SCHEDULES

SCHEDULE 22

Section 82.

TONNAGE TAX

PART I

INTRODUCTORY

Tonnage tax

1 (1) This Schedule provides an alternative regime ("tonnage tax") for calculating the profits of a shipping company for the purposes of corporation tax.

(2) The regime applies only if an election to that effect (a "tonnage tax election") is made (see Part II of this Schedule).

Companies that are members of a group must join in a group election.

(3) A tonnage tax election may only be made if—

(a) the company or group is a qualifying company or group (see Part III of this Schedule), and

(b) certain requirements are met as to training (see Part IV of this Schedule) and other matters (see Part V of this Schedule).

Tonnage tax companies and groups

2 (1) In this Schedule a "tonnage tax company" or "tonnage tax group" means a company or group in relation to which a tonnage tax election has effect.

(2) References in this Schedule to a company entering or leaving tonnage tax are to its becoming or ceasing to be a tonnage tax company.

References to a company being subject to tonnage tax have a corresponding meaning.

Profits of tonnage tax company

3 (1) In the case of a tonnage tax company, its tonnage tax profits are brought into charge to corporation tax in place of its relevant shipping profits (see Part VI of this Schedule).

(2) Where profits would be relevant shipping income, any loss accruing to the company is similarly left out of account for the purposes of corporation tax.

Tonnage tax profits: method of calculation

4 (1) A company's tonnage tax profits for an accounting period are calculated in accordance with this paragraph by reference to the net tonnage of the qualifying ships operated by the company.

For the purposes of the calculation the net tonnage of a ship is rounded down (if necessary) to the nearest multiple of 100 tons.

(2) The calculation is as follows:

Step One

Determine the daily profit for each qualifying ship operated by the company by reference to the following table and the net tonnage of the ship:

For each 100 tons up to 1,000 tons	£0.60
For each 100 tons between 1,000 and 10,000 tons	£0.45
For each 100 tons between 10,000 and 25,000 tons	£0.30
For each 100 tons above 25,000 tons	£0.15

Step Two

Work out the ship's profit for the accounting period by multiplying the daily profit by—

(a) the number of days in the accounting period, or

(b) if the ship was operated by the company as a qualifying ship for only part of the period, by the number of days in that part.

Step Three

Follow Steps One and Two for each of the qualifying ships operated by the company in the accounting period.

Step Four

Add together the resulting amounts and the total is the amount of the company's tonnage tax profits for that accounting period.

Tonnage tax profits: calculation in case of joint operation etc.

5 (1) If two or more companies fall to be regarded as operators of a ship by virtue of a joint interest in the ship, or in an agreement for the use of the ship, the tonnage tax profits of each are calculated as if each were entitled to a share of the profits proportionate to its share of that interest.

(2) If two or more companies fall to be treated as the operator of a ship otherwise than as mentioned in sub-paragraph (1), the tonnage tax profits of each are computed as if each were the only operator.

Measurement of tonnage of ship

6 (1) References in this Schedule to the gross or net tonnage of a ship are to that tonnage as determined—

(a) in the case of a vessel of 24 metres in length or over, in accordance with the IMO International Convention on Tonnage Measurement of Ships (ITC69);

(b) in the case of a vessel under 24 metres in length, in accordance with tonnage regulations.

(2) A ship shall not be treated as a qualifying ship for the purposes of this Schedule unless there is in force—

(a) a valid International Tonnage Certificate (1969), or

(b) a valid certificate recording its tonnage as measured in accordance with tonnage regulations.

(3) In this paragraph "tonnage regulations" means regulations under section 19 of the [M1]Merchant Shipping Act 1995 or provisions of the law of a country or territory outside the United Kingdom corresponding to those regulations.

Marginal Citations

M1 1995 c. 21.

PART II

TONNAGE TAX ELECTIONS

Company or group election

7 (1) A tonnage tax election may be made in respect of—

(a) a qualifying single company (a "company election"), or

(b) a qualifying group (a "group election").

(2) A group election has effect in relation to all qualifying companies in the group.

Method of making election

8 (1) A tonnage tax election is made by notice to the Inland Revenue.

(2) The notice must contain such particulars and be supported by such evidence as the Inland Revenue may require.

Person by whom election to be made

9 (1) A company election must be made by the company concerned.

(2) A group election must be made jointly by all the qualifying companies in the group.

When election may be made

10 (1) A tonnage tax election may be made at any time before the end of the period of twelve months beginning with the day on which this Act is passed ("the initial period").

After the end of the initial period a tonnage tax election may only be made—

(a) in the circumstances specified in the following provisions of this paragraph, or

(b) as provided by an order under paragraph 11 (power to provide further opportunities for election).

(2) An election may be made after the end of the initial period in respect of a single company that—

(a) becomes a qualifying company, and

(b) has not previously been a qualifying company at any time after the passing of this Act.

Any such election must be made before the end of the period of twelve months beginning with the day on which the company became a qualifying company.

(3) An election may be made after the end of the initial period in respect of a group that becomes a qualifying group by virtue of a member of the group becoming a qualifying company, not previously having been a qualifying company at any time after the passing of this Act.

This does not apply if the group—

(a) was previously a qualifying group at any time after the passing of this Act, or

(b) is substantially the same as a group that was previously a qualifying group at any such time.

An election under this sub-paragraph must be made before the end of the period of twelve months beginning with the day on which the group became a qualifying group.

(4) This paragraph does not prevent an election being made under the provisions of Part XII of this Schedule relating to mergers and demergers.

Power to provide further opportunities for election

11 (1) The Treasury may by order provide for further periods during which tonnage tax elections may be made.

(2) Any such order may provide for this Part of this Schedule to apply, with such consequential adaptations as appear to the Treasury to be appropriate, in relation to any such further period as it applies in relation to the initial period.

The consequential adaptations that may be made include adaptations of the references to the passing of this Act or to 1st January 2000.

When election takes effect

12 (1) The general rule is that a tonnage tax election has effect from the beginning of the accounting period in which it is made.

This is subject to the following exceptions.

(2) A tonnage tax election cannot have effect in relation to an accounting period beginning before 1st January 2000.

If the general rule would produce that effect, the election has effect instead from the beginning of the accounting period following that in which it is made.

(3) The Inland Revenue may agree that a tonnage tax election made before the end of the initial period shall have effect from the beginning of an accounting period earlier than that in which it is made (but not one beginning before 1st January 2000).

(4) The Inland Revenue may agree that a tonnage tax election made before the end of the initial period shall have effect from the beginning of the accounting period following that in which it is made.

In exceptional circumstances they may agree that it shall have effect from the beginning of the accounting period following that one.

(5) In the case of a group election in respect of a group where the members have different accounting periods—

(a) sub-paragraph (1), or

(b) any agreement under sub-paragraph (3) or (4),

has effect in relation to each qualifying company by reference to that company's accounting periods.

(6) A tonnage tax election under paragraph 10(2) or (3) (election in consequence of company becoming a qualifying company) has effect from the time at which the company in question became a qualifying company.

This is subject to paragraph 38(2)(a) and (b) (effect in certain cases of exceeding the 75% limit on chartered in tonnage).

Modifications etc. (not altering text)

C1 Sch. 22 para. 12 modified (1.7.2005) by Tonnage Tax (Further Opportunity for Election) Order 2005 (S.I. 2005/1449), **arts. 1**, 3

Period for which election is in force

13 (1) The general rule is that a tonnage tax election remains in force until it expires at the end of the period of ten years beginning—

(a) in the case of a company election, with the first day on which the election has effect in relation to the company;

(b) in the case of a group election, with the first day on which the election has effect in relation to any member of the group.

This is subject to the following exceptions.

(2) A tonnage tax election ceases to be in force—

(a) in the case of a company election, if the company ceases to be a qualifying company;

(b) in the case of a group election, if the group ceases to be a qualifying group.

[F1(2A) A tonnage tax election ceases to be in force—

(a) in the case of a company election, if a withdrawal notice in respect of the company takes effect under paragraph 15A;

(b) in the case of a group election, if a withdrawal notice in respect of the group takes effect under that paragraph.**]**

(3) A tonnage tax election may also cease to be in force under—

(a) the provisions of Part V of this Schedule, or

(b) the provisions of Part XII of this Schedule relating to mergers and demergers.

(4) This paragraph has effect subject to paragraph 15(4) (election superseded by renewal election).

Textual Amendments

F1 Sch. 22 para. 13(2A) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 2(2)**, 18(2)

Effect of election ceasing to be in force

14 A tonnage tax election that ceases to be in force ceases to have effect in relation to any company.

Renewal election

15 (1) At any time when a tonnage tax election is in force in respect of a single company or group a further tonnage tax election (a "renewal election") may be made in respect of that company or group.

(2) This is subject to paragraph 32(5) (training requirement: no renewal election if non-compliance notice in force).

(3) The provisions of—

paragraphs 7 to 9 (type of election, method of election and person by whom election to be made), and

paragraphs 13 and 14 (period for which election is in force and when election ceases to have effect),

apply in relation to a renewal election as they apply in relation to an original tonnage tax election.

(4) A renewal election supersedes the existing tonnage tax election.

I[F2 Withdrawal notices

Textual Amendments

F2 Paras. 15A, 15B and cross-headings inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 3**, 18(2)

15A (1) A withdrawal notice (see paragraph 13(2A)) may be given—

(a) in respect of a single company, or

(b) in respect of a group,

but only if the following conditions are met.

(2) Condition 1 is that the notice is given during the period—

(a) beginning with the day on which the Finance Act 2005 is passed, and

(b) ending with 31st March 2006.

(3) Condition 2 is that, for the whole of the period of three years ending with the day on which the Finance Act 2005 is passed, a tonnage tax election or a renewal election has been in force in respect of the company or group in respect of which the withdrawal notice is to be given.

(4) A withdrawal notice must be given to the Inland Revenue—

(a) in the case of a withdrawal notice in respect of a single company, by that company;

(b) in the case of a withdrawal notice in respect of a group, jointly by all the qualifying companies in the group.

(5) A withdrawal notice given in accordance with this paragraph takes effect at the end of the accounting period that precedes the first accounting period of the company to begin after 1st July 2005.

(6) In the case of a withdrawal notice given in respect of a group, sub-paragraph (5) has effect in relation to each qualifying company in the group by reference to that company's accounting periods.

Power to provide further opportunities for withdrawal

15B (1) The Treasury may by order provide for further periods during which withdrawal notices under paragraph 15A may be given.

(2) Any such order may provide for that paragraph to apply, with such consequential adaptations as appear to the Treasury to be appropriate, in relation to any such further period as it applies in relation to the period specified in sub-paragraph (2) of that paragraph.

(3) The consequential adaptations that may be made include adaptations of the reference in sub-paragraph (3) of that paragraph to the period of three years ending with the day on which the Finance Act 2005 is passed.**]**

PART III

QUALIFYING COMPANIES AND GROUPS

Qualifying companies and groups

16 (1) For the purposes of this Schedule a company is a "qualifying company" if—

(a) it is within the charge to corporation tax,

(b) it operates qualifying ships, and

(c) those ships are strategically and commercially managed in the United Kingdom.

(2) A "qualifying group" means a group of which one or more members are qualifying companies.

Effect of temporarily ceasing to operate qualifying ships

17 (1) This paragraph applies where a company temporarily ceases to operate any qualifying ships.

It does not apply where a company continues to operate a ship that temporarily ceases to be a qualifying ship.

