with section 55.

- (1) Subject to subsection (6) below, subsection (2) below applies if—
- (a) a construction trade is being carried on by a person (“the sub-contractor”) at the end of the year 1997-98; and
  - (b) there are receipts of that trade which, but for section 134(5)(c) of the Taxes Act 1988, would have fallen to be treated for the year 1997-98 as the emoluments of an office or employment.
- (2) Where this subsection applies, then, subject to subsections (4) and (5) below—
- (a) the trade shall be deemed to have been permanently discontinued at the end of the year 1997-98; and
  - (b) to the extent (if any) that the trade includes activities in addition to the rendering of services falling by virtue of section 55 to be treated as the duties of an office or employment, a new trade shall be deemed to have been set up and commenced on 6th April 1998.
- (3) Subsection (4) below applies if—
- (a) a construction trade (“the old trade”) is deemed by virtue of subsection (2)(a) above to have been permanently discontinued; and
  - (b) a construction trade (“the new trade”)—
    - (i) is deemed by virtue of subsection (2)(b) above to have been set up and commenced; or
    - (ii) (where sub-paragraph (i) above does not apply) is actually set up and commenced in the year 1998-99.
- (4) Where this subsection applies then, notwithstanding the deemed discontinuance, the old trade and the new trade shall be treated as the same for the purposes of section 385 of the Taxes Act 1988 (carry-forward of losses against subsequent profits).
- (5) An officer of the Board shall not become entitled by virtue of anything in this section to give a direction under paragraph 3(2) of Schedule 20 to the <sup>M15</sup>Finance Act 1994 (power to revise assessment so that made on the actual basis) in the case of a person whose trade is deemed under subsection (2) above to cease on 5th April 1998.
- (6) Subsection (2) above does not apply if the sub-contractor by notice to an officer of the Board otherwise elects.

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- (7) An election under subsection (6) above—
- (a) if it relates to a trade carried on by an individual, must be included in a return under section 8 of the <sup>M16</sup>Taxes Management Act 1970 which is made and delivered in that individual’s case on or before the day on which it is required to be made and delivered under that section; and
  - (b) if it relates to a trade carried on by persons in partnership, must be included in a return under section 12AA of that Act which is made and delivered in the partners’ case, or in the case of any one or more of them, on or before the day specified in relation to that return under subsection (2) or (3) of that section.
- (8) In this section “construction trade” means a trade consisting in or including the rendering of services under contracts relating to construction operations (within the meaning of [<sup>F30</sup>section 74 of the Finance Act 2004]).
- (9) Where at any time on or after 17th March 1998 and before the day on which this Act is passed any election corresponding to an election under subsection (6) above has been made under a resolution of the House of Commons having effect in accordance with the provisions of the <sup>M17</sup>Provisional Collection of Taxes Act 1968, this section has effect, on and after the day on which this Act is passed, as if that election were an election under subsection (6) above.

#### Textual Amendments

**F30** Words in s. 56(8) substituted (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 15\(2\)](#)

#### Marginal Citations

**M15** 1994 c. 9.

**M16** 1970 c. 9.

**M17** 1968 c. 2.

#### <sup>F31</sup>**57 Sub-contractors in the construction industry.**

.....

#### Textual Amendments

**F31** [S. 57](#) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

*Payments and other benefits in connection with termination of employment etc.*

#### <sup>F32</sup>**58 Payments and other benefits in connection with termination of employment, etc.**

.....

*Status: Point in time view as at 18/04/2005.*

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**Textual Amendments**

**F32** S. 58 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)

*Benefits in kind*

**59 Car fuel.**

(1) In section 158 of the Taxes Act 1988 (car fuel) for the Tables in subsection (2) (tables of cash equivalents) there shall be substituted—

“ TABLE A

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
1,400 or less	£1,010
More than 1,400 but not more than 2,000	£1,280
More than 2,000	£1,890

TABLE AB

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
2,000 or less	£1,280
More than 2,000	£1,890

TABLE B

<i>Description of car</i>	<i>Cash equivalent</i>
Any car	£1,890”

(2) This section shall have effect for the year 1998-99 and subsequent years of assessment.

**F33 60 Reductions for road fuel gas cars.**

.....

**Textual Amendments**

**F33** S. 60 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)

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**F34 61 Travelling expenses.**

.....

**Textual Amendments**

**F34** S. 61 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](#))

*Profit-related pay*

**62 Provision preventing manipulation of profit periods.**

Schedule 11 to this Act (which makes provision to prevent the manipulation of profit periods in relation to the phasing out of relief for profit-related pay) shall have effect.

*Foreign earnings deduction*

**F35 63 Withdrawal except in relation to seafarers.**

.....

**Textual Amendments**

**F35** Ss. 63-69 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](#))

*PAYE: non-cash benefits etc.*

**F35 64 Transitory provision relating to tradeable assets.**

.....

**Textual Amendments**

**F35** Ss. 63-69 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](#))

**F35 65 Payment in the form of a readily convertible asset.**

.....

**Textual Amendments**

**F35** Ss. 63-69 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](#))

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**F35 66 Enhancing the value of an asset.**

**Textual Amendments**

**F35** Ss. 63-69 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](#))

**F35 67 Gains from share options etc.**

**Textual Amendments**

**F35** Ss. 63-69 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](#))

**F35 68 Vouchers and credit-tokens.**

**Textual Amendments**

**F35** Ss. 63-69 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](#))

**F35 69 Intermediaries, non-UK employers, agencies etc.**

**Textual Amendments**

**F35** Ss. 63-69 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](#))

*The enterprise investment scheme and venture capital trusts*

**70 Qualifying trades for EIS and VCTs.**

- (1) Schedule 12 to this Act (which amends the definition of qualifying trade for the purposes of the enactments relating to the enterprise investment scheme and venture capital trusts) shall have effect.
- (2) In section 298(4) of the Taxes Act 1988 (power to amend sections 297 and 298), for “section 297” there shall be substituted “sections 293 and 297”.
- (3) In paragraph 12(a) of Schedule 28B to that Act (power to amend paragraphs 4 and 5 of that Schedule), for “4 and 5” there shall be substituted “3 to 5”.

*Status: Point in time view as at 18/04/2005.*

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- (4) The power conferred by subsection (2) above shall not be exercisable in relation to any shares issued before 17th March 1998.

## 71 Pre-arranged exits from EIS.

- (1) After section 299A of the Taxes Act 1988 there shall be inserted the following section—

### “299B Pre-arranged exits.

- (1) An individual is not eligible for relief in respect of any shares in a company if the relevant arrangements include—
- (a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the same company;
  - (b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;
  - (c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;
  - (d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.
- (2) The arrangements referred to in subsection (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 304A(1).
- (3) The arrangements referred to in subsection (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—
- (a) the relevant arrangements include arrangements for the company to be wound up; or
  - (b) the company is wound up otherwise than for bona fide commercial reasons.
- (4) The arrangements referred to in subsection (1)(d) above do not include any arrangements which are confined to the provision—
- (a) for the company itself, or
  - (b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,
- of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.
- (5) The reference in subsection (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 in that section.



*Status: Point in time view as at 18/04/2005.*

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- (6) In this section “the relevant arrangements” means—
- (a) the arrangements under which the shares are issued to the individual; and
  - (b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.
- (7) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”
- (2) In section 307(6)(a) of that Act (interest on overdue tax where relief withdrawn), after “289(6)” there shall be inserted “ or 299B(1) ”.
- (3) In section 310 of that Act (information powers), in subsection (5), after “293(8)” there shall be inserted “ , 299B(1) ”.
- (4) For subsection (6) of that section there shall be substituted the following subsection—
- “(6) For the purposes of subsection (5) above the persons who are persons concerned are—
- (a) in relation to section 289(6), the claimant, the company and any person controlling the company;
  - (b) in relation to section 291B(5), the claimant;
  - (c) in relation to section 293(8) or 308(2)(e), the company and any person controlling the company; and
  - (d) in relation to section 299B(1), the claimant, the company and any person connected with the company;
- and for those purposes references in this subsection to the claimant include references to any person to whom the claimant appears to have made a transfer such as is mentioned in section 304(1) of any of the shares in question.”
- (5) The preceding provisions of this section apply in relation to shares issued on or after 2nd July 1997.

## 72 **Qualifying holdings for VCTs after 2nd July 1997.**

- (1) After paragraph 10 of Schedule 28B to the Taxes Act 1988 there shall be inserted the following paragraph—

### **Requirement that securities should not relate to a guaranteed loan**

- “10A (1) The requirement of this paragraph is that there are no securities relating to a guaranteed loan in the relevant holding.
- (2) For the purposes of this paragraph a security relates to a guaranteed loan if (and only if) there are arrangements for the trust company to be or become entitled, in the event of a failure by any person to comply with—
- (a) the terms of the loan to which the security relates, or
  - (b) the terms of the security,
- to receive anything (whether directly or indirectly) from a third party.
- (3) For the purposes of sub-paragraph (2) above it shall be immaterial whether the arrangements apply in all cases of a failure to comply or only in certain such cases.

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- (4) For the purposes of this paragraph “third party” means any person except—
- (a) the relevant company; and
  - (b) if the relevant company is the parent company of a trading group for the purposes of paragraph 3 above, the subsidiaries of the relevant company.”
- (2) After the paragraph 10A inserted by subsection (1) above there shall be inserted the following paragraph—

**“10B Requirement that a proportion of the holding in each company must be eligible shares**

- (1) The requirement of this paragraph is that eligible shares represent at least 10 per cent. by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the trust company.
  - (2) For the purposes of this paragraph the value at any time of any shares in or securities of a company shall be taken (subject to sub-paragraph (4) below) to be their value immediately after—
    - (a) any relevant event occurring at that time; or
    - (b) where no relevant event occurs at that time, the last relevant event to occur before that time.
  - (3) In sub-paragraph (2) above “relevant event”, in relation to any shares in or securities of the relevant company, means—
    - (a) the acquisition by the trust company of those shares or securities;
    - (b) the acquisition by the trust company of any other shares in or securities of the relevant company which—
      - (i) are of the same description as those shares or securities, and
      - (ii) are acquired otherwise than by virtue of being allotted to the trust company without that company’s becoming liable to give any consideration;

or

    - (c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the trust company as (by discharging that obligation) increases the value of any such shares or securities.
  - (4) If at any time the value of any shares or securities held by the trust company is less than the amount of the consideration given by the trust company for those shares or securities, it shall be assumed for the purposes of this paragraph that the value of those shares or securities at that time is equal to the amount of that consideration.
  - (5) In this paragraph “eligible shares” has the same meaning as in section 842AA.”
- (3) Subject to subsections (4) and (5) below, the preceding provisions of this section have effect in relation to accounting periods ending on or after 2nd July 1997.
- (4) Subsection (1) above shall not have effect for the purpose of determining whether any shares or securities acquired by a company by means of the investment of—

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- (a) money raised by the issue before 2nd July 1997 of shares in or securities of the trust company, or
  - (b) money derived from the investment by that company of any such money, constitute qualifying holdings of the trust company at any time.
- (5) If at any time the requirement of paragraph 10B of Schedule 28B to the Taxes Act 1988—
- (a) would be satisfied in relation to a relevant holding and a company if none of the old investments were held by the trust company at that time, but
  - (b) would not otherwise be satisfied,
- that paragraph shall apply in relation to that holding as if the old investments were not held by the trust company at that time.
- (6) In subsection (5) above, “old investments” means shares in or securities of the relevant company acquired by means of the investment of—
- (a) money raised by the issue before 2nd July 1997 of shares in or securities of the trust company; or
  - (b) money derived from the investment of such money.