(2) If the company gives notice to the Inland Revenue stating—

(a) its intention to resume operating qualifying ships, and

(b) its wish to remain within tonnage tax,

the company shall be treated for the purposes of this Schedule as if it had continued to operate the qualifying ship or ships it operated immediately before the temporary cessation.

(3) The notice must be given not later than the date which is the filing date for the company's company tax return for the accounting period in which the temporary cessation begins.

"Filing date" and "company tax return" here have the same meaning as in Schedule 18 to the [M2]Finance Act 1998.

(4) This paragraph ceases to apply if and when the company—

(a) abandons its intention to resume operating qualifying ships, or

(b) again in fact operates a qualifying ship.

Marginal Citations

M2 1998 c. 36.

Meaning of operating a ship

18 (1) A company is regarded for the purposes of this Schedule as operating any ship owned by, or chartered to, the company, subject to the following provisions.

(2) A company is not regarded as the operator of a ship where part only of the ship has been chartered to it.

For this purpose a company is not to be taken as having part only of a ship chartered to it by reason only of the ship being chartered to it jointly with one or more other persons.

(3) A company is not regarded as the operator of a ship that has been chartered out by it on bareboat charter terms, except as provided by the following provisions.

(4) A company is regarded as operating a ship that has been chartered out by it on bareboat charter terms if the person to whom it is chartered is not a third party.

For this purpose a "third party" means—

(a) in the case of a single company, any other person;

(b) in the case of a member of a group—

(i) any member of the group that is not a tonnage tax company (and does not become a tonnage tax company by virtue of the ship being chartered to it), or

(ii) any person who is not a member of the group.

(5) A company is not regarded as ceasing to operate a ship that has been chartered out by it on bareboat charter terms if—

(a) the ship is chartered out because of short-term over-capacity, and

(b) the term of the charter does not exceed three years.

(6) A company is regarded as operating a ship that has been chartered out by it on bareboat charter terms if the ship—

(a) is registered in the United Kingdom, and

(b) is in the service of a government department by reason of a charter by demise to the Crown,

and there is in force under section 308(2) of the [M3]Merchant Shipping Act 1995 an Order in Council providing for the registration of government ships in the service of that department.

In this sub-paragraph "government department" includes a Northern Ireland department.

Marginal Citations

M3 1995 c. 21.

Qualifying ships

19 (1) For the purposes of this Schedule a "qualifying ship" means, subject to sub-paragraph (2), a seagoing ship of 100 tons or more gross tonnage used for—

(a) the carriage **[**[F3]by sea**]** of passengers,

(b) the carriage **[**[F4]by sea**]** of cargo,

(c) towage, salvage or other marine assistance **[**[F5]carried out at sea**]**, or

(d) transport **[**[F6]by sea**]** in connection with other services of a kind necessarily provided at sea.

(2) A vessel is not a qualifying ship for the purposes of this Schedule if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land.

(3) Sub-paragraph (1) is also subject to

[[F7](a)**]** paragraph 20 (vessels excluded from being qualifying ships);

[[F8](b) paragraph 20A (qualifying dredgers and tugs);

(c) paragraphs 22A to 22F (flagging).**]**

(4) For the purposes of this paragraph a ship is a seagoing ship if it is certificated for navigation at sea by the competent authority of any country or territory.

[[F9](5) For the purposes of sub-paragraph (1) "sea" does not include—

(a) a port or harbour;

(b) an estuary, a tidal or other river or an inland waterway.**]**

Textual Amendments

F3 Words in Sch. 22 para. 19(1)(a) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(2)(a)**, 18(1) (with Sch. 7 paras. 19-21)

F4 Words in Sch. 22 para. 19(1)(b) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(2)(b)**, 18(1) (with Sch. 7 paras. 19-21)

F5 Words in Sch. 22 para. 19(1)(c) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(2)(c)**, 18(1) (with Sch. 7 paras. 19-21)

F6 Words in Sch. 22 para. 19(1)(d) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(2)(d)**, 18(1) (with Sch. 7 paras. 19-21)

F7 Word in Sch. 22 para. 19(3) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(3)(a)**, 18(1) (with Sch. 7 paras. 19-21)

F8 Sch. 22 para. 19(3)(b), (c) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(3)(b)**, 18(1) (with Sch. 7 paras. 19-21)

F9 Sch. 22 para. 19(5) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 4(4)**, 18(1) (with Sch. 7 paras. 19-21)

Vessels excluded from being qualifying ships

20 (1) The following kinds of vessel are not qualifying ships for the purposes of this Schedule—

(a) fishing vessels or factory ships;

(b) pleasure craft;

(c) harbour or river ferries;

(d) offshore installations;

(e) tankers dedicated to a particular oil field;

[F10(f) dredgers other than qualifying dredgers.**]**

(2) In sub-paragraph (1)(a) "factory ship" means a vessel providing processing services for the fishing industry.

(3) In sub-paragraph (1)(b) "pleasure craft" means a vessel of a kind whose primary use is for the purposes of sport or recreation.

(4) In sub-paragraph (1)(c) "harbour or river ferry" means a vessel used for harbour, estuary or river crossings.

F11(5) . . . . . .

(6) For the purposes of sub-paragraph (1)(e) whether a tanker is dedicated to a particular oil field shall be determined in accordance with section 2 of the M4Oil Taxation Act 1983 (dedicated mobile assets).

[F12(7) In this Schedule "qualifying dredger" means a dredger which—

(a) is self-propelled, and

(b) is constructed or adapted for the carriage of cargo;

(but see further paragraph 20A).**]**

Textual Amendments

F10 Sch. 22 para. 20(1)(f) substituted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 5(2)**, 18(1) (with Sch. 7 paras. 19-21)

F11 Sch. 22 para. 20(5) repealed (22.7.2004) (with effect in accordance with Sch. 27 para. 7(2) of the amending Act) by Finance Act 2004 (c. 12), Sch. 27 para. 7(1), **Sch. 42 Pt. 2(19)**

F12 Sch. 22 para. 20(7) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 5(3)**, 18(1) (with Sch. 7 paras. 19-21)

Marginal Citations

M4 1983 c. 56.

I[F13]Qualifying dredgers and tugs

Textual Amendments

F13 Sch. 22 para 20A and cross-heading inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 6**, 18(1) (with Sch. 7 paras. 19-21)

20A (1) This paragraph applies where a company operates a ship in an accounting period and the ship—

(a) is a qualifying dredger or a tug, and

(b) would, apart from this paragraph, be a qualifying ship.

(2) The ship shall not be regarded as a qualifying ship operated by the company in that accounting period unless it is used for one or more of the activities mentioned in paragraph 19(1)(a) to (d) for more than 50% of its operational time.

(3) In this paragraph "operational time", in relation to a ship operated by a company in an accounting period, means the time during that accounting period during which the ship is—

(a) operated by the company, and

(b) used for any activity.

(4) For the purposes of sub-paragraph (2) assisting a self-propelled vessel into or out of a port or harbour is not to be regarded as use for an activity mentioned in paragraph 19(1)(c).

(5) For the purposes of sub-paragraph (3) any waiting time spent by a tug for the purposes of a particular activity is to be treated as time during which the tug is used for that activity.**]**

Power to modify exclusions

21 The Treasury may make provision by order amending paragraph 20 so as to add any description of vessel to, or remove any description of vessel from, the kinds of vessel that are excluded from being qualifying ships for the purposes of this Schedule.

Effect of change of use

22 (1) A qualifying ship that begins to be used **[**F14for non-qualifying purposes**]** ceases to be a qualifying ship when it begins to be so used, subject to the following provisions.

(2) If—

(a) a company operates a ship throughout an accounting period of the company, and

(b) in that period the ship is used **[**F15for non-qualifying purposes**]** on not more than 30 days,

that use shall be disregarded in determining whether the ship is a qualifying ship at any time during that period.

(3) In the case of an accounting period shorter than a year, the figure of 30 days in sub-paragraph (2) shall be proportionately reduced.

(4) If a company operates a ship during part only of an accounting period of the company, sub-paragraph (2) has effect as if for "30 days", or the number of days substituted by sub-paragraph (3), there were substituted the number of days that bear to the length of that part of the accounting period the same proportion that 30 days does to a year.

(5) In this paragraph references to use **[**F16for non-qualifying purposes are to—

(a) use for an activity other than any of the activities mentioned in paragraph 19(1)(a) to (d), or

(b)**]** use as a vessel of a kind excluded by paragraph 20 from being a qualifying ship.

[F17(6) This paragraph does not apply for the purposes of sub-paragraphs (2) to (5) of paragraph 20A (qualifying dredgers and tugs).**]**

Textual Amendments

F14 Words in Sch. 22 para. 22(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(2)**, 18(2)

F15 Words in Sch. 22 para. 22(2)(b) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(3)**, 18(2)

F16 Words in Sch. 22 para. 22(5) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(4)**, 18(2)

F17 Sch. 22 para. 22(6) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(5)**, 18(2)

*[**F18**Flagging: rule for ships other than dredgers and tugs*

Textual Amendments

F18 Sch. 22 paras. 22A-22C and cross-headings inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 8**, 18(1) (with Sch. 7 paras. 19-21)

22A (1) This paragraph applies if the following conditions are satisfied in the case of a ship which—

(a) is neither a qualifying dredger nor a tug, and

(b) would, apart from this paragraph, be a qualifying ship.

(2) Condition 1 is that, at a time after the later of the reference date (see paragraph 22B(1)) and 30th June 2005,—

(a) in the case of a tonnage tax company which is a single company, the company begins, in a financial year which is not excepted (see paragraph 22B(2)), to operate the ship for the first time, or

(b) in the case of a tonnage tax company which is a member of a tonnage tax group, the company begins, in a financial year which is not excepted, to operate the ship for the first time, the ship not having previously been operated by any other member of the group.

(3) Condition 2 is that less than 60% of the company's total tonnage is Community-flagged (see paragraph 22B(3)) on average over the period—

(a) beginning with the first day of the financial year mentioned in condition 1, and

(b) ending with the day on which the company so begins to operate the ship.

(4) Condition 3 is that—

(a) the percentage of the company's total tonnage which is Community-flagged on average over the period mentioned in condition 2,

is less than

(b) the percentage of the company's total tonnage which was Community-flagged on the reference date.

(5) Condition 4 is that, on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers (see paragraph 22B(7)).

(6) Where this paragraph applies in relation to the ship, the ship shall not, at any time on or after that date, be regarded as—

(a) a qualifying ship operated by the company, or

(b) if immediately before that date the company is a member of a tonnage tax group, a qualifying ship operated by any company that is or becomes a member of the group.

(7) But sub-paragraph (6) does not apply if—

(a) the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date, or

(b) the conditions in sub-paragraph (8) are satisfied.

(8) Those conditions are that—

(a) a substitute ship which was not registered in one of the Member States' registers has, during the period mentioned in sub-paragraph (7)(a), become so registered, and

(b) no later than the end of that period—

(i) if the company is a single company, the company makes an election under this sub-paragraph in relation to the substitute ship, or

(ii) if the company is a member of a tonnage tax group, all the qualifying companies in the group jointly make such an election.

(9) In sub-paragraph (8) a "substitute ship" means a qualifying ship—

(a) the tonnage of which is no less than that of the ship mentioned in sub-paragraph (1), and

(b) which was first operated by the company or, if the company is a member of a tonnage tax group, by any other member of the group more than three months before that date;

and for this purpose the tonnage of a ship is to be determined on the same basis as it is under paragraph 22B(3).

(10) An election under sub-paragraph (8) is made by notice to the Inland Revenue.

Flagging: meaning of terms used in paragraph 22A

22B (1) In paragraph 22A "the reference date" means 17th January 2004 or, if later,—

(a) in the case of a single company, the date of the end of the accounting period in which the company became (or becomes) a tonnage tax company;

(b) in the case of a member of a group, the date of the end of the accounting period in which the group became (or becomes) a tonnage tax group;

but where the members of a group had (or have) different accounting periods at the time the group became (or becomes) a tonnage tax group, paragraph (b) has effect by reference to the first of those accounting periods.

(2) For the purposes of sub-paragraph (2) of paragraph 22A a financial year is excepted if it is designated by an order made by the Treasury as a financial year in relation to which that paragraph is not to have effect (see further paragraph 22C(1) to (3)).

(3) For the purposes of paragraph 22A the percentage of a company's total tonnage which is Community-flagged is—

(CFT/TT) x 100

$$CFTTT \times 100$$

where—
CFT is the aggregate tonnage of such of the relevant ships as are registered in one of the Member States' registers, and
TT is the aggregate tonnage of all the relevant ships.

(4) For the purposes of sub-paragraph (3) the ships which are the relevant ships are—

(a) if the company is a single company, the ships operated by the company, or

(b) if the company is a member of a tonnage tax group, the ships operated by each member of the group which is a qualifying company.

(5) Sub-paragraphs (3) and (4) are subject to any regulations made under paragraph 22C(4).

(6) A ship shall not be counted more than once in determining for the purposes of sub-paragraph (3) the aggregate tonnage of relevant ships.

(7) In this Schedule "Member States' registers" has the meaning given by the Annex to Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport (as from time to time amended or replaced).

Flagging: provisions supplementing paragraphs 22A and 22B

22C (1) An order under paragraph 22B(2) designating a financial year shall be made if—

(a) the Treasury are satisfied, on the basis of the information available to them, that the percentage of the tonnage tax fleet which is Community-flagged has not decreased on average over a prescribed three year period, and

(b) the order is made before the beginning of that financial year.

(2) The Treasury may make provision by regulations for or in connection with—

(a) specifying the meaning, for the purposes of sub-paragraph (1)(a), of the percentage of the tonnage tax fleet which is Community-flagged;

(b) specifying the way in which an average is to be calculated for those purposes;

(c) requiring any tonnage tax company or tonnage tax group to provide prescribed information for the purposes of enabling the Treasury to determine whether the condition in sub-paragraph (1)(a) is met;

(d) imposing penalties in respect of a failure to comply with a provision of the regulations made by virtue of paragraph (c) (including, in prescribed cases or circumstances, the exclusion of a company or group from tonnage tax).

(3) Section 828(3) of the Taxes Act 1988 shall not apply in relation to an order under paragraph 22B(2).

(4) The Treasury may make provision by regulations as to the way in which the percentage of a company's total tonnage which is Community-flagged is to be calculated for the purposes of paragraph 22A.

(5) The provision that may be made by regulations under sub-paragraph (4) includes provision for or in connection with—

(a) determining the percentage of a company's total tonnage which is Community-flagged on average over a period;

(b) specifying the basis on which the tonnage of a ship is to be determined;

(c) treating ships which would, but for the regulations, be relevant ships for the purposes of paragraph 22B(3) as not being relevant ships for those purposes;

(d) including in the calculation set out in paragraph 22B(3) only such proportion of the tonnage of a relevant ship as may be prescribed.

(6) Regulations under this paragraph—

(a) may make different provision for different cases or circumstances, and

(b) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Treasury to be necessary or expedient.

(7) In this paragraph "prescribed" means—

(a) specified in, or

(b) determined in accordance with,

regulations under this paragraph.**]**

[F19 Flagging: rule on first operation of qualifying dredger or tug

Textual Amendments

F19 Sch. 22 paras. 22D-22E and cross-headings inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 9**, 18(1) (with Sch. 7 paras. 19-21)

22D (1) This paragraph applies if—

(a) a company begins to operate a ship which—

(i) is a qualifying dredger or a tug,

(ii) would, apart from this paragraph, be a qualifying ship, and

(iii) has not previously been operated by the company or, if the company is a member of a group, by any member of the group, and

(b) on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers.

(2) The ship shall not, at any time on or after that date, be regarded as—

(a) a qualifying ship operated by the company, or

(b) if immediately before that date the company is a member of a group, a qualifying ship operated by any company that is or becomes a member of the group.

(3) But sub-paragraph (2) does not apply if the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date.

Flagging: rule on subsequent re-flagging of qualifying dredger or tug

22E (1) This paragraph applies if—

(a) a qualifying ship operated by a company ceases to be registered in any of the Member States' registers, and

(b) the ship is a qualifying dredger or a tug.

(2) The ship shall not, at any time on or after the date on which it ceases to be so registered, be regarded as—

(a) a qualifying ship operated by the company, or

(b) if immediately before that date the company is a member of a group, a qualifying ship operated by any company that is or becomes a member of the group.**]**

[*F20**Flagging: restrictions where ship ceases to be qualifying ship under paragraph 22E*

Textual Amendments

F20 Sch. 22 para 22F and cross-heading inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 10**, 18(1) (with Sch. 7 paras. 19-21)

22F (1) This paragraph applies where a qualifying ship operated by a tonnage tax company ceases to be a qualifying ship by virtue of paragraph 22E.

(2) No notice may be given under section 130 of the Capital Allowances Act 2001 for the postponement of all or part of a relevant allowance to which—

(a) the company, or

(b) if immediately before the date on which the ship so ceases to be a qualifying ship ("the cessation date") the company is a member of a tonnage tax group, any company that is or becomes a member of the group,

becomes entitled on or after the cessation date.

(3) In sub-paragraph (2) "relevant allowance" means an allowance in respect of—

(a) qualifying expenditure on the provision of the ship, or

(b) qualifying expenditure which—

(i) is incurred on the provision of the ship, and

(ii) is allocated to a single ship pool.

(4) No claim may be made under section 135 of that Act for deferment of all or part of a balancing charge—

(a) to which the company or, if immediately before the cessation date the company is a member of a tonnage tax group, any company that is or becomes a member of the group becomes liable, and

(b) which arises when there is a disposal event in respect of the ship on or after the cessation date.

(5) Relief in respect of a relevant loss shall not be given under section 393A(1) of the Taxes Act 1988 (losses: set off against profits of the same, or an earlier, accounting period).

(6) Group relief under Chapter 4 of Part 10 of that Act shall not be available in respect of a relevant loss.

(7) Accordingly, relief in respect of a relevant loss shall be given only under section 393(1) of that Act (losses other than terminal losses).

(8) In sub-paragraphs (5) to (7) "relevant loss" means a loss which is incurred in respect of the ship on or after the cessation date in the course of a trade carried on by—

(a) the company, or

(b) if immediately before the cessation date the company is a member of a tonnage tax group, any company that is or becomes a member of the group.**]**

PART IV

THE TRAINING REQUIREMENT

Introduction

23 (1) It is a condition of entering tonnage tax or making a renewal election that—

(a) in the case of a single company, the company, or

(b) in the case of a group, the group,

meets certain minimum obligations in connection with the training of seafarers.

(2) The provisions of this Part of this Schedule have effect for securing that result.

The minimum training obligation

24 (1) The Secretary of State may make provision by regulations as to the minimum obligation of a tonnage tax company as regards the training of seafarers.

(2) The regulations may—

(a) require the company to provide training for a minimum number of seafarers calculated on such basis as may be prescribed, and

(b) impose different requirements with respect to the training of officers and ratings.

Paragraph (b) is without prejudice to the general power to make different provision for different cases (see paragraph 36(2)(a)).

(3) The regulations may impose such requirements as to the nationality and ordinary residence of trainees as appear to the Secretary of State to be appropriate.

(4) References in this Part of this Schedule to "the minimum training obligation" are—

(a) in relation to a single company, to the minimum obligation of that company, and

(b) in relation to a group, to the minimum obligations of the qualifying companies in the group taken as a whole.

Meaning of "training commitmen"t

25 (1) References in this Part of this Schedule to a "training commitment" are to a statement by a company or group setting out how it proposes to meet the minimum training obligation.

(2) A training commitment is not effective for the purposes of this Part of this Schedule unless approved by the Secretary of State.

(3) Sub-paragraphs (1) and (2) are subject to—

paragraph 27(4) and (5) (power of Secretary of State to set training commitment), and

paragraph 28(2) (power of Secretary of State to adjust training commitment to take account of changed circumstances).

Approval of initial training commitment

26 (1) A company or group proposing to make a tonnage tax election must produce, and submit to the Secretary of State for approval, an initial training commitment.

(2) If the Secretary of State is satisfied that the proposals are adequate to meet the minimum training obligation, he shall approve the initial training commitment and issue a certificate to that effect.

(3) A tonnage tax election is ineffective unless such a certificate of approval is in force with respect to the training commitment of the company or group in respect of which the election is made.

Annual training commitment

27 (1) The Secretary of State may by regulations require a tonnage tax company or tonnage tax group—

(a) to produce a training commitment at such annual or other intervals as may be prescribed in respect of such period as may be prescribed, and

(b) to submit it to the Secretary of State for approval.

(2) If the Secretary of State is satisfied that the proposals are adequate to meet the minimum training obligation, he shall approve the training commitment and issue a certificate to that effect.

(3) It is an offence to fail to comply with any requirement imposed by regulations under sub-paragraph (1).

(4) The Secretary of State may make provision by regulations enabling him—

(a) to set the training commitment for a company or group if, after such period as may be prescribed, no training commitment has been submitted to and approved by him; and

(b) on the application of the company or group concerned, made after consultation with any prescribed person involved in the training of seafarers, to vary a training commitment set by him.

(5) A training commitment set by the Secretary of State has effect as if submitted by the company or group and approved by him.

Supplementary provisions about training commitments

28 (1) The Secretary of State may make provision by regulations—

(a) as to the form and contents of a training commitment;

(b) requiring an application for approval of a training commitment to be in such form and contain such information as may be prescribed;

(c) authorising the Secretary of State, when considering a training commitment, to consult any prescribed person involved in the training of seafarers;

(d) as to the procedure to be followed where the Secretary of State is minded not to approve a training commitment.

(2) The Secretary of State may make provision by regulations—

(a) enabling him, on the application of the company or group concerned, to adjust a training commitment (to any extent) to take account of changed circumstances;

(b) requiring an application for adjustment to be in such form and contain such information as may be prescribed;

(c) authorising the Secretary of State, when considering an application for adjustment, to consult any prescribed person involved in the training of seafarers;

(d) as to the procedure to be followed where the Secretary of State is minded not to make the adjustment applied for.

(3) The Secretary of State may by regulations make such provision as he thinks appropriate as to the effect in relation to a training commitment of a merger or other transaction resulting in a change of control of one or more companies.

Payments in lieu of training

29 (1) The Secretary of State may make provision by regulations—

(a) allowing a company or group, in such circumstances and to such extent as may be prescribed, to propose in its training commitment to meet the minimum training obligation by making payments in lieu of training; and

(b) requiring a company or group to make payments in lieu of training—

(i) where its training commitment provides for such payments;

(ii) where training is not provided in accordance with its training commitment.