### 73 Other changes to requirements for VCTs.

- (1) In each of—
- (a) subsection (14) of section 842AA of the Taxes Act 1988, and
  - (b) sub-paragraph (1) of paragraph 6 of Schedule 15B to that Act,
- (which define “eligible shares” for the purposes of enactments relating to VCTs), the word “preferential”, in the second place where it occurs in that subsection or sub-paragraph, shall be omitted.
- <sup>F36</sup>(2) .....
- (3) In paragraph 3 of Schedule 28B to that Act, in sub-paragraph (3) (requirement in relation to qualifying trade of relevant company or qualifying subsidiary), for “qualifying subsidiary” there shall be substituted “relevant qualifying subsidiary”;  
<sup>F37</sup> ...
- (4) In paragraph 6 of Schedule 28B to that Act, in sub-paragraphs (1)(b), (2A)(c) and (2B) (requirement as to use of money raised), for “qualifying subsidiary”, wherever it occurs, there shall be substituted “relevant qualifying subsidiary”;  
<sup>F38</sup> ...
- (5) In paragraph 8(1) of Schedule 28B to that Act (requirement as to capital of the relevant company), for “£10 million” and “£11 million” there shall be substituted, respectively, “£15 million” and “£16 million”.
- (6) Subsections (1) to (4) above have effect for the purpose of determining whether shares or securities are, as at any time on or after 6th April 1998, to be regarded as comprised in a company’s qualifying holdings; and subsection (5) above has effect in relation to relevant holdings issued on or after that date.

#### Textual Amendments

- F36** S. 73(2) repealed (with effect in accordance with Sch. 42 Pt. 2(13) Note 6 of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(13)

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- F37** Words in s. 73(3) repealed (with effect in accordance with Sch. 42 Pt. 2(13) Note 6 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(13)**
- F38** Words in s. 73(4) repealed (with effect in accordance with Sch. 42 Pt. 2(13) Note 6 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(13)**

**74 Other changes to EIS etc.**

- (1) Schedule 13 to this Act, which amends the provisions mentioned in subsection (2) below, shall have effect.
- (2) The provisions are—
  - (a) Chapter III of Part VII of the Taxes Act 1988 (EIS income tax relief);
  - (b) sections 150A and 150B of the <sup>M18</sup>Taxation of Chargeable Gains Act 1992 (EIS relief in respect of chargeable gains);
  - (c) Schedule 5B to that Act (EIS deferral of chargeable gains); and
  - (d) that Chapter as it has effect in relation to shares issued before 1st January 1994 (BES income tax relief) and section 150 of that Act (BES relief in respect of chargeable gains).
- (3) Unless the contrary intention appears, the amendments made by that Schedule have effect in relation to shares issued on or after 6th April 1998.

**Marginal Citations**

**M18** 1992 c. 12.

*Individual savings accounts etc.*

**<sup>F39</sup>75 Use of PEPs powers to provide for accounts.**

**Textual Amendments**

**F39** S. 75 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 3** (with [Sch. 2](#))

**76 Tax credits for accounts and for PEPs.**

- <sup>F40</sup>(1) .....
- <sup>F40</sup>(2) .....

- (3) The Treasury may by regulations make provision for individuals who—
  - (a) are not resident in the United Kingdom, but
  - (b) have made investments under plans for which provision is made by regulations under [<sup>F41</sup>Chapter 3 of Part 6 of the Income Tax (Trading and Other Income) Act 2005],

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to be treated in relation to any such investments as if they were so resident for the purposes of any enactment conferring an entitlement to, or to the payment of, tax credits.

F42(4) .....

F42(5) .....

#### Textual Amendments

**F40** S. 76(1)(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

**F41** Words in s. 76(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 503](#) (with [Sch. 2](#))

**F42** S. 76(4)(5) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

## 77 The insurance element etc.

(1) In Chapter IV of Part VII of the Taxes Act 1988, after section 333A there shall be inserted the following section—

### “333B Involvement of insurance companies with plans and accounts.

- (1) The Treasury may make regulations providing exemption from tax for income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company’s long term business fund as is referable to section 333 business.
- (2) The Treasury may by regulations modify the effect of section 30(4) of the <sup>M19</sup>Finance (No. 2) Act 1997 (which repeals section 231(2) of the Taxes Act 1988 with effect from 6th April 1999) in relation to distributions which—
  - (a) are made before 6th April 2004; and
  - (b) are received by an insurance company in respect of investments of so much of its long term business fund as is referable to section 333 business.
- (3) Regulations under this section may make provision for insurance companies that are not resident in the United Kingdom to be treated, in relation to investments of so much of their long term business funds as are referable to section 333 business—
  - (a) as if they were so resident for the purposes of any enactment conferring an entitlement to, or to the payment of, tax credits in respect of investments; and
  - (b) as if such other conditions of any entitlement to, or to the payment of, tax credits were also satisfied.
- (4) Regulations under section 333 or this section may include provision which, in relation to insurance companies that are not resident in the United Kingdom—
  - (a) requires a person to be appointed to be responsible for securing the discharge of any duties to which such an insurance company is subject under the regulations; and

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- (b) confers rights and powers, and imposes liabilities, on a person so appointed;
- and, without prejudice to the generality of paragraphs (a) and (b) above, regulations made by virtue of this subsection may include any provision corresponding to any that, in relation to a European institution, may be made under section 333A.
- (5) Regulations under this section may provide that an insurance company—
- (a) shall comply with any notice served on it by the Board which requires it, within a prescribed period, to make available for the Board’s inspection documents (of a prescribed kind) relating to, or to matters connected with, its past or present section 333 business; and
- (b) shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about its past or present section 333 business or any matters connected with it.
- (6) Any power of the Treasury under this section to make provision by regulations in relation to insurance companies shall include power by regulations to make such corresponding provision in relation to friendly societies as the Treasury think fit.
- (7) Regulations under this section may—
- (a) for purposes connected with any exemption from tax conferred by virtue of subsection (1) above, apply or modify any provision made by or under the Tax Acts;
- (b) make different provision for different cases;
- (c) include such incidental, supplemental, consequential and transitional provision as the Treasury may consider appropriate.
- (8) Without prejudice to the generality of the powers conferred by subsection (7) above, the provision that may be made in connection with an exemption from tax conferred by virtue of subsection (1) above shall include provision for section 436 to apply (with any such modifications as may be prescribed) in relation to section 333 business as it applies in relation to pension business.
- (9) In this section—
- “friendly society” has the same meaning as in Chapter II of Part XII;
- “insurance company” means an insurance company within the meaning of the <sup>M20</sup>Insurance Companies Act 1982;
- “long term business fund” has the same meaning as in Chapter I of Part XII;
- “prescribed” means prescribed by regulations under this section;
- “section 333 business”, in relation to an insurance company, means the business of the company that is attributable to the making of investments with that company under plans for which provision is made by regulations under section 333.”
- (2) In each of the columns of the Table in section 98 of the <sup>M21</sup>Taxes Management Act 1970 (penalties for failure to comply with notice or to furnish information), after the entry relating to regulations under section 333 of the Taxes Act 1988 there shall be inserted the following entry—

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“regulations under section 333B;”.

#### Marginal Citations

- M19 1997 c. 58.
- M20 1982 c. 50.
- M21 1970 c. 9.

#### <sup>F43</sup>78 Phasing out of TESSAs.

#### Textual Amendments

- F43 S. 78 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Relief for interest and losses etc.*

#### 79 Relief for loan to acquire interest in a close company.

- (1) At the end of subsection (3A) of section 360 of the Taxes Act 1988 (loan to buy interest in close company) there shall be inserted the words “ or makes a claim in respect of them under Schedule 5B to the 1992 Act ”.
- (2) This section has effect in relation to shares acquired on or after 6th April 1998.

#### 80 Relief for losses on unlisted shares in trading companies.

- (1) At the beginning of subsection (1) of section 576 of the Taxes Act 1988 (provisions supplementary to sections 573 to 575) there shall be inserted the words “ Subject to subsections (1A) and (1B) below, ”.
- (2) After that subsection there shall be inserted the following subsections—
  - “(1A) Subsection (1B) below applies where the holding mentioned in subsection (1) above comprises any of the following, namely—
    - (a) shares issued before 1st January 1994 in respect of which relief has been given under Chapter III of Part VII and has not been withdrawn;
    - (b) shares issued on or after that date to which relief under that Chapter is attributable; and
    - (c) shares to which deferral relief (within the meaning of Schedule 5B to the 1992 Act) is attributable.
  - (1B) Any such question as is mentioned in subsection (1) above shall not be determined as provided by that subsection, but shall be determined instead—
    - (a) in the case of shares issued before 1st January 1994, as provided by subsections (3) to (4C) of section 299 as it has effect in relation to such shares; and

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- (b) in the case of shares issued on or after that date, as provided by subsections (6) to (6D) of that section as it has effect in relation to such shares.”

(3) For subsection (4) of that section there shall be substituted the following subsections—

“(4) For the purposes of sections 573 to 575 and this section a qualifying trading company is a company which at all times in the relevant period has been an unquoted company (within the meaning given by section 312) and which—

- (a) either—
- (i) is an eligible trading company on the date of the disposal; or
  - (ii) has ceased to be an eligible trading company at a time which is not more than three years before that date and has not since that time been an excluded company, an investment company or a trading company that is not an eligible trading company; and
- (b) either—
- (i) has been an eligible trading company for a continuous period of six years ending on that date or at that time; or
  - (ii) has been an eligible trading company for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company that is not an eligible trading company; and
- (c) has carried on its business wholly or mainly in the United Kingdom throughout the relevant period.

(4A) A company is an eligible trading company for the purposes of subsection (4) above at any time when, or in any period throughout which, it would comply with the requirements of section 293 if—

- (a) the provisions mentioned in subsection (4B) below were omitted;
- (b) the references in subsection (6) of section 293 to dissolution were omitted and the condition in paragraph (b) of that subsection were a condition that the company continue to be a trading company within the meaning of subsection (5) below;
- (c) the reference in section 293(6A) to the eligible shares were a reference to the shares in respect of which relief is claimed under section 573 or 574;
- (d) any reference in section 293, 297 or 308 to the relevant period were a reference to the time that is relevant for the purposes of subsection (4) (a) above or, as the case may require, the continuous period that is relevant for the purposes of subsection (4)(b) above;
- (e) the reference in section 304A(1)(e)(i) to eligible shares were a reference to shares in respect of which relief is claimed under section 573 or 574;
- (f) references in section 304A(3) to an individual were references to a person;
- (g) the reference in section 304A(4) to section 304 were a reference to section 574(3)(b); and



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- (h) the reference in section 304A(6) to the expressions “eligible shares” and “subscriber shares” were a reference to the expression “subscriber shares”.