(2) The regulations shall provide for payments in lieu of training—

(a) to be calculated on such basis as may be prescribed,

(b) to be made to or for the benefit of any prescribed person involved in the training of seafarers, and

(c) to be made at such intervals and in such manner as may be prescribed.

(3) The regulations may provide that if in any case there is a failure in relation to a company or group to comply with the requirements of this Part of this Schedule with respect to—

(a) the submission of training commitments, or

(b) the making of returns or provision of information,

the Secretary of State may determine to the best of his information and belief the amount of the payments in lieu of training to be made by the company or group.

(4) The regulations may provide that a payment in lieu of training that has become due but is unpaid—

(a) is a debt due to the Secretary of State or any prescribed person involved in the training of seafarers, and

(b) carries interest at such rate as may be prescribed.

(5) The regulations may provide for the costs or expenses of any legal or other proceedings for recovering the debt or interest to be recoverable, and to carry interest, in the same way as the debt.

Monitoring of compliance with training commitment

30 (1) The Secretary of State may make provision by regulations—

(a) requiring a return to be made to the Secretary of State or any prescribed person involved in the training of seafarers, at such intervals as may be prescribed, of such information as may be prescribed relating to—

(i) the training provided, and

(ii) any payments in lieu of training made,

by a tonnage tax company or tonnage tax group;

(b) authorising the Secretary of State to direct any person to provide such information as the Secretary of State may reasonably require for the purposes of ascertaining—

(i) what the minimum training obligation of a company or group should be,

(ii) whether the proposals in a training commitment are adequate to meet the minimum training obligation of a company or group, or

(iii) whether a company or group has complied with its training commitment;

(c) enabling an audit to be carried on on behalf of the Secretary of State of the accounts or other records—

(i) of a qualifying single company, or

(ii) of the qualifying companies in a group,

for the purpose of checking that any return or information provided to the Secretary of State is correct.

(2) A person commits an offence if without reasonable excuse—

(a) he fails to make a return that he is required to make by regulations under sub-paragraph (1)(a),

(b) having been directed under regulations under sub-paragraph (1)(b) to provide any information, he fails to comply with the direction, or

(c) he obstructs a person carrying out an audit under regulations under sub-paragraph (1)(c).

Higher rate of payment in case of failure to meet training commitment

31 (1) The Secretary of State may by regulations provide that—

(a) if a company fails to meet its training commitment in any period, the amount of any payments in lieu of training that fall to be made by the company in a subsequent period shall be at a higher rate; and

(b) if a group fails to meet its training commitment in any period, the amount of any payments in lieu of training that fall to be made by any member of the group in a subsequent period shall be at a higher rate.

(2) The regulations may contain provision as to—

(a) the periods by reference to which it is to be determined whether a company or group has met its training commitment;

(b) the circumstances in which a company or group is to be treated as failing to meet its training commitment;

(c) the method of calculating the higher rate of payment; and

(d) any circumstances in which the higher rate is not to be payable despite the failure of a company or group to meet its training commitment.

(3) The regulations may make provision having the effect that the rate of payments in lieu of training is progressively increased if a company or group fails to meet its training commitment in successive periods.

Certificate of non-compliance

32 (1) The Secretary of State may by regulations make provision authorising the Secretary of State to issue a certificate of non-compliance in the following cases.

(2) The regulations may authorise the issue of a certificate of non-compliance in respect of a single company if—

(a) the company fails to meet its training commitment for successive periods amounting to not less than two years, or

(b) the company, or any of its officers, commits an offence under this Schedule.

(3) The regulations may authorise the issue of a certificate of non-compliance in respect of a group if—

(a) the group fails to meet its training commitment for successive periods amounting to not less than two years, or

(b) a member of the group, or an officer of a member, commits an offence under this Schedule.

(4) If such regulations are made they shall provide that a certificate of non-compliance must be issued unless the Secretary of State is satisfied that there are good reasons why a certificate should not be issued.

(5) No renewal election may be made in respect of a company or group in relation to which a certificate of non-compliance is in force.

Certificates of non-compliance: supplementary provisions

33 (1) The Secretary of State may make provision by regulations—

(a) enabling a company or group in respect of which a certificate of non-compliance has been issued to apply to the Secretary of State to cancel the certificate;

(b) requiring any such application to be in such form and contain such information as may be prescribed;

(c) authorising or requiring the Secretary of State, when considering such an application, to consult any prescribed person involved in the training of seafarers;

(d) as to the procedure to be followed where the Secretary of State is minded not to cancel a certificate of non-compliance.

(2) The Secretary of State may by regulations make such provision as he thinks appropriate as to the effect on a certificate of non-compliance of a merger or demerger relating to the company or group in respect of which the certificate is in force.

Disclosure of information

34 (1) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—

(a) by the Secretary of State to the Inland Revenue for the purpose of assisting the Inland Revenue to discharge their functions under the Corporation Tax Acts so far as relating to matters arising under this Schedule, or

(b) by the Inland Revenue to the Secretary of State for the purpose of assisting the Secretary of State to discharge his functions under this Part of this Schedule.

(2) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—

(a) by the Secretary of State to any prescribed person involved in the training of seafarers, or

(b) by any such person to the Secretary of State,

for the purposes of assisting the Secretary of State to discharge his functions under this Part of this Schedule.

(3) Information obtained by such disclosure as is mentioned in sub-paragraph (1) or (2) shall not be further disclosed except for the purposes of legal proceedings arising out of the functions referred to.

Modifications etc. (not altering text)

C2 Sch. 22 para. 34(2) applied (31.8.2000) by S.I. 2000/2129, **reg. 25**

C3 Sch. 22 para. 34(3) powers of disclosure extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt. I para. 49**

Offences

35 (1) It is an offence for a person to provide for any of the purposes of this Part of this Schedule information that he knows or has reasonable cause to believe is false in a material particular.

(2) A person committing any offence under this Part of this Schedule, is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

General provisions about regulations

36 (1) Regulations under this Part of this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

(2) Regulations under this Part of this Schedule—

(a) may make different provision for different cases, and

(b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.

(3) In this Part of this Schedule "prescribed" means prescribed by regulations made by the Secretary of State.

(4) Regulations under this Part of this Schedule may make provision as to the obligations of a company in respect of any part of the period—

(a) beginning with 1st January 2000, and

(b) ending immediately before the first regulations under this Part come into force,

during which the company is, or is treated as having been, subject to tonnage tax.

This includes power to require payments in lieu of training to be made in respect of any such part of that period.

PART V

OTHER REQUIREMENTS

The requirement that not more than 75% of fleet tonnage is chartered in

37 (1) It is a requirement of entering or remaining within tonnage tax—

(a) in the case of a single company, that not more than 75% of the net tonnage of the qualifying ships operated by it is chartered in;

(b) in the case of a group, that not more than 75% of the aggregate net tonnage of the qualifying ships operated by the members of the group that are qualifying companies is chartered in.

(2) For this purpose a ship is "chartered in"—

(a) in relation to a single company, if it is chartered to the company otherwise than on bareboat charter terms, or

(b) in relation to a group, if it is chartered otherwise than on bareboat charter terms to a qualifying member of the group by a person who is not a qualifying member of the group.

In paragraph (b) "qualifying member of the group" means a qualifying company that is a member of the group.

(3) A ship shall not be counted more than once in determining for the purposes of sub-paragraph (1)(b) the aggregate net tonnage of the qualifying ships operated by the members of a group that are qualifying companies.

(4) In the following provisions the requirement in this paragraph is referred to as "the 75% limit"—

paragraph 38 (election not effective if limit exceeded), and

paragraphs 39 and 40 (exclusion of company or group where limit exceeded).

(5) References to the limit being exceeded in an accounting period are to its being exceeded on average over the period in question.

The 75% limit: election not effective if limit exceeded

38 (1) Where a tonnage tax election is made before the end of the initial period and the 75% limit is exceeded in the first relevant accounting period, the election is treated as never having been of any effect.

(2) Where a tonnage tax election is made after the end of the initial period, then—

(a) if the 75% limit is exceeded in the first relevant accounting period, the election does not have effect in relation to that period;

(b) if the 75% limit is exceeded in the first and second relevant accounting periods, the election does not have effect in relation to either of those periods; and

(c) if the 75% limit is exceeded in the first, second and third relevant accounting periods, the election is treated as never having been of any effect.

(3) For the purposes of sub-paragraphs (1) and (2) the first, second or third relevant accounting period means—

(a) in relation to a single company, the accounting period that, if the election had been effective, would have been the first, second or third accounting period of the company after its entry into tonnage tax;

(b) in relation to a group, the accounting period that, if the election had been effective, would have been the first, second or third accounting period of a member of the group that would have been a tonnage tax company.

(4) Sub-paragraphs (1) and (2) do not apply to a renewal election.

The 75% limit: exclusion of company if limit exceeded

39 (1) If the 75% limit is exceeded in two or more consecutive accounting periods of a single company subject to tonnage tax, the Inland Revenue may give notice excluding the company from tonnage tax.

(2) The effect of the notice is that the company's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the accounting period of the company that follows the second consecutive accounting period of the company in which the limit is exceeded.

The 75% limit: exclusion of group if limit exceeded

40 (1) If the 75% limit is exceeded in relation to a tonnage tax group in two or more consecutive accounting periods of any tonnage tax company that is a member of the group ("the relevant company"), the Inland Revenue may give notice excluding the group from tonnage tax.

(2) The effect of the notice is that the group's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the accounting period of the relevant company that follows the second consecutive accounting period of that company in which the limit is exceeded.

(3) Notice under this paragraph need only be given to the relevant company.

This is subject to any arrangements under paragraph 120 (arrangements for dealing with group matters).

The requirement not to enter into tax avoidance arrangements

41 (1) It is a condition of remaining within tonnage tax that a company is not a party to any transaction or arrangement that is an abuse of the tonnage tax regime.

(2) A transaction or arrangement is such an abuse if in consequence of its being, or having been, entered into the provisions of this Schedule fall to be applied in a way that results (or would but for this paragraph result) in—

(a) a tax advantage being obtained for—

(i) a company other than a tonnage tax company, or

(ii) a tonnage tax company in respect of its non-tonnage tax activities,

or

(b) the amount of the tonnage tax profits of a tonnage tax company being artificially reduced.

(3) In this paragraph "tax advantage" has the same meaning as in Chapter I of Part XVII of the Taxes Act 1988 (tax avoidance) (see section 709 of that Act).

(4) A [F21]... lease is not to be taken as being an abuse of the tonnage tax regime by reason of the lessor obtaining capital allowances as a result of the lease being, or having been, entered into.

[[F22]In this sub-paragraph "lease", and "lessor" in relation to a lease, have the meaning given by paragraph 89(2).**]**

Textual Amendments

F21 Word in Sch. 22 para. 41(4) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 2(1)(a), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

F22 Words in Sch. 22 para. 41(4) substituted (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 32 para. 2(1)(b)** (with Sch. 32 para. 4)

Tax avoidance: exclusion from tonnage tax

42 (1) If a tonnage tax company is a party to any such transaction or arrangement as is mentioned in paragraph 41(1), the Inland Revenue may—

(a) if it is a single company, give notice excluding it from tonnage tax;

(b) if it is a member of a group, give notice excluding the group from tonnage tax.

(2) The effect of the notice in the case of a single company is that the company's tonnage tax election ceases to be in force from the beginning of the accounting period in which the transaction or arrangement was entered into.

(3) The effect of such a notice in the case of a group is that the group's tonnage tax election ceases to be in force from such date as may be specified in the notice.

The specified date must not be earlier than the beginning of the earliest accounting period in which any member of the group entered into the transaction or arrangement in question.

(4) The provisions of paragraphs 138 and 139 (exit charge: chargeable gains and balancing charges) apply where a company ceases to be a tonnage tax company by virtue of this paragraph.

(5) Notice under this sub-paragraph (1)(b) need only be given to the company mentioned in the opening words of that sub-paragraph.

This is subject to any arrangements under paragraph 120 (arrangements for dealing with group matters).

Appeals

43 (1) An appeal lies to the Special Commissioners against a notice given by the Inland Revenue under—

paragraph 39 or 40 (exclusion of company or group from tonnage tax if 75% limit exceeded), or

paragraph 42 (exclusion from tonnage tax of company or group where tax avoidance arrangement entered into).

(2) Notice of appeal must be given to the Inland Revenue within 30 days of the date of issue of the notice appealed against.

(3) In the case of a notice under paragraph 40 or 42(1)(b) only one appeal may be brought, but it may be brought jointly by two or more members of the group concerned.

[F23 The requirement to prove compliance with safety etc standards

Textual Amendments

F23 Para 43A and cross-heading inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 11**, 18(2)

43A (1) The Secretary of State may make provision by regulations for or in connection with requiring qualifying companies or qualifying groups to provide evidence of compliance with prescribed standards relating to—

(a) health and safety in connection with qualifying ships which are not registered in any of the Member States' registers;

(b) environmental performance of such ships;

(c) working conditions on such ships.

(2) The provision that may be made by regulations under this paragraph includes provision for or in connection with—

(a) requiring returns to be made at prescribed intervals;

(b) authorising the Secretary of State to require persons to provide prescribed information in prescribed cases or circumstances;

(c) enabling audits to be carried out on behalf of the Secretary of State;

(d) authorising the Secretary of State to issue certificates of non-compliance in prescribed cases or circumstances;

(e) the effect of such a certificate (including preventing the making of a renewal election when such a certificate is in force);

(f) enabling persons to apply to the Secretary of State for the cancellation of such a certificate;

(g) requiring or enabling the Secretary of State to revoke a tonnage tax election after a prescribed period of non-compliance;

(h) the making of appeals;

(i) authorising the disclosure of information between the Secretary of State and the Inland Revenue.

(3) Regulations under this paragraph may create criminal offences in respect of failures to comply with requirements imposed by the regulations.

(4) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

(5) Regulations under this paragraph—

(a) may make different provision for different cases, and

(b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.

(6) In this paragraph "prescribed" means prescribed by regulations under this paragraph.**]**

PART VI

RELEVANT SHIPPING PROFITS

Introduction

44 (1) For the purposes of this Schedule the relevant shipping profits of a tonnage tax company are—

(a) its relevant shipping income (as defined below), and

(b) so much of its chargeable gains as is effectively excluded from the charge to tax by the provisions of Part VIII of this Schedule.

(2) The "relevant shipping income" of a tonnage tax company means—

(a) its income from tonnage tax activities (see paragraphs 45 to 48), and

(b) any income that is relevant shipping income under—

paragraph 49 (distributions of overseas shipping companies), or

paragraph 50 (certain interest etc.),

but subject to paragraph 51 (general exclusion of investment income).

Tonnage tax activities

45 (1) References in this Schedule to the "tonnage tax activities" of a tonnage tax company are to—

(a) its core qualifying activities (see paragraph 46),

(b) its qualifying secondary activities to the extent that they do not exceed the permitted level (see paragraph 47), and

(c) its qualifying incidental activities (see paragraph 48).

(2) Sub-paragraph (1) has effect subject to paragraph 51(2) (exclusion of activities giving rise to investment income).

Core qualifying activities

46 (1) A tonnage tax company's "core qualifying activities" are—

(a) its activities in operating qualifying ships, and

(b) other ship-related activities that are a necessary and integral part of the business of operating its qualifying ships.

(2) A company's activities in operating qualifying ships means the activities mentioned in paragraph 19(1)(a) to (d) by virtue of which the ship is a qualifying ship.

Qualifying secondary activities

47 (1) The Inland Revenue may make provision by regulations as to—

(a) the descriptions of activity that are to be regarded as qualifying secondary activities, and

(b) the permitted level in relation to any such activity or description of activity.

(2) The regulations may set the permitted level or provide for its determination by reference to such factors as may be specified in the regulations.

Qualifying incidental activities

48 (1) A company's incidental activities means its ship-related activities that—

(a) are incidental to its core qualifying activities, and

(b) are not qualifying secondary activities.

(2) If the turnover in an accounting period of the company from its incidental activities (taken together) does not exceed 0.25% of the company's turnover in that period from—

(a) its core qualifying activities, and

(b) its qualifying secondary activities to the extent that they do not exceed the permitted level,

the company's incidental activities in that period are qualifying incidental activities.

Relevant shipping income: distributions of overseas shipping companies

49 (1) Income of a tonnage tax company consisting in a dividend or other distribution of an overseas company is relevant shipping income if the following conditions are met.

(2) The conditions are—

(a) that the overseas company operates qualifying ships;

(b) that more than 50% of the voting power in the overseas company is held by a company resident in a member State, or that two or more companies each of which is resident in a member State hold in aggregate more than 50% of that voting power;

(c) that the 75% limit is not exceeded in relation to the overseas company in any accounting period in respect of which the distribution is paid;

(d) that all the income of the overseas company is such that, if it were a tonnage tax company, it would be relevant shipping income;

(e) that the distribution is paid entirely out of profits arising at a time when—

(i) the conditions in paragraphs (a) to (d) were met, and

(ii) the tonnage tax company was subject to tonnage tax; and

(f) the profits of the overseas company out of which the distribution is paid are subject to a tax on profits (in the country of residence of the company or elsewhere, or partly in that country and partly elsewhere).

(3) For the purposes of sub-paragraph (2)(c) the "75% limit" is the requirement set out in paragraph 37 (requirement that not more than 75% of tonnage is chartered in) as it applies to a single company.

(4) In this paragraph an "overseas company" means a company that is not resident in the United Kingdom.

Relevant shipping income: certain interest etc.

50 (1) Income to which this paragraph applies is relevant shipping income only to the extent that it would apart from this Schedule fall to be taken into account as trading income from a trade consisting of the company's tonnage tax activities.

(2) This paragraph applies to—

(a) anything giving rise to a credit that would fall to be brought into account for the purposes of Chapter II of Part IV of the [M5]Finance Act 1996 (loan relationships); **[**[F24]and**]**

[F25](b) . . . . . .

[[F26](c) any credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts).**]**

Textual Amendments

F24 Word in Sch. 22 para. 50(2)(a) inserted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by 2002 c. 23, s. 79, **Sch. 23 Pt. 2 para. 23(2)**

F25 Sch. 22 para. 50(2)(b) repealed (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by 2002 c. 23, s. 79, **Sch. 40 Pt. 3(10)** Note

F26 Sch. 22 para. 50(2)(c) substituted (24.7.2002 with effect as mentioned in s. 83(3)(4) of the amending Act) by 2002 c. 23, s. 83, **Sch. 27 para. 23(2)**

Marginal Citations

M5 1996 c. 8.

General exclusion of investment income

51 (1) Income from investments is not relevant shipping income.

(2) To the extent that an activity gives rise to income from investments it is not regarded as part of a company's tonnage tax activities.

(3) For the purposes of this paragraph "income from investments" includes—

(a) any income chargeable to tax under Schedule A or Case III of Schedule D, and

(b) any equivalent foreign income.

(4) "Equivalent foreign income" means income chargeable under Case V of Schedule D that—

(a) consists in income of an overseas property business, or

(b) is equivalent to a description of income chargeable to tax under Case III of Schedule D but arises from a possession outside the United Kingdom.

(5) Sub-paragraph (1) above does not affect income that is relevant shipping income under—

paragraph 49 (distributions of overseas shipping companies), or

paragraph 50 (certain interest etc.).

PART VII

THE RING FENCE: GENERAL PROVISIONS

Accounting period ends on entry or exit

52 An accounting period ends (if it would not otherwise do so) when a company enters or leaves tonnage tax.

Tonnage tax trade

53 (1) The tonnage tax activities of a tonnage tax company are treated for corporation tax purposes as a separate trade (the company's "tonnage tax trade") distinct from all other activities carried on by the company.

(2) Sub-paragraph (1) shall not be read as requiring a company to be treated—

(a) as setting up and commencing a new trade on entry into tonnage tax, or

(b) as permanently ceasing to carry on a trade on leaving tonnage tax.

Profits of controlled foreign companies

54 (1) A tonnage tax company is not subject to any liability under section 747 of the Taxes Act 1988 in any accounting period in respect of profits of a controlled foreign company if in that period distributions of the controlled foreign company made to the tonnage tax company would be relevant shipping income of the latter (see paragraph 49).

(2) Schedule 24 to that Act (assumptions for calculating chargeable profits of controlled foreign companies) has effect subject to the following provisions.

(3) If a company in relation to which that Schedule applies—

(a) is a member of a tonnage tax group, and

(b) is a tonnage tax company by virtue of the group's tonnage tax election, or would be if it were within the charge to corporation tax,

it shall be assumed for the purposes for which that Schedule applies to be a single company that is a tonnage tax company.

(4) Nothing in paragraph 5(1) of that Schedule (controlled foreign company assumed not to be member of a group) affects sub-paragraph (3) above.

For accounting periods ending before 1st April 2000 the reference to paragraph 5(1) has effect as a reference to paragraph 5 of that Schedule.

(5) Paragraph 20 of that Schedule (provisions for avoiding double charge) does not apply where, or to the extent that, the transaction in question is one any profits from which would be, or would be reflected in, relevant shipping profits of a party to the transaction.

General exclusion of reliefs, deductions and set-offs

55 No relief, deduction or set-off of any description is allowed against the amount of a company's tonnage tax profits.

Exclusion of loss relief

56 (1) When a company enters tonnage tax, any losses that have accrued to it before entry and are attributable—

(a) to activities that under tonnage tax become part of the company's tonnage tax trade, or

(b) to a source of income that under tonnage tax becomes relevant shipping income,

are not available for loss relief in any accounting period beginning on or after the company's entry into tonnage tax.

(2) Any apportionment necessary to determine the losses so attributable shall be made on a just and reasonable basis.

(3) In sub-paragraph (1) "loss relief" includes any means by which a loss might be used to reduce the amount in respect of which that company, or any other company, is chargeable to tax.

Exclusion of relief or set-off against tax liability

57 (1) Any relief or set-off against a company's tax liability for an accounting period does not apply in relation to—

(a) so much of that tax liability as is attributable to the company's tonnage tax profits, or

(b) so much of that tax liability as is attributable to tonnage profits of a controlled foreign company apportioned to the company under section 747(3) of the Taxes Act 1988.

(2) Relief to which this paragraph applies includes, but is not limited to, any relief or set-off under—

(a) section 788 or 790 of the Taxes Act 1988 (double taxation relief), or

(b) regulations under section 32 of the [M6]Finance Act 1998 (unrelieved surplus advance corporation tax).

(3) Sub-paragraph (1)(b) applies whether or not the company to which the profits are apportioned is subject to tonnage tax.