(4B) The provisions are—

- (a) in section 293, the words “Subject to section 294,” in subsection (1), the words “an unquoted company and be” in subsection (2), and subsections (8A) and (8B);
- (b) sections 294 to 296;
- (c) in section 298(5), the words “and section 312(1A)(b) shall apply to determine the relevant period for the purposes of that section”;
- (d) in section 304A, subsections (1)(e)(ii) and (2)(b), in subsection (3), the words “to which relief becomes so attributable” and paragraphs (c) and (d), in subsection (4), the words “to which relief becomes so attributable” and paragraphs (c) and (d), and subsection (5); and
- (e) section 308(5A).”

(4) In subsection (5) of that section—

- (a) in the definition of “excluded company”, for the words “dealing in shares, securities, land, trades or commodity futures” there shall be substituted the words “dealing in land, in commodities or futures or in shares, securities or other financial instruments, ”;
- (b) in the definition of “relevant period”, for the words “subscribed for” there shall be substituted the word “issued ”;
- (c) for the definition of “shares” there shall be substituted the following definition—

““shares”—

- (a) except in subsections (1A) and (1B) above, includes stock; but
- (b) except in the definition of “excluded company”, does not include shares or stock not forming part of a company’s ordinary share capital;”and
- (d) in the definition of “trading group”, the words “or not resident in the United Kingdom” shall cease to have effect.

(5) In this section—

- (a) subsections (1) and (2) have effect in relation to disposals made on or after 6th April 1998; and
- (b) subsections (3) and (4) have effect in relation to shares issued on or after that date.

F44 81 .....

**Textual Amendments**

F44 S. 81 repealed (*retrospectively*) by 2000 c. 17, ss. 100(5), 156, Sch. 40 Pt. II(11)

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**82 Carry forward of non-trading deficit on loan relationships.**

<sup>F45</sup>(1) .....

(2) Section 797 (limits on credit: corporation tax) and section 797A (foreign tax on interest brought into account as a non-trading credit) of the Taxes Act 1988 are amended as follows—

- (a) in section 797(3B)(b), omit “or in accordance with subsection (3) of that section”;
- (b) in section 797A(5), at the end of paragraph (a) insert the word “ and ” and omit paragraph (c) and the word “and” preceding it;

<sup>F46</sup>(c) .....

(d) in section 797A(6), for “specified in subsection (5)(c) above” substitute “ carried forward to the applicable accounting period in pursuance of a claim under section 83(2)(d) of that Act ”;

<sup>F46</sup>(e) .....

(3) The following amendments of Schedule 28A to the Taxes Act 1988 (change in ownership of investment company: deductions) are consequential on the amendment in subsection (1) above—

- (a) in paragraph 6(da), after “period” insert “ (other than one within sub-paragraph (dc) below) ”;
- (b) in paragraph 6(db), omit “(dc) or”;
- (c) in paragraph 6(dc), for “debit given for that accounting period by” substitute “ deficit carried forward to that accounting period under ”;
- (d) in paragraph 7(1)(b), for “debit” substitute “ deficit ”;
- (e) in paragraph 11(2), omit paragraph (a);
- (f) in paragraph 13(1)(ea), after “period” insert “ (other than one within paragraph (ec) below) ”;
- (g) in paragraph 13(1)(eb), omit “(ec) or”;
- (h) in paragraph 13(1)(ec), for “debit given for that accounting period by” substitute “ deficit carried forward to that accounting period under ”;
- (i) in paragraph 16(1)(b), for “debit” substitute “ deficit ”.

(4) The amendments made by this section shall be deemed always to have had effect.

**Textual Amendments**

**F45** S. 82(1) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(12) Note of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(12)** Note

**F46** S. 82(2)(c)(e) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(12) Note of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(12)** Note

*Capital allowances*

<sup>F47</sup>**83 First-year allowances for investment in Northern Ireland.**

.....

*Status: Point in time view as at 18/04/2005.*

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**Textual Amendments**

**F47** Ss. 83-85 repealed (22.3.2001 with effect as mentioned in s. 579 of the amending Act) by 2001 c. 2, ss. 579, 580, **Sch. 4**

**F48 84 First-year allowances for small businesses etc.**

**Textual Amendments**

**F48** Ss. 83-85 repealed (22.3.2001 with effect as mentioned in s. 579 of the amending Act) by 2001 c. 2, ss. 579, 580, **Sch. 4**

**F49 85 First-year allowances: consequential amendments etc.**

**Textual Amendments**

**F49** Ss. 83-85 repealed (22.3.2001 with effect as mentioned in s. 579 of the amending Act) by 2001 c. 2, ss. 579, 580, **Sch. 4**

*Insurance, insurance companies and friendly societies*

**86 Life policies etc.**

Schedule 14 to this Act (which makes provision in relation to the taxation of life policies etc under Chapter II of Part XIII of the Taxes Act 1988) shall have effect.

**87 Non-resident insurance companies: tax representatives.**

After section 552 of the Taxes Act 1988 (duty of insurers to provide certain information) there shall be inserted—

**“552A Tax representatives.**

- (1) This section has effect for the purpose of securing that, where it applies to an overseas insurer, another person is the overseas insurer’s tax representative.
- (2) In this section “overseas insurer” means a person who is not resident in the United Kingdom who carries on a business which consists of or includes the effecting and carrying out of—
  - (a) policies of life insurance;
  - (b) contracts for life annuities; or
  - (c) capital redemption policies.
- (3) This section applies to an overseas insurer—

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- (a) if the condition in subsection (4) below is satisfied on the designated day; or
  - (b) where that condition is not satisfied on that day, if it has subsequently become satisfied.
- (4) The condition mentioned in subsection (3) above is that—
- (a) there are in force relevant insurances the obligations under which are obligations of the overseas insurer in question or of an overseas insurer connected with him; and
  - (b) the total amount or value of the gross premiums paid under those relevant insurances is £1 million or more.
- (5) In this section “relevant insurance” means any policy of life insurance, contract for a life annuity or capital redemption policy in relation to which this Chapter has effect and in the case of which—
- (a) the holder is resident in the United Kingdom;
  - (b) the obligations of the insurer are obligations of a person not resident in the United Kingdom; and
  - (c) those obligations are not attributable to a branch or agency of that person’s in the United Kingdom.
- (6) Before the expiration of the period of three months following the day on which this section first applies to an overseas insurer, the overseas insurer must nominate to the Board a person to be his tax representative.
- (7) A person shall not be a tax representative unless—
- (a) if he is an individual, he is resident in the United Kingdom and has a fixed place of residence there, or
  - (b) if he is not an individual, he has a business establishment in the United Kingdom,
- and, in either case, he satisfies such other requirements (if any) as are prescribed in regulations made for the purpose by the Board.
- (8) A person shall not be an overseas insurer’s tax representative unless—
- (a) his nomination by the overseas insurer has been approved by the Board; or
  - (b) he has been appointed by the Board.
- (9) The Board may by regulations make provision supplementing this section; and the provision that may be made by any such regulations includes provision with respect to—
- (a) the making of a nomination by an overseas insurer of a person to be his tax representative;
  - (b) the information which is to be provided in connection with such a nomination;
  - (c) the form in which such a nomination is to be made;
  - (d) the powers and duties of the Board in relation to such a nomination;
  - (e) the procedure for approving, or refusing to approve, such a nomination, and any time limits applicable to doing so;
  - (f) the termination, by the overseas insurer or the Board, of a person’s appointment as a tax representative;

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- (g) the appointment by the Board of a person as the tax representative of an overseas insurer (including the circumstances in which such an appointment may be made);
  - (h) the nomination by the overseas insurer, or the appointment by the Board, of a person to be the tax representative of an overseas insurer in place of a person ceasing to be his tax representative;
  - (j) circumstances in which an overseas insurer to whom this section applies may, with the Board's agreement, be released (subject to any conditions imposed by the Board) from the requirement that there must be a tax representative;
  - (k) appeals to the Special Commissioners against decisions of the Board under this section or regulations under it.
- (10) The provision that may be made by regulations under subsection (9) above also includes provision for or in connection with the making of other arrangements between the Board and an overseas insurer for the purpose of securing the discharge by or on behalf of the overseas insurer of the relevant duties, within the meaning of section 552B.
- (11) Section 839 (connected persons) applies for the purposes of this section.
- (12) In this section—
- “the designated day” means such day as the Board may specify for the purpose in regulations;
  - “tax representative” means a tax representative under this section.

#### **552B Duties of overseas insurers' tax representatives.**

- (1) It shall be the duty of an overseas insurer's tax representative to secure (where appropriate by acting on the overseas insurer's behalf) that the relevant duties are discharged by or on behalf of the overseas insurer.
- (2) For the purposes of this section “the relevant duties” are—
- (a) the duties imposed by section 552,
  - (b) any duties imposed by regulations made under subsection (4A)(a) of that section, and
  - (c) any duties imposed by regulations made under subsection (4A)(b) of that section by virtue of subsection (4B) of that section,
- so far as relating to relevant insurances under which the overseas insurer in question has any obligations.
- (3) An overseas insurer's tax representative shall be personally liable—
- (a) in respect of any failure to secure the discharge of the relevant duties, and
  - (b) in respect of anything done for purposes connected with acting on the overseas insurer's behalf,
- as if the relevant duties were imposed jointly and severally on the tax representative and the overseas insurer.
- (4) In the application of this section in relation to any particular tax representative, it is immaterial whether any particular relevant duty arose before or after his appointment.

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- (5) This section has effect in relation to relevant duties relating to chargeable events happening on or after the day by which section 552A(6) requires the nomination of the overseas insurer's first tax representative to be made.
- (6) Expressions used in this section and in section 552A have the same meaning in this section as they have in that section."

## **88 Overseas life assurance business.**

- (1) After section 553 of the Taxes Act 1988 (non-resident policies and off-shore capital redemption policies) there shall be inserted—

### **“553A Overseas life assurance business: life policies.**

- (1) A policy of life insurance which, immediately before the happening of a chargeable event or a relevant event—
  - (a) is an overseas policy, but
  - (b) is not a new non-resident policy,
 shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new non-resident policy.
- (2) A policy of life insurance which, immediately before the happening of a relevant event—
  - (a) is an overseas policy, and
  - (b) is a new non-resident policy,
 shall, in relation to that event, be taken for the purposes of this Chapter not to be a qualifying policy.
- (3) Where a chargeable event happens in relation to a new non-resident policy, section 553(7) shall not have effect in relation to the gain treated as arising in connection with the policy on the happening of the chargeable event.
- (4) In this section—
  - “new non-resident policy” means a new non-resident policy as defined in paragraph 24 of Schedule 15 (and in subsections (2) and (3) above includes a policy treated as such by virtue of subsection (1) above);
  - “overseas policy” means a policy of life insurance which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company or friendly society;
  - “relevant event”, in relation to a policy of life insurance, means an event which would be a chargeable event in relation to that policy if the policy were assumed not to be a qualifying policy.
- (5) This section applies in relation to chargeable events and relevant events happening on or after 17th March 1998 in relation to policies of life insurance issued in respect of insurances made on or after that date.
- (6) A policy of life insurance issued in respect of an insurance made before 17th March 1998 shall be treated for the purposes of this section as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any

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exercise of rights conferred by the policy shall be regarded for this purpose as a variation.”

(2) After section 553A of the Taxes Act 1988 there shall be inserted—

**“553B Overseas life assurance business: capital redemption policies.**

(1) A capital redemption policy which immediately before the happening of a chargeable event—

- (a) is an overseas policy, but
- (b) is not a new offshore capital redemption policy,

shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new offshore capital redemption policy.

(2) In this section—

“new offshore capital redemption policy” has the same meaning as in section 553;

“overseas policy” means a capital redemption policy which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company.

(3) This section applies in relation to capital redemption policies where the contract is made after the coming into force of the first regulations under section 458A in consequence of which capital redemption business forms part of the overseas life assurance business of an insurance company.”

**89 Personal portfolio bonds.**

In Chapter II of Part XIII of the Taxes Act 1988 (life policies, life annuities and capital redemption policies) after section 553B (which is inserted by section 88 above) there shall be inserted—

**“553C Personal portfolio bonds.**

(1) The Treasury may by regulations make provision imposing a yearly charge to tax in relation to personal portfolio bonds (“yearly” being construed for this purpose by reference to years as defined in section 546(4)).

(2) Subject to any provision to the contrary made by the regulations, any charge to tax under this section is in addition to any other charge to tax under this Chapter.

(3) The regulations may make provision with respect to or in connection with all or any of the following—

- (a) the method by which the charge to tax, or any relief, allowance or deduction against or in respect of the tax, is to be imposed or given effect;
- (b) the person who is to be liable for the tax;
- (c) the periods for or in respect of which the tax is to be charged;
- (d) the amounts in respect of which, or by reference to which, the tax is to be charged;
- (e) the period or periods by reference to which those amounts are to be determined;

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- (f) the rate or rates at which the tax is to be charged;
  - (g) any reliefs, allowances or deductions which are to be given or made against or in respect of the tax;
  - (h) the administration of the tax.
- (4) The provision that may be made by the regulations includes provision for imposing the charge to tax by a method which involves—
- (a) treating an event described in the regulations as if it were a chargeable event;
  - (b) treating an amount determined in accordance with the regulations as if it were a gain treated as arising on the happening of a chargeable event;
  - (c) deeming an amount determined in accordance with the regulations to be income of a person or body of persons (or to be part of the aggregate income of the estate of a deceased person); or
  - (d) applying section 740, with or without modification, in relation to an amount determined in accordance with the regulations.
- (5) The provision that may be made in the regulations includes provision for the amount or amounts in respect of which, or by reference to which, the tax is to be charged for periods beginning after the coming into force of the regulations to be determined in whole or in part by reference to periods beginning or ending, premiums paid, or events happening, before, on or after the day on which the Finance Act 1998 is passed.
- (6) The regulations may make provision excluding, or applying (with or without modification), other provisions of this Chapter in relation to policies or contracts which are also personal portfolio bonds.
- (7) In this section, “personal portfolio bond” means a policy of life insurance, contract for a life annuity or capital redemption policy under whose terms—
- (a) some or all of the benefits are determined by reference to the value of, or the income from, property of any description (whether or not specified in the policy or contract) or fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and
  - (b) some or all of the property, or such an index, may be selected by, or by a person acting on behalf of, the holder of the policy or contract or a person connected with him (or the holder of the policy or contract and a person connected with him);
- but a policy or contract is not a personal portfolio bond if the only property or index which may be so selected is of a description prescribed for this purpose in the regulations.
- (8) The regulations may prescribe additional conditions which must be satisfied if a policy or contract is to be a personal portfolio bond.
- (9) The regulations—
- (a) may make different provision for different cases, different circumstances or different periods; and
  - (b) may make incidental, consequential, supplemental or transitional provision.



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(10) In this section, “holder”, in the case of a policy or contract held by two or more persons, includes a reference to any of those persons.

(11) Section 839 (connected persons) applies for the purposes of this section.”

## 90 Distributions to friendly societies.

(1) The repeal by section 30(4) of the <sup>M22</sup>Finance (No. 2) Act 1997 of section 231(2) of the Taxes Act 1988 (payment of tax credit to a company resident in the UK) shall not have effect in relation to any distribution made to a friendly society before 6th April 2004 which is—

- (a) a distribution to a friendly society all of whose profits are exempt from corporation tax by virtue of section 460(1) of the Taxes Act 1988 (life or endowment business of friendly society); or
- (b) a distribution not falling within paragraph (a) above in relation to which exemption is given under section 460(1) of that Act.

(2) In relation to any distribution falling within paragraph (a) or (b) of subsection (1) above—

- (a) paragraph 3 of Schedule 4 to the <sup>M23</sup>Finance (No. 2) Act 1997 (which, from 6th April 1999, repeals certain provisions about claims for tax credits for accounting periods to which self-assessment applies) shall have effect as if the reference in sub-paragraph (2) of that paragraph to 6th April 1999 were a reference to 6th April 2004; and
- (b) paragraph 2 of that Schedule (which repeals certain provisions about claims for tax credits for earlier periods) shall have no effect.

<sup>F50</sup>(3) .....

(4) Schedule 8 to the <sup>M24</sup>Finance (No. 2) Act 1997 (repeals), so far as it relates to any repeal referred to in the preceding provisions of this section, shall have effect subject to those provisions.

### Textual Amendments

**F50** S. 90(3) repealed (11.5.2001) by 2001 c. 9, s. 110, Sch. 33 Pt. II(12)

### Marginal Citations

**M22** 1997 c. 58.

**M23** 1997 c. 58.

**M24** 1997 c. 58.

## <sup>F51</sup>91 Provisional repayments in connection with pension business.

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### Textual Amendments

**F51** S. 91 repealed (11.5.2001 with effect as mentioned in s. 87 of the amending Act) by 2001 c. 9, ss. 87, 110, Sch. 33 Pt. II(12) Note

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*Pensions*

**92 Approved retirement benefit schemes etc.**

Schedule 15 to this Act (which makes provision in relation to cases where a scheme has been approved for the purposes of Chapter I of Part XIV of the Taxes Act 1988 or an approval for those purposes has ceased to have effect) shall have effect.

**F5293 Benefits received under non-approved retirement benefits scheme.**

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**Textual Amendments**  
**F52** S. 93 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)

**94 Approval of personal pension schemes.**

(1) After section 638 of the Taxes Act 1988 there shall be inserted the following section—

**“638A Power to prescribe restrictions on approval.**

- (1) The Board—
  - (a) may by regulations restrict their discretion to approve a personal pension scheme; and
  - (b) shall not approve any such scheme if to do so would be inconsistent with any regulations under this section.
- (2) The restrictions that may be imposed by regulations under this section may be imposed by reference to any one or more of the following, that is to say—
  - (a) the benefits for which the scheme provides;
  - (b) the investments held for the purposes of the scheme;
  - (c) the manner in which the scheme is administered;
  - (d) any other circumstances whatever.
- (3) The following provisions of this section apply where—
  - (a) any regulations are made under this section imposing a restriction (“the new restriction”) on the Board’s discretion to approve a personal pension scheme;
  - (b) the new restriction did not exist immediately before the making of the regulations; and
  - (c) that restriction is one imposed by reference to circumstances other than the benefits for which the scheme provides.
- (4) Subject to subsections (5) and (6) below, a personal pension scheme which is an approved scheme immediately before the day on which the regulations imposing the new restriction come into force shall cease to be approved at the end of the period of 36 months beginning with that day if, at the end of that period, the scheme—
  - (a) contains a provision of a prohibited description, or

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- (b) does not contain every provision which is a provision of a required description.
- (5) The Board may by regulations provide that subsection (4) above is not to apply in the case of the inclusion of such provisions of a prohibited description, or in the case of the omission of such provisions of a required description, as may be specified in the regulations.
- (6) For the purposes of subsection (4) above—
  - (a) a provision contained in a scheme shall not be treated as being of a prohibited description to the extent that it authorises the retention of an investment held immediately before the day of the making of the new regulations; and
  - (b) so much of any provision contained in a scheme as authorises the retention of an investment held immediately before that day shall be disregarded in determining if any provision of the scheme is of a required description.
- (7) In this section—
  - (a) references to a provision of a prohibited description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which, if contained in a personal pension scheme, would prevent the Board from approving it; and
  - (b) references to a provision of a required description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which must be contained in a personal pension scheme before the Board may approve it.”
- (2) Accordingly, in section 631(2) of that Act (power to approve schemes), for “638” there shall be substituted “ 638A ”.

## **95 Personal pensions: charge on withdrawal of approval.**

- (1) After section 650 of the Taxes Act 1988 (withdrawal of approval) there shall be inserted the following section—

### **“650A Charge on withdrawal of approval from arrangements.**

- (1) Where any personal pension arrangements cease to be approved arrangements by virtue of the exercise by the Board of their power under section 650(2), tax shall be charged in accordance with this section.
- (2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent. on an amount equal to the value (taking that value at the relevant time) of the appropriate part of the assets held at that time for the purposes of the relevant scheme.
- (3) In subsection (2) above—

“the appropriate part”, in relation to the value of any assets, is so much of those assets as is properly attributable, in accordance with the provisions of the scheme and any just and reasonable apportionment, to the arrangements in question; and

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“the relevant time” means the time immediately before the date from which the Board’s approval is withdrawn.

- (4) Subject to subsection (5) below, the person liable for the tax charged under this section shall be the scheme administrator for the relevant scheme.
- (5) If, in any case where an amount of tax has been charged under this section and has not been paid—
- (a) there is at any time no person who, as the scheme administrator for the relevant scheme, may be assessed to that amount of tax, or is liable to pay it,
  - (b) the scheme administrator for that scheme cannot for the time being be traced,
  - (c) there has been such a failure by the scheme administrator for that scheme to meet a liability to pay that amount as the Board consider to be a failure of a serious nature, or
  - (d) it appears to the Board that a liability of the scheme administrator for that scheme to pay that amount of tax is a liability that he will be, or (were there an assessment) would be, unable to meet out of assets held in accordance with the scheme for the purposes of those arrangements,
- the Board shall be entitled to assess the unpaid tax on the person who made the arrangements in question as if the tax charged under this section, to the extent that it is unpaid, were assessable under this section on that person, instead of on the scheme administrator.
- (6) An assessment to tax made by virtue of subsection (5)(c) above shall not be out of time if it is made within three years after the date on which the tax which the scheme administrator has failed to pay first became due from him.
- (7) For the purposes of this section the value of an asset is, subject to subsection (8) below, its market value, construing “market value” in accordance with section 272 of the 1992 Act.
- (8) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (9) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.
- (9) Those persons are—
- (a) the person who (whether or not before the making of the loan) made the arrangements in relation to which the Board’s approval has been withdrawn;
  - (b) any other person who has at any time (whether or not before the making of the loan) made contributions under those arrangements; and
  - (c) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (a) or (b) above.
- (10) In this section “the relevant scheme”, in relation to any personal pension arrangements, means the scheme in accordance with which those arrangements were made.
- (11) Section 839 shall apply for the purposes of this section.”