(4) For the purposes of sub-paragraph (1)(b)—

(a) "tonnage profits" means so much of the chargeable profits of the controlled foreign company as, on the assumptions in Schedule 24 to the Taxes Act 1988, are calculated in accordance with paragraph 4 of this Schedule; and

(b) so much of a controlled foreign company's chargeable profits for any accounting period as are tonnage profits shall be treated as apportioned under section 747(3) of that Act in the same proportions as those chargeable profits (taken generally) are apportioned.

(5) For the purposes of any such regulations as are mentioned in sub-paragraph (2)(b), a company's tonnage tax profits shall be left out of account in determining the company's profits charged to corporation tax.

This does not affect the computation under those regulations of shadow ACT on distributions made by a tonnage tax company, whether paid out of tonnage tax profits or other profits.

(6) This paragraph does not affect—

(a) any reduction under section 13(2) of the Taxes Act 1988 (marginal small companies' relief), or

(b) any set off under section 7(2) or 11(3) of the Taxes Act 1988 (set off for income tax borne by deduction).

Marginal Citations

M6 1998 c. 36.

Transactions not at arm's length: between tonnage tax company and another person

58 (1) In relation to provision made or imposed as between a tonnage tax company and another person by a transaction or series of transactions that—

(a) falls in relation to the tonnage tax company to be regarded as made or imposed in the course of, or with respect to, its tonnage tax trade, and

(b) does not fall in relation to the other person to be regarded as made or imposed in the course of, or with respect to, a tonnage tax trade carried on by that person,

[[F27]Schedule 28AA to the Taxes Act 1988 (transactions not at arm's length) has effect with the omission of paragraphs 6 to 7A (elimination of double counting etc).**]**

(2) Expressions used in Schedule 28AA have the same meaning in this paragraph.

(3) Nothing in this paragraph affects the computation of a company's tonnage tax profits.

Textual Amendments

F27 Words in Sch. 22 para. 58(1) substituted (22.7.2004) (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 12**

Transactions not at arm's length: between tonnage tax trade and other activities of same company

59 (1) Schedule 28AA of the Taxes Act 1988 (transactions not at arm's length) applies to provision made or imposed as between a company's tonnage tax trade and other activities carried on by it as if—

(a) that trade and those activities were carried on by two different persons,

(b) the provision were made or imposed between those persons by means of a transaction, and

(c) the two persons were both controlled by the same person at the time of the making or imposition of the provision.

[[F28](2) As applied by sub-paragraph (1), Schedule 28AA has effect with the omission of paragraphs 6 to 7A (elimination of double counting etc).**]**

(3) Expressions used in Schedule 28AA have the same meaning in this paragraph.

(4) Nothing in this paragraph affects the computation of a company's tonnage tax profits.

Textual Amendments

F28 Sch. 22 para. 59(2) substituted (22.7.2004) (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 13**

Transactions not at arm's length: duty to give notice

60 (1) Not more than 90 days after—

(a) the making of an election under this Schedule, or the occurrence of any other event, as a result of which a company enters, or is taken to have entered, tonnage tax, or

(b) the making of an election under this Schedule as a result of which a company will become a tonnage tax company at a later date,

the company shall give notice under this paragraph to any person whose tax liability may be affected by paragraph 58 (transactions not at arm's length).

(2) The notice must state—

(a) that the company has become a tonnage tax company, or

(b) that an election has been made under this Schedule as a result of which the company will become a tonnage tax company,

and inform the person to whom it is given of the possible application of the provisions of Schedule 28AA in relation to transactions between the company and that person.

Treatment of finance costs: single company

61 (1) This paragraph applies to a tonnage tax company which is a single company carrying on tonnage tax activities and other activities.

(2) An adjustment shall be made if it appears, in relation to an accounting period of the company, that the company's deductible finance costs outside the ring fence exceed a fair proportion of the company's total finance costs.

(3) The company's "deductible finance costs outside the ring fence" means the total of the amounts that may be brought into account in respect of finance costs in calculating for the purposes of corporation tax the company's profits other than relevant shipping profits.

(4) A company's "total finance costs" means so much of the company's finance costs as could, if there were no tonnage tax election, be brought into account in calculating the company's profits for the purposes of corporation tax.

(5) What proportion of the company's total finance costs should be deductible outside the ring fence shall be determined on a just and reasonable basis by reference to the extent to which the funding in relation to which the costs are incurred is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.

(6) Where an adjustment falls to be made under this paragraph, an amount equal to the excess referred to in sub-paragraph (2) shall be brought into account as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the [M7]Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities.

Marginal Citations

M7 1996 c. 8.

Treatment of finance costs: group company

62 (1) This paragraph applies to a tonnage tax company which is a member of a tonnage tax group where the activities carried on by the members of the group include activities other than tonnage tax activities.

(2) An adjustment shall be made if it appears, in relation to an accounting period of the company, that the group's deductible finance costs outside the ring fence exceed a fair proportion of the total finance costs of the group.

(3) A group's "deductible finance costs outside the ring fence" means so much of the group's finance costs as may be brought into account in calculating for the purposes of corporation tax—

(a) in the case of a group member that is a tonnage tax company, the company's profits other than relevant shipping profits, and

(b) in the case of a group member that is not a tonnage tax company, the company's profits.

(4) A group's "total finance costs" means so much of the group's finance costs as could, if there were no tonnage tax election, be brought into account in calculating for the purposes of corporation tax the profits of any member of the group.

(5) What proportion of the group's total finance costs should be deductible outside the ring fence shall be determined on a just and reasonable basis by reference to the extent to which the funding in relation to which the costs are incurred is applied in such a way that any profits arising, directly or indirectly, would be relevant shipping profits.

(6) Where an adjustment falls to be made under this paragraph, an amount equal to the relevant proportion of the excess referred to in sub-paragraph (2) shall be brought into account as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the [M8]Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities.

For this purpose "the relevant proportion" is the proportion that the company's tonnage tax profits bear to the tonnage tax profits of all the members of the group.

Marginal Citations

M8 1996 c. 8.

Meaning of "finance cost"s

63 (1) For the purposes of paragraphs 61 and 62 "finance costs" means the costs of debt finance.

(2) In calculating the costs of debt finance, the matters to be taken into account include—

(a) any costs giving rise to a trading or non-trading debit under Chapter II of Part IV of the [M9]Finance Act 1996 (loan relationships);

[[F29](b) any credit or debit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts) in relation to debt finance;**]**

(c) any exchange gain or loss **[**[F30]within the meaning given by section 103(1A) of the Finance Act 1996**]** in relation to debt finance;

(d) the finance cost—

(i) implicit in a payment under a finance lease, or

(ii) payable on debt factoring or any similar transaction; and

(e) any other costs arising from what would be considered on normal accounting principles to be a financing transaction.

(3) No adjustment shall be made under paragraph 61 or 62 if, in calculating for a period the company's, or as the case may be, the group's deductible finance costs outside the ring fence, the amount taken into account in respect of costs and losses is exceeded by the amount taken into account in respect of profits and gains.

Textual Amendments

F29 Sch. 22 para. 63(2)(b) substituted (24.7.2002 with effect as mentioned in s. 83(3)(4) of the amending Act) by 2002 c. 23, s. 83, **Sch. 27 para. 23(3)**

F30 Words in Sch. 22 para. 63(2)(c) substituted (24.7.2002 with effect as mentioned in s. 79(3) of the amending Act) by 2002 c. 23, s. 79, **Sch. 23 para. 23(3)**

Marginal Citations

M9 1996 c. 8.

PART VIII

CHARGEABLE GAINS AND ALLOWABLE LOSSES ON TONNAGE TAX ASSETS

Chargeable gains: tonnage tax assets

64 (1) In this Part of this Schedule a "tonnage tax asset" means an asset that is used wholly and exclusively for the purposes of the tonnage tax activities of a tonnage tax company.

(2) Where for one or more continuous periods of at least a year part of an asset has been used wholly and exclusively for the purposes of the tonnage tax activities of a tonnage tax company and part has not, this Part of this Schedule shall apply as if the part so used were a separate asset.

(3) Where sub-paragraph (2) applies, any necessary apportionment of the gain or loss on the whole asset shall be made on a just and reasonable basis.

Chargeable gains: disposal of tonnage tax asset

65 (1) When an asset is disposed of that is or has been a tonnage tax asset—

(a) any gain or loss on the disposal is a chargeable gain or allowable loss only to the extent (if any) to which it is referable to periods during which the asset was not a tonnage tax asset, and

(b) any such chargeable gain or allowable loss on a disposal by a tonnage tax company is treated as arising otherwise than in the course of the company's tonnage tax trade.

(2) For the purposes of sub-paragraph (1) the amount of the gain or loss on a disposal means what would be the amount of the chargeable gain or allowable loss apart from this paragraph.

(3) The proportion of that gain or loss referable to periods during which the asset was not a tonnage tax asset is given by:

$$\frac{P - \mathrm{PTTA}}{P}$$

where:

P is the total length of the period since the asset was created or, if later, the last third-party disposal, and

PTTA is the length of the period (or the aggregate length of the periods) since—

(a) the asset was created, or

(b) if later, the last third-party disposal,

during which the asset was a tonnage tax asset.

(4) In sub-paragraph (3) a "third-party disposal" means a disposal (or deemed disposal) that is not treated as one on which neither a gain nor a loss accrues to the person making the disposal.

Chargeable gains: losses brought forward

66 A tonnage tax election does not affect the deduction under section 8(1) of the [M10]Taxation of Chargeable Gains Act 1992 (corporation tax: computation of chargeable gains) of allowable losses that accrued to a company before it became a tonnage tax company.

Marginal Citations

M10 1992 c. 12.

Chargeable gains: roll-over relief for business assets

67 (1) Sections 152 and 153 of the [M11]Taxation of Chargeable Gains Act 1992 (roll-over relief for business assets) do not apply if or to the extent that the new assets are tonnage tax assets.

(2) Where relief under either of those sections is, or has been, claimed in respect of the disposal of an asset ("Asset No.1") and the acquisition of another asset ("Asset No.2") that subsequently becomes a tonnage tax asset, the claimant is not (or, as the case may be, shall cease to be) entitled under that section to—

(a) a reduction of the consideration for the disposal of Asset No.1, and

(b) a corresponding reduction of the expenditure for the acquisition of Asset No.2,

but so much of the chargeable gain arising on the disposal of Asset No.1 as is equal to the amount of the reduction that would have been made is treated as not accruing until Asset No.2 is disposed of.

(3) Any chargeable gain accruing as a result of the rules in sub-paragraph (1) or (2) is treated as arising otherwise than in the course of the company's tonnage tax trade.

Modifications etc. (not altering text)

C4 Sch. 22 para. 67(2) modified (24.7.2002 with application as mentioned in s. 43(4) of the amending Act) by 1992 c. 12, s. 179(B), **Sch. 7AB para. 10** (as inserted by 2002 c. 23, s. 43(1)(2), **Sch. 7**)

Marginal Citations

M11 1992 c. 12.

PART IX

THE RING FENCE: CAPITAL ALLOWANCES: GENERAL

Introduction

68 (1) This Part of this Schedule makes provision about capital allowances where a company enters, leaves or is subject to tonnage tax.

(2) The general scheme of this Part of this Schedule is that—

(a) entry of a company into tonnage tax does not of itself give rise to any balancing charges or balancing allowances,

(b) a company subject to tonnage tax is not entitled to capital allowances in respect of expenditure incurred for the purposes of its tonnage tax trade, whether before or after its entry into tonnage tax, and

[F31(c) on leaving tonnage tax—

(i) a company is treated as having incurred qualifying expenditure on its tonnage tax plant and machinery assets of an amount equal to the lower of cost and market value, where it leaves tonnage tax on expiry of an election or on the taking effect of a withdrawal notice, but

(ii) otherwise, a company is put broadly in the position it would have been in if it had never been subject to tonnage tax.**]**

(3) A company's tonnage tax trade is not a qualifying activity for the purposes of determining the company's entitlement to capital allowances.