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(2) In section 650 of that Act (withdrawal of approval), the following subsection shall be inserted after subsection (5)—

“(6) The power of the Board under this section to withdraw their approval in relation to any arrangements made under a personal pension scheme shall be exercisable for the purposes of section 650A notwithstanding that the time from which the approval is withdrawn is a time from which, by virtue of section 631(4) or 638A(4), the whole scheme ceases to be an approved scheme.”

(3) After section 239A of the <sup>M25</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted—

*“ Personal pension schemes*

**239B Withdrawal of approval of approved arrangements.**

(1) This section applies where tax is charged in accordance with section 650A of the Taxes Act (tax charged on the withdrawal of the Board’s approval in relation to approved personal pension arrangements).

(2) For the purposes of this Act the appropriate part of the assets which at the relevant time are held for the purposes of the relevant scheme—

- (a) shall be deemed to be acquired at that time for a consideration equal to the amount on which tax is charged by virtue of section 650A(2) of the Taxes Act; but
- (b) shall not be deemed to be disposed of by any person at that time.

(3) The person who shall be deemed in accordance with subsection (2)(a) above to have acquired the appropriate part of the assets shall be the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at the relevant time.

(4) In this section—

“the appropriate part” and “the relevant time” have the meanings given by subsection (3) of section 650A of the Taxes Act for the purposes of subsection (2) of that section; and

“the relevant scheme” has the same meaning as in that section.”

(4) This section has effect in relation to any case in which the date from which the Board’s approval is withdrawn is a date on or after 17th March 1998, except a case where the notice under section 650(2) of the Taxes Act 1988 was given before that date.

**Marginal Citations**

M25 1992 c. 12.

**96 Information relating to personal pension schemes etc.**

(1) After section 651 of the Taxes Act 1988 there shall be inserted the following section—

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**“651A Information powers.**

- (1) The Board may by regulations make any of the following provisions—
- (a) provision requiring prescribed persons to furnish to the Board, at prescribed times, information relating to any of the matters mentioned in subsection (2) below;
  - (b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;
  - (c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;
  - (d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;
  - (e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.
- (2) The matters referred to in subsection (1) above are—
- (a) any personal pension scheme which is or has been approved; and
  - (b) any personal pension arrangements which are or have been approved.
- (3) A person who fails to comply with regulations made under subsection (1)(e) above shall be liable to a penalty not exceeding £3,000.
- (4) Regulations under this section may make different provision for different descriptions of case.
- (5) In this section “prescribed” means prescribed by regulations made under this section.”
- (2) Section 652 of the Taxes Act 1988 (information about payments) shall cease to have effect.
- (3) In the Table in section 98 of the <sup>M26</sup>Taxes Management Act 1970 (penalties for failure to provide information etc.)—
- (a) in the first column, after the entry relating to regulations under section 639 of the Taxes Act 1988 there shall be inserted the following entry—
 

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“regulations under section 651A(1)(b) to (d);”;

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  - (b) in that column, the entry relating to section 652 of the Taxes Act 1988 shall be omitted; and
  - (c) in the second column, after the entry relating to regulations under section 639 of the Taxes Act 1988 there shall be inserted the following entry—
 

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“regulations under section 651A(1)(a);”.

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- (4) Subsections (2) and (3)(b) above shall come into force on such day as the Treasury may by order appoint.

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#### Subordinate Legislation Made

**P2** [S. 96\(4\)](#) power partly exercised: 1.10.2000 appointed for specified provisions by [S.I. 2000/2319](#), [art. 2](#)

#### Commencement Information

**II** [S. 96](#) wholly in force; [s. 96\(1\)\(3\)\(a\)\(c\)\(4\)](#) in force at Royal Assent, see [s. 96\(4\)](#); [s. 96\(2\)\(3\)\(b\)](#) in force at 1.10.2000 by [S.I. 2000/2319](#), [art. 2](#)

#### Marginal Citations

**M26** [1970 c. 9](#).

### 97 Notices to be given to scheme administrator.

(1) After section 653 of the Taxes Act 1988 there shall be inserted the following section—

#### “653A Notices to be given to scheme administrator.

(1) Where—

- (a) the Board, or any officer of the Board, is authorised or required by or in consequence of any provision of this Chapter to give a notice to the person who is the scheme administrator of a personal pension scheme, but
- (b) there is for the time being no scheme administrator for that scheme or the person who is the scheme administrator for that scheme cannot be traced,

that power or duty may be exercised or performed by giving that notice, instead, to the person specified in subsection (2) below.

(2) That person is—

- (a) the person who established the scheme; or
- (b) any person by whom that person has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

(3) The giving of a notice in accordance with this section shall have the same effect as the giving of that notice to the scheme administrator and, without prejudice to section 650A(5), shall not impose an additional obligation or liability on the person to whom the notice is actually given.”

(2) This section has effect in relation to the giving of notices at any time on or after the day on which this Act is passed.

### 98 Assessments on scheme administrators.

(1) Part XIV of the Taxes Act 1988 (pension schemes etc.) shall have effect, and shall be deemed always to have had effect, with the following section inserted as the first section of Chapter VI of that Part—

#### “658A Charges and assessments on administrators.

(1) Tax charged under Chapter I or IV of this Part on the administrator of a scheme—

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- (a) shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme, but
  - (b) shall not be assessable on any relevant person who, at the time of the assessment, is no longer either the administrator of the scheme or included in the persons who are the administrator of the scheme.
- (2) For the purposes of subsection (1) above a person is a relevant person in relation to any charge to tax on the administrator of a scheme if he is a person who at the time when the charge is treated as arising or any subsequent time is, or is included in the persons who are, the administrator of the scheme.
- (3) Where tax charged under Chapter I of this Part on the administrator of a scheme is assessable by virtue of section 606 or 606A on a person who is not a relevant person for the purposes of subsection (1) above, the assessment shall be made by the Board.
- (4) In this section “administrator”, in relation to a scheme, means the person who is—
- (a) the administrator of the scheme within the meaning given by section 611AA; or
  - (b) the scheme administrator, as defined in section 630.
- (5) This section is without prejudice to section 591D(4).”
- (2) In section 9 of the <sup>M27</sup>Taxes Management Act 1970 (self-assessment), in subsection (1), for “subsection (2)” there shall be substituted “ subsections (1A) and (2) ”; and after that subsection there shall be inserted the following subsection—
- “(1A) The tax to be assessed on a person by a self-assessment shall not include any tax which, under Chapter I or IV of Part XIV of the principal Act, is charged on the administrator of a scheme (within the meaning of section 658A of that Act) and is assessable by the Board in accordance with that section.”
- (3) Subsection (2) above shall have effect for the year 1998-99 and subsequent years of assessment and shall be deemed to have had effect for the years 1996-97 and 1997-98.

**Marginal Citations**

M27 1970 c. 9.

*Futures and options*

**99 Extension of provisions relating to guaranteed returns.**

- F53(1) .....
- F54(2) .....
- F54(3) .....
- F55(4) .....
- F55(5) .....



*Status: Point in time view as at 18/04/2005.*

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#### Textual Amendments

- F53** S. 99(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))
- F54** S. 99(2)(3) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(13) Note of the amending Act) by [2002 c. 23](#), s. 141, [Sch. 40 Pt. 3\(13\)](#) Note
- F55** S. 99(4)(5) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

### Securities

#### 100 Accrued income scheme.

- (1) In subsection (1) of section 1A of the Taxes Act 1988 (rate of income tax applicable to income from savings and distributions), for “and 686,” there shall be substituted “, 686 and 720(5),”.
- (2) In subsection (2) of that section, after paragraph (a) there shall be inserted the following paragraph—
  - “(aa) any amount chargeable to tax under Case VI of Schedule D by virtue of section 714, 716 or 723;”
- (3) Subsections (1) and (2) above apply for the year 1998-99 and subsequent years of assessment.

#### 101 Dealers in securities etc.

- (1) Section 471 of the Taxes Act 1988 (exchange of securities in connection with conversion operations, nationalisation etc.) shall cease to have effect.
- (2) Section 472 of that Act (distribution of securities issued in connection with nationalisation etc.) shall cease to have effect.
- (3) Subsection (1) above applies in relation to exchanges made after the day on which this Act is passed.
- (4) Subsection (2) above applies in relation to issues of securities occurring after that day.

#### 102 Manufactured dividends.

- (1) In section 231 of the Taxes Act 1988 (tax credits for certain recipients of qualifying distributions) in subsection (1), after “Subject to sections” there shall be inserted “231AA,” and after that section there shall be inserted—

**“231AA No tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement.**

- (1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—
  - (a) he is the borrower under a stock lending arrangement or the interim holder under a repurchase agreement;

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- (b) the qualifying distribution is, or is a payment representative of, a distribution in respect of securities to which the arrangement or agreement relates; and
  - (c) a manufactured dividend representative of that distribution is paid by that person in respect of securities to which the arrangement or agreement relates.
- (2) In this section “stock lending arrangement” has the same meaning as in section 263B of the 1992 Act and, in relation to any such arrangement, any reference to the borrower, or the securities to which the arrangement relates, shall be construed accordingly.
- (3) For the purposes of this section the cases where there is a repurchase agreement are the following—
- (a) any case falling within subsection (1) of section 730A; and
  - (b) any case which would fall within that subsection if the sale price and the repurchase price were different;
- and, in any such case, any reference to the interim holder, or the securities to which the agreement relates, shall be construed accordingly.
- (4) For the purposes of this section “manufactured dividend” has the same meaning as in paragraph 2 of Schedule 23A (and any reference to a manufactured dividend being paid accordingly includes a reference to a payment falling by virtue of section 736B(2) or 737A(5) to be treated for the purposes of Schedule 23A as if it were made).”
- (2) In section 231 of the Taxes Act 1988, in subsection (1), after “231AA,” there shall be inserted “ 231AB, ” and after section 231AA of that Act there shall be inserted—

**“231AB No tax credit for original owner under repurchase agreement in respect of certain manufactured dividends.**

- (1) A person shall not be entitled to a tax credit under section 231 in respect of a qualifying distribution if—
- (a) he is the original owner under a repurchase agreement;
  - (b) the qualifying distribution is a manufactured dividend paid to that person by the interim holder under the repurchase agreement in respect of securities to which the agreement relates; and
  - (c) the repurchase agreement is not such that the actual dividend which the manufactured dividend represents is receivable otherwise than by the original owner.
- (2) For the purposes of this section the cases where there is a repurchase agreement are the following—
- (a) any case falling within subsection (1) of section 730A; and
  - (b) any case which would fall within that subsection if the sale price and the repurchase price were different;
- and, in any such case, any reference to the original owner, the interim holder, or the securities to which the agreement relates, shall be construed accordingly.
- (3) Subsection (4) of section 231AA applies for the purposes of this section as it applies for the purposes of that section.”

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- (3) In section 737D of the Taxes Act 1988 (power by regulations to provide for manufactured payments to be eligible for relief) in subsection (2) (which defines manufactured payment as any manufactured dividend etc) the words “manufactured dividend” shall cease to have effect.
- (4) Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) shall be amended in accordance with subsections (5) to (8) below.
- (5) In paragraph 2 (UK equities) for sub-paragraph (2) there shall be substituted—
  - “(2) Where a manufactured dividend is paid by a dividend manufacturer who is a company resident in the United Kingdom, the Tax Acts shall have effect—
    - (a) in relation to the recipient, and persons claiming title through or under him, as if the manufactured dividend were a dividend on the UK equities in question; and
    - (b) in relation to the dividend manufacturer, as if the amount paid were a dividend of his.”
- (6) In paragraph 2(3) (manufactured dividends to which paragraph 2(2) does not apply) paragraph (a) (duty to account for notional ACT) shall cease to have effect.
- (7) In paragraph 2(6) (written statement in respect of certain manufactured dividends) in paragraph (a), after “a dividend manufacturer pays a manufactured dividend” there shall be inserted “to which sub-paragraph (3) above applies”.
- (8) In consequence of subsection (6) above, the following provisions shall also cease to have effect—
  - (a) in paragraph 2, sub-paragraphs (4) and (5) and, in sub-paragraph (6), paragraph (b) and the word “and” immediately preceding it; and
  - (b) in paragraph 2A (deductibility of manufactured payment in the case of the manufacturer) in sub-paragraph (1), the words “together with an amount equal to the notional ACT” and sub-paragraph (3).
- (9) Subsection (1) above has effect in relation to qualifying distributions made on or after 8th April 1998 if the manufactured dividend representative of the distribution is paid (or treated for the purposes of Schedule 23A to the Taxes Act 1988 as paid) on or after 6th April 1999.
- (10) Subsections (2) to (8) above have effect in relation to manufactured dividends paid (or treated for the purposes of Schedule 23A to the Taxes Act 1988 as paid) on or after 6th April 1999.

#### *Double taxation relief*

### **103 Restriction of relief on certain interest and dividends.**

- (1) For section 798 of the Taxes Act 1988 there shall be substituted the following section—

#### **“798 Restriction of relief on certain interest and dividends.**

- (1) This section applies where—

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- (a) in any chargeable period the profits of a trade carried on by a qualifying taxpayer include an amount computed in accordance with section 795 in respect of foreign interest or foreign dividends;
  - (b) the taxpayer is entitled in accordance with this Chapter to credit for foreign tax on the foreign interest or foreign dividends; and
  - (c) in the case of foreign dividends, the foreign tax mentioned in paragraph (b) above is or includes underlying tax.
- (2) The amount of the credit for foreign tax referred to in subsection (1)(b) above which, in accordance with this Chapter, is to be allowed against income tax or corporation tax—
  - (a) shall be limited by treating the amount of the foreign interest or foreign dividends (as increased or reduced under section 798A) as reduced (or further reduced) for the purposes of this Chapter by an amount equal to the taxpayer's financial expenditure in relation to the interest or dividends (as determined in accordance with section 798B); and
  - (b) so far as the credit relates to foreign tax on interest or foreign tax on dividends which is not underlying tax, shall not exceed 15 per cent. of the interest or dividends, computed without regard to paragraph (a) above or to any increase or reduction under section 798A.
- (3) In this section and sections 798A and 798B—
 

“interest”, in relation to a loan, includes any introductory or other fee or charge which is payable in accordance with the terms on which the loan is made or is otherwise payable in connection with the making of the loan;

“foreign dividends” means dividends payable out of or in respect of the stocks, funds, shares or securities of a body of persons not resident in the United Kingdom;

“foreign interest” means interest payable by a person not resident in the United Kingdom or by a government or public or local authority in a country outside the United Kingdom.
- (4) In this section and section 798B “qualifying taxpayer” means, subject to subsection (5) below, a person carrying on a trade which includes the receipt of interest or dividends and is not an insurance business.
- (5) Where a company which is connected or associated with a qualifying taxpayer is acting in accordance with a scheme or arrangement the purpose, or one of the main purposes, of which is to prevent or restrict the application of this section to the taxpayer—
  - (a) the company shall be treated for the purposes of this section as a qualifying taxpayer; and
  - (b) any foreign interest or foreign dividends received in pursuance of the scheme or arrangement shall be treated for those purposes as profits of a trade carried on by the company.
- (6) For the purposes of this section and section 798B—
  - (a) section 839 applies; and
  - (b) subsection (10) of section 783 applies as it applies for the purposes of that section.”

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- (2) This section and sections 104 and 105 do not have effect in relation to foreign interest or foreign dividends paid before 1st January 1999 in pursuance of arrangements which were entered into before, and are not altered on or after, 17th March 1998.
- (3) Subject to subsection (2) above, this section and sections 104 and 105 have effect in relation to foreign interest or foreign dividends paid on or after 17th March 1998.

#### **104 Adjustments of interest and dividends for spared tax etc.**

After section 798 of the Taxes Act 1988 there shall be inserted the following section—

##### **“798A Adjustments of interest and dividends for spared tax etc.**

- (1) In a case where section 798 applies—
  - (a) subsection (2) below applies if the foreign tax referred to in subsection (1)(b) of that section is or includes an amount of spared tax; and
  - (b) subsection (3) below applies if the foreign tax so referred to is or includes an amount of tax which is not spared tax.
- (2) For the purposes of income tax or corporation tax, the amount which apart from this subsection would be the amount of the foreign interest or foreign dividends shall be treated as increased by so much of the spared tax as does not exceed—
  - (a) the amount of the spared tax for which, in accordance with any arrangements applicable to the case in question, credit falls to be given as mentioned in section 798(1)(b); or
  - (b) if it is less, 15 per cent. of the interest or dividends, computed without regard to any increase under this subsection.
- (3) If the amount of tax which is not spared tax exceeds—
  - (a) the amount of the credit which, by virtue of this Chapter (but disregarding subsection (2) of section 798), is allowed for that tax against income tax or corporation tax; or
  - (b) if it is less in the case of tax on foreign interest, 15 per cent. of the interest, computed without regard to any increase or reduction under this section or that subsection,then, for the purposes of income tax or corporation tax, the amount which, apart from this subsection, would be the amount of the foreign interest or foreign dividends shall be treated as reduced by a sum equal to the excess.
- (4) Subsection (2) above has effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the <sup>M28</sup>Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act).
- (5) Nothing in subsection (2) above prejudices the operation of section 795 in relation to foreign tax which is not spared tax.
- (6) In this section “spared tax” means foreign tax which although not payable falls to be taken into account for the purposes of credit by virtue of section 788(5).”

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### Marginal Citations

M28 1996 c. 8.

## 105 Meaning of “financial expenditure”.

After section 798A of the Taxes Act 1988 there shall be inserted the following section—

### “798B Meaning of “financial expenditure”.

- (1) For the purposes of section 798 “financial expenditure”, in relation to a qualifying taxpayer and any interest or dividends is, subject to the provisions of this section, the aggregate of—
  - (a) so much of the financial expenses (consisting of interest, discounts or similar sums or qualifying losses) incurred by the taxpayer or a person connected or associated with him as—
    - (i) is properly attributable to the earning of the interest or dividends; and
    - (ii) falls to be taken into account in computing the taxpayer’s or person’s liability to income tax or corporation tax; and
  - (b) so much of any other sum paid by the taxpayer or a person connected or associated with him which—
    - (i) falls to be taken into account as mentioned in paragraph (a) above; and
    - (ii) would not, apart from this paragraph, be taken into account in determining the amount of the interest or dividends,
 

as it is reasonable to regard as attributable to the earning of the interest or dividends (whether or not it would fall, in accordance with normal accountancy practice, to be so treated).
- (2) There shall be deducted from the aggregate given by subsection (1) above so much of the qualifying gains and profits accruing to the qualifying taxpayer or a person connected or associated with him as—
  - (a) is properly attributable to the earning of the interest or dividends; and
  - (b) falls to be taken into account in computing the taxpayer’s or person’s liability to income tax or corporation tax.
- (3) In a case where the amount of a qualifying taxpayer’s financial expenditure in relation to the earning of the interest or dividends is not readily ascertainable—
  - (a) that amount shall be taken, subject to subsection (4) below, to be such sum as it is just and reasonable to attribute to the earning of the interest or dividends; and
  - (b) in the case of interest, regard shall be had in particular to any market rates of interest by reference to which the rate of the interest is determined.
- (4) The Board may by regulations supplement subsection (3) above—
  - (a) by specifying matters to be taken into account in determining such a just and reasonable attribution as is referred to in paragraph (a); and

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- (b) by making provision with respect to the determination of market rates of interest for the purposes of paragraph (b);  
and any such regulations may make different provision for different cases.
- (5) In this section “qualifying losses” means—
  - (a) losses falling to be brought into account for the purposes of Chapter II of Part II of the <sup>M29</sup>Finance Act 1993 (exchange gains and losses) in accordance with sections 125 to 127 of that Act; and
  - (b) losses falling to be brought into account for the purposes of Chapter II of Part IV of the <sup>M30</sup>Finance Act 1994 (interest rate and currency contracts) in accordance with sections 155 to 158 of that Act;and “qualifying gains” and “qualifying profits” shall be construed accordingly.”

#### Marginal Citations

**M29** 1993 c. 34.

**M30** 1994 c. 9.

## 106 Underlying tax reflecting interest or dividends.

- (1) Section 803 of the Taxes Act 1988 (underlying tax reflecting interest on loans) shall be amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (b), after the words “a dividend” there shall be inserted the words “ (“the overseas dividend”) ”;
  - (b) in paragraph (c), for the words “interest on a loan made” there shall be substituted the words “ interest or dividends earned or received ”; and
  - (c) for paragraph (d) there shall be substituted the following paragraph—
    - “(d) if the company which received the interest or dividends (“the company”) had been resident in the United Kingdom, section 798 would apply in relation to that company.”
- (3) In subsection (3), for the words from “on so much” to the end there shall be substituted the words “ on so much of the interest or dividends as exceeds the amount of the company’s relevant expenditure which is properly attributable to the earning of the interest or dividends ”.
- (4) In subsection (4)—
  - (a) in paragraph (a), for the words “section 798(2)” there shall be substituted the words “ section 798(3) ”;
  - (b) for paragraph (b) there shall be substituted the following paragraph—
    - “(b) “the company”'s relevant expenditure’ means the amount which, if the company referred to in subsection (1)(d) above were resident in the United Kingdom and were a qualifying taxpayer for the purposes of section 798, would be its financial expenditure in relation to the earning of the interest or dividends, as determined in accordance with section 798B.”
- (5) In subsection (5)—

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- (a) for the words “the dividend”, in both places where they occur, there shall be substituted the words “ the overseas dividend ”; and
  - (b) for the words “the interest” there shall be substituted the words “ the interest or dividends ”.
- (6) In subsection (6)—
- (a) for the words “the dividend” there shall be substituted the words “ the overseas dividend ”; and
  - (b) for the words “the permitted amount” there shall be substituted the following paragraphs—
    - “(a) the amount of the spared tax which under any arrangements is to be taken into account for the purpose of allowing credit against corporation tax in respect of the overseas dividend; or
    - (b) if it is less, 15 per cent. of the interest or dividends;”.
- (7) For subsection (7) there shall be substituted the following subsection—
- “(7) In this section “spared tax” has the same meaning as in section 798A.”
- (8) In subsection (8)—
- (a) after the words “amount of tax which” there shall be inserted the words “ is referable to interest and ”; and
  - (b) for the words “the dividend” there shall be substituted the words “ the overseas dividend ”.
- (9) In subsection (9)—
- (a) for the words “the interest”, in both places where they occur, there shall be substituted the words “ the interest or dividends ”; and
  - (b) for the words “the dividend” there shall be substituted the words “ the overseas dividend ”.
- (10) For subsections (10) and (11) there shall be substituted the following subsection—
- “(10) In subsection (1) above “bank” means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and section 839 applies for the purposes of that subsection.”
- (11) This section does not apply where the overseas dividend is paid before 1st January 1999 in pursuance of arrangements which were entered into before, and are not altered on or after, 17th March 1998.
- (12) Subject to subsection (11) above, this section applies where the overseas dividend is paid on or after 17th March 1998.