Textual Amendments

F31 Sch. 22 para. 68(2)(c) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 12(2)**, 18(2)

Entry: plant and machinery: assets to be used wholly for tonnage tax trade

69 (1) On a company's entry into tonnage tax any unrelieved qualifying expenditure attributable to plant or machinery that is to be used wholly for the purposes of the company's tonnage tax trade is taken to a single pool (the company's "tonnage tax pool").

[F32(2) In this paragraph "unrelieved qualifying expenditure" has the same meaning as in Chapter 5 of Part 2 of the Capital Allowances Act 2001.**]**

(3) The amount of unrelieved qualifying expenditure attributable to plant or machinery in a class pool, or the main pool, is the proportion of the whole given by:

$$\frac{AV}{PV}$$

where:

AV is the aggregate market value of the assets concerned immediately before entry into tonnage tax, and

PV is the aggregate market value at that time of all the assets in the pool.

(4) References in this paragraph to unrelieved qualifying expenditure include qualifying expenditure to the extent to which it is unrelieved by virtue of notice having been given under **[**F33section 130 of the Capital Allowances Act 2001 (notice postponing first-year or writing-down allowance)**]**

No allowance may be claimed in respect of any such expenditure taken to the company's tonnage tax pool.

Textual Amendments

F32 Sch. 22 para. 69(2) substituted (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. 108(2)**

F33 Words in Sch. 22 para. 69(4) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) for Sch. 22 para. 69(a)(b) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(3)**

Entry: plant and machinery: assets to be used partly for tonnage tax trade

70 (1) This paragraph applies where, on a company's entry into tonnage tax, plant and machinery is to be used partly for the purposes of the company's tonnage tax trade and partly for the purposes of a qualifying activity carried on by the company.

[F34(2) Sections 61(1)(e), 206(3) and 207 of the Capital Allowances Act 2001 (effect of use partly for qualifying activity and partly for other purposes) apply as follows—

(a) references to a qualifying activity shall be read as not including references to the tonnage tax trade, and

(b) references to purposes other than those of a qualifying activity shall be read as including references to the purposes of the tonnage tax trade.**]**

Textual Amendments

F34 Sch. 22 para. 70(2) substituted (28.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(4)**

Entry: ships acquired and disposed of within twelve months

71 (1) This paragraph applies if a company—

(a) acquires a qualifying ship within the period of six months before the company enters tonnage tax, and

(b) disposes of the ship before the end of the period of twelve months beginning with the day on which the ship was acquired.

(2) The aggregate amount of the capital allowances to which the company is entitled for the period or periods before entry into tonnage tax in respect of its expenditure on acquiring the ship is limited to the amount by which that expenditure exceeds the market value of the ship on the company's entry into tonnage tax.

Entry: deferred balancing charge on disposal of ship

72 (1) This paragraph applies where deferment of a balancing charge has been claimed under **[**F35sections 135 to 156 of the Capital Allowances Act 2001**]** (balancing charge

on disposal of ship to be deferred and set against new expenditure incurred within six years) by a company that subsequently enters tonnage tax.

(2) Expenditure on new shipping incurred by a company subject to tonnage tax shall not be taken into account for the purposes of those sections unless the company that incurred the balancing charge—

(a) was a qualifying company for the purposes of this Schedule at the time the balancing charge arose, or

(b) would have been such a company had this Schedule been in force at that time.

(3) Subject to sub-paragraph (2)—

(a) the company's entry into tonnage tax does not affect the operation of those sections, and

(b) the expenditure on new shipping that is to be taken into account for the purposes of those sections shall be determined as if the company was not subject to tonnage tax.

Textual Amendments

F35 Words in Sch. 22 para. 72(1) substituted (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. 108(5)**

During: plant and machinery: new expenditure partly for tonnage tax purposes

73 (1) This paragraph applies where a company subject to tonnage tax incurs expenditure on the provision of plant or machinery partly for the purposes of its tonnage tax trade and partly for the purposes of a qualifying activity.

[[F36](2) Sections 206(1), (2) and (4) and 207 of the Capital Allowances Act 2001 (operation of single asset pool for mixed use assets) apply as follows—

(a) references to a qualifying activity shall be read as not including references to the tonnage tax trade, and

(b) references to purposes other than those of a qualifying activity shall be read as including references to the purposes of the tonnage tax trade.**]**

Textual Amendments

F36 Sch. 22 para. 73(2) substituted (23.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), **Sch. 2 para. 108(6)**

During: plant and machinery: asset beginning to be used for tonnage tax trade

74 A company's tonnage tax pool is not increased by reason of an asset beginning to be used for the purposes of the company's tonnage tax trade after the company's entry into tonnage tax.

During: plant and machinery: change of use of tonnage tax asset

75 (1) This paragraph applies where, at a time when a company is subject to tonnage tax, plant or machinery used for the purposes of the company's tonnage tax trade begins to be used wholly or partly for purposes other than those of that trade.

[F37(2) If the asset was acquired before entry into tonnage tax, section 61(1)(e) of the Capital Allowances Act 2001 applies (disposal event if plant or machinery begins to be used wholly or partly for purposes other than those of the qualifying activity), but reading the reference in that provision to the qualifying activity as a reference to the tonnage tax trade.

F37(3) If the asset was acquired after entry into tonnage tax and begins to be used wholly or partly for the purposes of a qualifying activity carried on by the company, section 13 of the Capital Allowances Act 2001 (use for qualifying activity of plant or machinery provided for other purposes) applies as follows—

(a) references to purposes which were not those of any qualifying activity shall be read as including references to the purposes of the tonnage tax trade, and

(b) references to the qualifying activity carried on by him shall be read as not including references to the tonnage tax trade.**]**

Textual Amendments

F37 Sch. 22 para. 75(2)(3) substituted (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. 108(7)**

During: plant and machinery: change of use of non-tonnage tax asset

76 (1) This paragraph applies where, at a time when a company is subject to tonnage tax, plant or machinery used for the purposes of a qualifying activity carried on by the company begins to be used wholly or partly for the purposes of the company's tonnage tax trade.

[F38(2) Sections 61(1)(e), 206(3) and 207 of the Capital Allowances Act 2001 (effect of use partly for qualifying activity and partly for other purposes) apply as follows—

(a) references to a qualifying activity shall be read as not including references to the tonnage tax trade, and

(b) references to purposes other than those of a qualifying activity shall be read as including references to the purposes of the tonnage tax trade.**]**

Textual Amendments

F38 Sch. 22 para. 76(2) substituted (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. 108(8)**

During: plant and machinery: disposals

77 (1) This paragraph applies if when a company is subject to tonnage tax a disposal event occurs in relation to plant or machinery—

(a) in respect of which qualifying expenditure was incurred by the company before its entry into tonnage tax,

(b) some or all of the expenditure on which was carried to the tonnage tax pool on the company's entry into tonnage tax, and

(c) which is used by the company for the purposes of its tonnage tax trade.

(2) A "disposal event" means an event as a result of which the company is required under **[**[F39]Part 2 of the Capital Allowances Act 2001**]** to bring a disposal value into account.

In determining whether such an event has occurred **[**[F39]references in that Part of that Act to a qualifying activity**]** shall be read as including the company's tonnage tax trade.

(3) Where this paragraph applies—

(a) the disposal value to be brought into account in respect of any plant or machinery is limited to its market value when the company entered tonnage tax, and

(b) the disposal value is set against the unrelieved qualifying expenditure in the company's tonnage tax pool.

(4) If the amount of the disposal value is less than or equal to the amount of unrelieved qualifying expenditure in the company's tonnage tax pool, the amount of unrelieved qualifying expenditure is reduced or extinguished accordingly.

(5) If—

(a) the amount of the disposal value exceeds the amount of unrelieved qualifying expenditure, or

(b) there is no unrelieved qualifying expenditure in the pool,

the company is liable to a balancing charge.

(6) The amount of the balancing charge is—

(a) where sub-paragraph (5)(a) applies, the amount of the excess, or

(b) where sub-paragraph (5)(b) applies, the amount of the disposal value.

This is subject to any reduction under paragraph 78.

Textual Amendments

F39 Words in Sch. 22 para. 77(2) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 22, ss. 578, 579, **Sch. 2 para. 108(9)**

During: plant and machinery: reduction of balancing charges

78 (1) The amount of any balancing charge under this Part of this Schedule is reduced by reference to the number of whole years the company has been subject to tonnage tax at the time of the disposal event giving rise to the charge.

(2) The following table shows the percentage reduction:

Number of years	***Percentage reduction***
1	15%
2	30%
3	45%
4	60%
5	75%

6	90%
7 or more	100%

During: plant and machinery: giving effect to balancing charge

79 (1) A balancing charge under this Part of this Schedule—

(a) is treated as arising in connection with a trade (other than its tonnage tax trade) carried on by the company, and

(b) is made in taxing that trade.

(2) Subject to paragraph 80 (deferment of balancing charge in case of reinvestment), the charge must be given effect in the accounting period in which it arises.

During: plant and machinery: deferment of balancing charge

80 (1) If—

(a) a balancing charge under this Part of this Schedule arises in connection with the disposal of a qualifying ship, and

(b) within the requisite period the company incurs capital expenditure on acquiring one or more other qualifying ships, and

(c) the company claims relief under this paragraph,

only the amount (if any) by which the balancing charge exceeds that expenditure must be given effect in the accounting period in which the charge arises and the rest may be held over.

(2) For the purposes of this paragraph—

(a) the disposal of a qualifying ship includes any event within **[**[F40]section 61(1)(a) to (d) of the Capital Allowances Act 2001**]** occurring with respect to a qualifying ship, and

(b) the requisite period is the period beginning one year before, and ending two years after, the date of the disposal.

(3) If the new qualifying ship (or any of them) is disposed of before the end of the period of seven years after the company in question entered tonnage tax—

(a) there is a balancing charge under this paragraph when the disposal occurs, and

(b) the amount of that charge is equal to the amount held over under sub-paragraph (1) by reference to the acquisition of that ship.

This is subject to any reduction under paragraph 78 and to any further deferment under this paragraph.

(4) **[**Sections 135 to 156 of the Capital Allowances Act 2001**]** (deferment of balancing charges) do not apply in relation to balancing charges arising when the company is subject to tonnage tax.

(5) The fact that there is a balancing charge under this paragraph does not affect the operation of paragraph 77 in a case where that paragraph also applies.

Textual Amendments

F40 Words in Sch. 22 para. 80(2)(4) substituted (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. 108(9)(10)**

During: plant and machinery: surrender of unrelieved qualifying expenditure

81 (1) This paragraph applies where—

(a) a company subject to tonnage tax is liable to a balancing charge under this Part of this Schedule,

(b) another tonnage tax company which is a member of the same group has unrelieved qualifying expenditure in its tonnage tax pool, and

(c) the two companies have been members of the same group for not less than a year at the date of the disposal giving rise to the balancing charge.

(2) The latter company may surrender to the former all or part of its unrelieved qualifying expenditure, and the amount of the balancing charge shall be reduced or extinguished accordingly.