## **107 Notification of foreign tax adjustment.**

- (1) In section 806 of the Taxes Act 1988 (supplemental provision with respect to double taxation relief), after subsection (2) there shall be inserted the following subsections—
- “(3) Subject to subsection (5) below, where—
- (a) any credit for foreign tax has been allowed to a person under any arrangements, and



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- (b) the amount of that credit is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the laws of a territory outside the United Kingdom,  
that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the credit excessive.
- (4) A notice under subsection (3) above must be given within one year from the time of the making of the adjustment.
- (5) Subsections (3) and (4) above do not apply where the adjustment is one the consequences of which in relation to the credit fall to be given effect to in accordance with regulations made under—
- (a) section 182(1) of the <sup>M31</sup>Finance Act 1993 (regulations relating to individual members of Lloyd’s); or
- (b) section 229 of the <sup>M32</sup>Finance Act 1994 (regulations relating to corporate members of Lloyd’s).
- (6) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount by which the credit allowed has been rendered excessive by reason of the adjustment.”
- (2) This section shall be deemed to have come into force on 17th March 1998 in relation to adjustments made on or after that date.

**Marginal Citations**

- M31** 1993 c. 34.  
**M32** 1994 c. 9.

*Transfer pricing, FOREX and financial instruments*

**108 New regime for transfer pricing etc.**

- (1) For sections 770 to 773 of the Taxes Act 1988 (transfer pricing provisions) there shall be substituted the following section—

**“770A Provision not at arm’s length.**

Schedule 28AA (which deals with provision made or imposed otherwise than at arm’s length) shall have effect.”

- (2) After Schedule 28A to that Act there shall be inserted, as Schedule 28AA to that Act, the Schedule set out in Schedule 16 to this Act.

<sup>F56</sup>(3) .....

- (4) In the <sup>M33</sup>Finance Act 1996—

<sup>F56</sup>(a) .....

- (b) in paragraph 16 of Schedule 9 (imputed interest)—

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- (i) in sub-paragraph (1), for the words from “sections 770” to “that Act” there shall be substituted “ Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) ”; and
  - (ii) in sub-paragraph (2), for “Those sections” there shall be substituted “ That Schedule ”.
- (5) Subject to subsection (6) below, this section and Schedule 16 to this Act have effect (in relation to provision made or imposed at any time)—
- (a) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M34</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions); and
  - (b) for the purposes of income tax, as respects any year of assessment ending on or after that day.
- (6) The Schedule 28AA to the Taxes Act 1988 that is inserted by subsection (2) above shall not, in the case of any potentially advantaged person, apply as respects the consequences at any time of the difference between the actual provision and the arm’s length provision if—
- (a) that time falls before 17th March 2001;
  - (b) the actual provision is a provision made or imposed by means of contractual arrangements entered into by that person before 17th March 1998;
  - (c) the requirements of paragraph 1(1)(b) of Schedule 28AA to that Act (control requirements) are satisfied in the case of the actual provision and that person by reference only to paragraph 4(2)(b) of that Schedule (joint ventures etc.);
  - (d) the rights and obligations of that person by virtue of the actual provision are not ones that have been varied or continued in pursuance of any transaction entered into by that person in the period between 17th March 1998 and that time; and
  - (e) that person is not a party, and has not been a party, to any transaction by virtue of which he could during that period have secured the variation or termination of those rights and obligations.
- (7) Expressions used in subsection (6) above and in Schedule 28AA to the Taxes Act 1988 have the same meanings in that subsection as in that Schedule.

**Textual Amendments**  
**F56** S. 108(3)(4)(a) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2

**Marginal Citations**  
**M33** 1996 c. 8.  
**M34** 1994 c. 9.

**109**  
<sup>F57</sup>(1) .....  
<sup>F57</sup>(2) .....  
<sup>F58</sup>(3) .....

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F59(4) .....

F59(5) .....

**Textual Amendments**

**F57** S. 109(1)(2) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2

**F58** S. 109(3) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(13) Note 2 of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(13)** Note 2

**F59** S. 109(4)(5) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(10) Note 2, Pt. 3(13) Note 2 of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2, Pt. 3(13) Note 2

**110 Determinations requiring the sanction of the Board.**

(1) This section has effect where a determination requiring the Board's sanction is made for any of the following purposes, that is to say—

- (a) the giving of a closure notice;
- (b) the giving of a notice under section 30B(1) of the <sup>M35</sup>Taxes Management Act 1970 amending a<sup>F60</sup> partnership return; or
- (c) the making of a discovery assessment.

(2) If the closure notice, the notice under section 30B(1) of the <sup>M36</sup>Taxes Management Act 1970 or, as the case may be, a notice of the discovery assessment is given to any person—

- (a) without the determination, so far as it is taken into account in the notice or assessment, having been approved by the Board, or
- (b) without a copy of the Board's approval having been served on that person at or before the time of the giving of the notice,

the closure notice, notice under section 30B(1) of that Act or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.

(3) For the purposes of this section the Board's approval of a determination requiring their sanction—

- (a) must be given specifically in relation to the case in question and must apply to the amount determined; but
- (b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.

(4) In this section references to a determination requiring the Board's sanction are references (subject to subsection (5) below) to any of the following determinations, that is to say—

- (a) a determination of an amount falling to be brought into account for tax purposes in respect of any assumption made by virtue of paragraph 1(2) of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length);

<sup>F61</sup>(b) .....

- (c) a determination of the amount of any adjustment falling to be made for tax purposes in respect of any deduction from, or addition to, any amount in

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- accordance with section 167 of the <sup>M37</sup>Finance Act 1994 (arm's length test in relation to financial instruments).
- (5) For the purposes of this section a determination shall be taken, in relation to a closure notice, a notice under section 30B(1) of the <sup>M38</sup>Taxes Management Act 1970 or a discovery assessment, not to be a determination requiring the Board's sanction if—
- (a) an agreement about the matters to which the determination relates has been made between an officer of the Board and the person in whose case it is made;
  - (b) that agreement is in force at the time of the giving of the notice or, as the case may be, of any notice of the assessment; and
  - (c) the matters to which the agreement relates include the amount determined.
- (6) For the purposes of subsection (5) above an agreement made between an officer of the Board and any person ("the taxpayer") in relation to any matter shall be taken to be in force at any time if, and only if—
- (a) the agreement is one which has been made or confirmed in writing;
  - (b) that time is after the end of the period of thirty days beginning—
    - (i) in the case of an agreement made in writing, with the day of the making of the agreement, and
    - (ii) in any other case, with the day of the agreement's confirmation in writing;
- and
- (c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.
- (7) The references in subsection (6) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice in writing—
- (a) stating that the agreement has been made; and
  - (b) setting out the terms of the agreement.
- (8) The matters that may be questioned on so much of any appeal by virtue of any provision of the <sup>M39</sup>Taxes Management Act 1970 or Schedule 18 to this Act as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board's approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.
- (9) In this section—
- "closure notice" means—
- (a) [<sup>F62</sup>a closure notice under section 28A(1) or 28B(1) of the Taxes Management Act 1970 in relation to an enquiry into a return under section 8 or 8A of that Act or into a partnership return; or]
  - (b) a closure notice under paragraph 32 of Schedule 18 to this Act in relation to an enquiry into a company tax return;
- "discovery assessment" means—
- (a) an assessment under section 29 of the <sup>M40</sup>Taxes Management Act 1970; or
  - (b) a discovery assessment or discovery determination under paragraph 41 of Schedule 18 to this Act (including an assessment by virtue of paragraph 52 of that Schedule).

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- (10) This section has effect—
- (a) for the purposes of corporation tax, as respects accounting periods ending on or after the day appointed under section 199 of the <sup>M41</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions); and
  - (b) for the purposes of income tax, as respects any year of assessment ending on or after that day.

#### Textual Amendments

- F60** Words in s. 110(1)(b) substituted (11.5.2001 with effect as mentioned in s. 88(3) of the amending Act) by 2001 c. 9, s. 88, **Sch. 29 para. 38(1)(2)(a)**
- F61** S. 110(4)(b) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the amending Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2
- F62** S. 110(9): para. (a) in definition of “closure notice” substituted (11.5.2001 with effect as mentioned in s. 88 of the amending Act) by 2001 c. 9, s. 88, **Sch. 29 para. 38(2)(b)**

#### Marginal Citations

- M35** 1970 c. 9.  
**M36** 1970 c. 9.  
**M37** 1994 c. 9.  
**M38** 1970 c. 9.  
**M39** 1970 c. 9.  
**M40** 1970 c. 9.  
**M41** 1994 c. 9.

## 111 Notice to potential claimants.

- (1) Where—
- (a) a relevant notice is given to any person,
  - (b) that notice, or anything contained in it, takes account of a determination of an amount falling to be brought into account for tax purposes in respect of any assumption made by virtue of paragraph 1(2) of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), and
  - (c) it appears to an officer of the Board that there is a person who is or may be a disadvantaged person by reference to the subject-matter of that determination, the officer shall give a notice under this section to the person who so appears to him.
- (2) A notice under this section is a notice containing particulars of the determination by reference to which the person to whom the notice is given appears to an officer of the Board to be a person who is or may be a disadvantaged person.
- (3) Where, in any case, there is a contravention of subsection (1) above or the notice required by that subsection is given after the giving of the relevant notice, the Board—
- (a) shall consider whether, as a result of the contravention, any person has been prejudiced with respect to the making or amendment of a claim for the purposes of paragraph 6 of Schedule 28AA to the Taxes Act 1988 (claim for relief by party disadvantaged by transfer pricing adjustment), and

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- (b) may, if they think fit, treat the period for the making or amendment of such a claim in that case as extended by such further period as appears to them to be appropriate.
- (4) Where, in a case in which a relevant notice is given to any person, there is a contravention of this section, that contravention shall not affect the validity of that notice or of any determination to which that notice relates.
- (5) For the purposes of this section a person is a disadvantaged person by reference to the subject-matter of a determination such as is mentioned in subsection (1)(b) above if, and only if—
- (a) he is entitled, in consequence of the making of the determination, to make a claim for the purposes of paragraph 6 of Schedule 28AA to the Taxes Act 1988;
  - (b) he is entitled, in consequence of the making of the determination, to amend such a claim; or
  - (c) he will be entitled, by virtue of paragraph 12(3) of that Schedule, to appear and be heard by the Special Commissioners in any proceedings on an appeal relating to that determination.
- (6) In this section “relevant notice” means any of the following, that is to say—
- (a) a closure notice under section 28A(1) or 28B(1) of the Taxes Management Act 1970 in relation to an enquiry into a return under section 8 or 8A of that Act or into a partnership return;
  - (b) a closure notice under paragraph 32 of Schedule 18 to this Act in relation to an enquiry into a company tax return;
  - (c) a notice of assessment under section 29 of that Act of 1970;
  - (d) a notice of any discovery assessment or discovery determination under paragraph 41 of Schedule 18 to this Act (including any notice of an assessment by virtue of paragraph 52 of that Schedule);
  - (e) a notice under section 30B(1) of that Act of 1970 amending a<sup>F63</sup> partnership return.
- (7) This section applies to notices given at any time after the day appointed under section 199 of the <sup>M42</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment management provisions).

#### Textual Amendments

**F63** Words in s. 111(6)(e) substituted 11.5.2001 with effect as mentioned in s. 88 of the amending Act) by 2001 c. 9, s. 88, **Sch. 29 para. 38(1)(3)(b)**

#### Modifications etc. (not altering text)

**C3** S. 111 modified (27.7.1999) by 1999 c. 16, s. 87(5)

#### Marginal Citations

**M42** 1994 c. 9.

*Status: Point in time view as at 18/04/2005.*

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### *Controlled foreign companies*

#### **112 Exempt activities.**

- (1) Part II of Schedule 25 to the Taxes Act 1988 (exempt activities) shall be amended as follows.
- (2) In paragraph 9 (activities which constitute investment business) for sub-paragraph (1A) (definition of “intellectual property”) there shall be substituted—  
“(1A) In sub-paragraph (1)(a) above “intellectual property” includes (in particular)  
—
  - (a) any industrial, commercial or scientific information, knowledge or expertise;
  - (b) any patent, trade mark, registered design, copyright or design right;
  - (c) any licence or other right in respect of intellectual property;
  - (d) any rights under the law of a country outside the United Kingdom which correspond or are similar to those falling within paragraph (b) or (c) above.”
- (3) In paragraph 11(1) (activities which constitute wholesale, distributive or financial business) for paragraph (c) (banking or any similar business involving the receipt of deposits, loans or both and the making of loans or investments) there shall be substituted—  
“(c) banking, deposit-taking, money-lending or debt-factoring, or any business similar to banking, deposit-taking, money-lending or debt-factoring;”.
- (4) In consequence of subsection (3) above—
  - (a) in paragraph 9(3), for “banking or any similar business” there shall be substituted “business”;
  - (b) in paragraph 11(3), for “banking or other business” there shall be substituted “business”.
- (5) This section has effect in relation to accounting periods of a controlled foreign company, within the meaning of Chapter IV of Part XVII of the Taxes Act 1988, beginning on or after 17th March 1998.

#### **113 Miscellaneous amendments.**

Schedule 17 to this Act (which makes provision in relation to controlled foreign companies) shall have effect.

### *Changes in company ownership*

#### **114 Postponed corporation tax.**

- (1) After section 767A of the Taxes Act 1988 there shall be inserted the following section—

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**“767AA Change in company ownership: postponed corporation tax.**

- (1) Where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the transferred company”),
  - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
  - (c) that tax remains unpaid at any time more than six months after it was assessed, and
  - (d) the condition set out in subsection (2) below is fulfilled,
 any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.
  
- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
  - (a) the terms of any transactions entered into in connection with the change, and
  - (b) the other circumstances of the change and of any such transactions,
 that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
  
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
  - (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
  - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,
 would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).
  
- (4) The persons mentioned in subsection (1) above are—
  - (a) any person who at any time during the relevant period had control of the transferred company;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
  
- (5) In subsection (4) above, “the relevant period” means—
  - (a) the period of three years before the change in the ownership of the transferred company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
  
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—



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- (a) it is the transaction, or one of the transactions, by which that change is effected; or
  - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.
- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
  - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and
  - (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
    - (i) would not have been entered into independently of the other or others; or
    - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the transferred company;
  - (b) is a company of which the transferred company has control; or
  - (c) is a company under the control of the same person or persons as the transferred company.
- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.”
- (2) Subsection (1) above has effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

## **115 Information powers where ownership changes.**

- (1) After section 767B of the Taxes Act 1988, there shall be inserted the following section—

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**“767C Change in company ownership: information.**

- (1) This section applies where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the subject company”); and
  - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
  - (a) any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
  - (b) any particulars which appear to them to be so relevant.
- (3) Those matters are—
  - (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
  - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.
- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—
  - (a) subsection (4) of section 20B of the <sup>M43</sup>Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
  - (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board; and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.

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- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
  - (b) is a company of which the subject company has control; or
  - (c) is a company under the control of the same person or persons as the subject company.
- (10) In this section “document” means anything in which information of any description is recorded.”

- (2) In the Table in section 98 of the <sup>M44</sup>Taxes Management Act 1970 (penalties in respect of certain information provisions), after the entry in the first column relating to section 765A of the Taxes Act 1988, there shall be inserted the following entry—

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“section 767C;”.

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- (3) The preceding provisions of this section have effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

**Marginal Citations**

- M43 1970 c. 9.  
M44 1970 c. 9.

**116 Provisions supplemental to sections 114 and 115.**

- (1) After subsection (1) of section 767B of the Taxes Act 1988 (supplementary provision about changes of company ownership), there shall be inserted the following subsection—
- “(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).”
- (2) In subsection (2) of that section—
- (a) after “767A” there shall be inserted “ or 767AA ”; and
  - (b) at the end there shall be added “or the transferred company or associated company (as the case may be)”.
- (3) In subsection (4) of that section, for “section 767A” there shall be substituted “ sections 767A, 767AA and 767C ”.
- (4) In subsection (10) of that section, for “section 767A” there shall be substituted “ sections 767A and 767AA ”.
- (5) In section 769 of that Act (rules for ascertaining change in ownership of a company)—
- (a) in subsections (1) and (5), after “767A,” there shall be inserted “ 767AA, 767C, ”;

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- (b) in subsection (2)(d), after “767A,” there shall be inserted “ 767AA, ”; and
  - (c) in subsections (2A) and (9), after “767A” there shall be inserted “ , 767AA or 767C ”.
- (6) The preceding provisions of this section have effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

### *Corporation tax self-assessment*

## 117 Company tax returns, assessments and related matters.

- (1) The provisions of Schedule 18 to this Act have effect in place of—
- (a) the provisions of Parts II and IV of the <sup>M45</sup>Taxes Management Act 1970 (returns, assessment and claims), so far as they relate to corporation tax,
  - (b) certain related provisions of Part X of that Act (penalties) [<sup>F64</sup>and]
  - (c) Schedule 17A to the Taxes Act 1988 (group relief: claims),
- [<sup>F65</sup> and also make provision in relation to claims for allowances under the Capital Allowances Act]
- (2) Schedule 18 to this Act, the <sup>M46</sup>Taxes Management Act 1970 and the Tax Acts shall be construed and have effect as if that Schedule were contained in that Act.
- (3) The enactments mentioned in Schedule 19 to this Act have effect with the amendments specified there, which are minor amendments and amendments consequential on Schedule 18.
- (4) Except as otherwise provided, the provisions of Schedules 18 and 19 to this Act have effect in relation to accounting periods ending on or after the self-assessment appointed day.
- (5) In this section “the self-assessment appointed day” means the day appointed by the Treasury under section 199 of the <sup>M47</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

#### **Textual Amendments**

- F64** Word in s. 117(1)(b) inserted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 100(1)**
- F65** Words in s. 11(1) and preceding “and” substituted for s. 117(1)(d) (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, **ss. 578, 579** Sch. 2 para. 100(2)

#### **Marginal Citations**

- M45** 1970 c. 9.  
**M46** 1970 c. 9.  
**M47** 1994 c. 9.

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*Telephone claims etc.*

**118 Claims for income tax purposes.**

- (1) Subject to the following provisions of this section, the Board may, by publishing them in such manner as they think fit, give such general directions for the purposes of income tax as they consider appropriate with respect to—
  - (a) the circumstances in which, and
  - (b) the conditions subject to which,claims under the Tax Acts may be made by individuals by the use of [<sup>F66</sup>an electronic communications service] or otherwise without producing a claim in writing.
- (2) If directions of the Board under this section are for the time being in force with respect to the making to the Board or an officer of the Board of claims of any description, then, notwithstanding any enactment or subordinate legislation requiring claims of that description to be made in writing or by notice, claims of that description may be made to the Board or, as the case may be, an officer of the Board in any manner authorised by the directions.
- (3) Where directions of the Board under this section are for the time being in force with respect to the making of claims of any description, claims of that description that are made without producing the claim in writing must be made in accordance with the directions.
- (4) The power of the Board to give directions under this section—
  - (a) shall not be exercisable in relation to the making of any claim by an individual in his capacity as a trustee, partner or personal representative; but
  - (b) subject to that, shall be exercisable in relation to claims made by an individual through another person acting on his behalf.
- (5) The Board shall not give directions under this section with respect to—
  - (a) the making of any claim to which Schedule 1B to the <sup>M48</sup>Taxes Management Act 1970 applies; or
  - (b) the making of any claim under any provision of the [<sup>F67</sup>the Capital Allowances Act] .
- (6) Directions under this section—
  - (a) shall not be capable of modifying any requirement by or under any enactment as to the period within which any claim is to be made or as to the contents of any claim; but
  - (b) may include provision as to how any requirement as to the contents of a claim is to be fulfilled when the claim is not produced in writing.
- (7) Different provision may be made by directions under this section with respect to the making of claims of different descriptions; and a direction under this section may revoke or vary any previous direction given under this section.
- (8) References in the preceding provisions of this section to the making of a claim include references to any of the following—
  - (a) the making of an election,
  - (b) the giving of a notification or notice,
  - (c) the amendment of any return, claim, election, notification or notice,
  - (d) the withdrawal of any claim, election, notification or notice,

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and references in those provisions to a claim shall be construed accordingly.

(9) In this section—

“return” includes any statement or declaration under the Income Tax Acts;  
 “subordinate legislation” has the same meaning as in the <sup>M49</sup>Interpretation Act 1978.

(10) In section 832(1) of the Taxes Act 1988 (interpretation), in the definition of “notice”, after “writing” there shall be inserted “ or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998 ”.

#### Textual Amendments

- F66** Words in s. 118(1) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 152](#) (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F67** Words in s. 118(5)(b) (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by [2001 c. 2](#), ss. 578, 579(1), [Sch. 2 para. 101](#)

#### Marginal Citations

- M48** 1970 c. 9.  
**M49** 1978 c. 30.

### 119 Evidential provisions in PAYE regulations.

In section 203 of the Taxes Act 1988 (PAYE regulations), after subsection (9) there shall be inserted the following subsection—

“(10) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, regulations under this section may include provision as to the manner of proving any of the matters for which the regulations provide and, in particular, of proving the contents or transmission of anything that, by virtue of the regulations, takes an electronic form or is transmitted to any person by electronic means.”

**Status:**

Point in time view as at 18/04/2005.

**Changes to legislation:**

Finance Act 1998, Chapter I is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.