(3) The provisions of Part VIII of Schedule 18 to the [M12]Finance Act 1998 (corporation tax self-assessment: claims for group relief), except paragraph 77 (joint amended returns), apply in relation to relief under this paragraph as they apply in relation to group relief.

Marginal Citations

M12 1998 c. 36.

During: industrial buildings: mixed use

[[F41]82 If any identifiable part of a building or structure is used for the purposes of a company's tonnage tax trade, that part is treated for the purposes of Part 3 of the Capital Allowances Act 2001 as used otherwise than as an industrial building.**]**

Textual Amendments

F41 Sch 22. para. 82 substituted (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. 108(12)**

During: industrial buildings: balancing charges

83 (1) This paragraph applies where, in an accounting period during which a company is subject to tonnage tax, a **[**[F42]balancing event occurs in relation to an industrial building**]** in respect of which qualifying expenditure was incurred by the company before its entry into tonnage tax.

(2) **[**[F43]A "balancing event" means an event by reason of which the company is required by Part 3 of the Capital Allowances Act 2001 to bring into account any proceeds.**]** In determining whether such an event has occurred references in that Part of that Act to a trade or undertaking shall be read as including the company's tonnage tax trade.

(3) Where this paragraph applies—

[F44(a) the proceeds to be brought into account in respect of the industrial building are limited to the market value of the relevant interest when the company entered tonnage tax; and**]**

(b) the amount of any balancing charge under that Part is reduced in accordance with paragraph 78.

Textual Amendments

F42 Words in Sch. 22 para. 83(1) substituted (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. 108(13)**

F43 Words in Sch. 22 para. 83(2) substituted (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. 108(14)**

F44 Sch. 22 para. 83(3)(a) substituted (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. 108(15)**

During: industrial buildings: residue of qualifying expenditure

84 (1) This paragraph applies where a company subject to tonnage tax disposes of the relevant interest in an industrial building F45. . ..

(2) **[**F46Section 313 and Chapter 8 of Part 3 of the Capital Allowances Act 2001 (meaning of "residue of qualifying expenditure" and writing off qualifying expenditure)**]** apply to determine the residue of expenditure in the hands of the person who acquires the relevant interest, as if—

(a) the company had not been subject to tonnage tax, and

(b) all writing-down allowances, and balancing allowances and charges, had been made as could have been made if the company had not been subject to tonnage tax.

Textual Amendments

F45 Words in Sch. 22 para. 84(1) repealed (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579(1), 580, Sch. 2 para. 108(16), **Sch. 4**

F46 Words in Sch. 22 para. 84(2) substituted (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. 108(17)**

Exit: plant and machinery

85 (1) If a company leaves tonnage tax—

(a) the amount of qualifying expenditure under **[**F47Part 2 of the Capital Allowances Act 2001 (plant and machinery allowances)**]** (plant and machinery), and

(b) the pools to which such expenditure is to be allocated for the purposes of that Part,

shall be determined under this paragraph.

[F48(1A) Sub-paragraph (1C) applies where the company leaves tonnage tax—

(a) on the expiry of a tonnage tax election, or

(b) on a tonnage tax election ceasing to be in force under paragraph 13(2A) (taking effect of withdrawal notice under paragraph 15A).

(1B) In any other case, sub-paragraph (2) applies.

(1C) Where this sub-paragraph applies, the amount of qualifying expenditure in respect of each asset used by the company for the purposes of its tonnage tax activities and held by the company when it leaves tonnage tax shall be taken to be—

(a) the market value of the asset at the time the company leaves tonnage tax, or

(b) if less, the amount of expenditure incurred on the provision of the asset that would have been qualifying expenditure if the company had not been subject to tonnage tax.**]**

(2) **[**[F49]Where this sub-paragraph applies,**]** for each asset used by the company for the purposes of its tonnage tax activities and held by the company when it leaves tonnage tax there shall be determined—

(a) the amount of expenditure incurred on the provision of the asset that would have been qualifying expenditure if the company had not been subject to tonnage tax, and

(b) the written down value of that amount by reference to the period since the expenditure was incurred.

(3) The Inland Revenue shall make provision by regulations as to the basis on which the writing down is to be done.

The regulations may make different provision for different descriptions of asset.

Textual Amendments

F47 Words in Sch. 22 para. 85(1) substituted (22.3.2002 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(18)**

F48 Sch. 22 para. 85(1A)-(1C) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 13(2)**, 18(2)

F49 Words in Sch. 22 para. 85(2) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 13(3)**, 18(2)

Exit: industrial buildings

86 If a company leaves tonnage tax the amount of unrelieved qualifying expenditure under **[**[F50]Part 3 of the Capital Allowances Act 2001 (industrial buildings allowances)**]** is calculated as if—

(a) the company had never been subject to tonnage tax, and

(b) all such allowances and charges under that Part had been made as could have been made.

Textual Amendments

F50 Words in Sch. 22 para. 86(1) substituted (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. 108(19)**

Meaning of "not entitled to capital allowance"s

87 (1) Where any provision of this Part of this Schedule states that a person is not entitled to capital allowances in respect of expenditure on plant or machinery—

(a) a first-year allowance shall not be given in respect of that expenditure, and

[[F51](b) the expenditure shall be disregarded for the purposes of calculating the person's entitlement to a writing-down allowance or balancing allowance or liability to a balancing charge.**]**

(2) If there is no entitlement to capital allowances in respect of expenditure, there is no entitlement to capital allowances in respect of any additional VAT liability incurred in respect of it.

Textual Amendments

F51 Sch. 22 para. 87(1)(b) substituted (23.1.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(20)**

Interpretation

88 (1) In this Part of this Schedule—

[[F52]"capital allowance" means any allowance under the Capital Allowances Act 2001;**]**

[[F53]"qualifying activity" means any activity in respect of which a person may be entitled to a capital allowance;**]**

"qualifying expenditure" means expenditure in respect of which a person is or may be entitled to a capital allowance.

[[F54](2) In this Part of this Schedule any reference to pooling or to single asset pools, class pools or the main pool shall be construed in accordance with sections 53 and 54 of the Capital Allowances Act 2001.**]**

(4) Other expressions relating to capital allowances have the same meaning in this Part of this Schedule as in the **[**[F55]Capital Allowances Act 2001**]**.

Textual Amendments

F52 Sch. 22 para. 88: definition of "capital allowance" substituted (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. 108(21)**

F53 Sch. 22 para. 88: definition of "qualifying activity" substituted (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. 108(21)**

F54 Sch. 22 para. 88(2) substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) for Sch. 22 para. 88(2)(3) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(22)**

F55 Words in Sch. 22 para. 88(4) substituted (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. 108(23)**

PART X

THE RING FENCE: CAPITAL ALLOWANCES: SHIP LEASING

Introduction

89 (1) In the case of a [F56]... lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax, the provisions of **[**[F57]Part 2 of the Capital Allowances Act 2001**]** have effect subject to and in accordance with the provisions of—

paragraphs 90 and 91 (defeased leasing),

paragraph 92 (sale and lease back arrangements, and

paragraphs 94 to 102 (quantitative restrictions on allowances).

[[F58]This is subject to paragraph 89A (exception for ordinary charters).**]**

[[F59](2) In this Part of this Schedule "lease" means any arrangements that provide for a ship to be leased or otherwise made available by a person ("the lessor") to another person ("the lessee").**]**

(3) Other expressions used in this Part of this Schedule have the same meaning as in Part IX of this Schedule (the ring fence: capital allowances: general).

Textual Amendments

F56 Word in Sch. 22 para. 89(1) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

F57 Words in Sch. 22 para. 89(1)(2) inserted (23.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(24)(25)**

F58 Words in Sch. 22 para. 89(1) inserted (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 32 para. 1(3)** (with Sch. 32 para. 4)

F59 Sch. 22 para. 89(2) substituted (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 32 para. 1(4)** (with Sch. 32 para. 4)

[F60Quantitative restrictions not to apply to ordinary charters

Textual Amendments

F60 Sch. 22 para. 89A and heading inserted (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 32 para. 1(5)** (with Sch. 32 para. 4)

89A (1) Paragraphs 94 to 102, and paragraph 89(1) so far as relating to those paragraphs, do not apply in the following cases.

(2) The first case is where the ship is chartered out by a person who is responsible—

(a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, throughout the period of the charter, and

(b) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.

For the purposes of this sub-paragraph a person is "responsible" if he is responsible as principal or if he appoints another person, other than the lessee or a person connected with the lessee, to be responsible in his place.

(3) The second case is where—

(a) the ship is chartered out by a person acting in the course of a trade that consists of, or to a significant extent includes, operating ships, and

(b) the conditions in sub-paragraph (4) are met.

(4) Those conditions are—

(a) that the period of the charter does not exceed seven years, and there is no provision or agreement under which it could be extended beyond seven years;

(b) that the period of the charter, together with any other periods in the same ten years during which the ship is chartered out to the lessee or a person connected with him, does not exceed seven years in total;

(c) that there are no arrangements under which the lessee or a person connected with him may acquire the ship, whether directly or indirectly, from the lessor.

In paragraph (b) "the same ten years" means any period of ten years that includes the period of the charter mentioned in that paragraph.

(5) References in this paragraph to the period of a charter are to the term specified in the lease or, if longer, the actual period during which the ship is chartered.

(6) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.**]**

Defeased leasing

90 (1) The lessor under the [F61]... lease is not entitled to capital allowances in respect of expenditure on the provision of the ship if—

(a) the lease, or

(b) any transaction or series of transaction of which the lease forms a part,

makes provision the effect of which is to remove the whole, or the greater part of, any non-compliance risk which, apart from that provision, would fall directly or indirectly on the lessor.

(2) For this purpose a "non-compliance risk" means a risk that a loss will be sustained by any person if payments under the lease are not made in accordance with its terms.

(3) For the purposes of this paragraph the lessor and any persons connected with him shall be treated as the same person.

(4) In this paragraph "connected person" has the meaning given by section 839 of the Taxes Act 1988.

Textual Amendments

F61 Word in Sch. 22 para. 90(1) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

Defeased leasing: excepted forms of security

91 (1) Paragraph 90 (defeased leasing) is subject to the following exceptions.

(2) It does not apply to the provision of security of any of the following kinds by the lessee, or a person connected with the lessee—

(a) a mortgage of the ship;

(b) security attaching—

(i) to the ship's earnings, or

(ii) to the proceeds of insurance policies on the ship;

(c) security over rental rebates arising from the arm's length sale of the ship;

(d) any other form of security relating to assets, sums or rights arising directly from the ordinary operation of the ship or from arm's length transactions involving the ship.

In this sub-paragraph "the ship" means the ship that is the subject of the lease.

(3) It does not apply to the provision of security by the lessee, or a person connected with the lessee, if the following conditions are met—

(a) no deposit of money or other property by way of security is obtained by the lessor or any third party;

(b) any payments under the security are limited to the amount of any rental payments under the lease in respect of which the lessee is in default.

(4) It does not apply to the provision of security by a third party where no security other than security of a kind mentioned in sub-paragraph (2)(a) to (d) is held by the third party or any person connected with the third party.

(5) It does not apply to the provision of security by a third party if the following conditions are met—

(a) no deposit of money or other property by way of security is obtained by the lessor or any third party;

(b) the security does not involve the assumption of any obligations of the lessee under the lease in return for a payment made (directly or indirectly) by the lessee or a person connected with him;

(c) the security does not give rise to any payments to the lessor unless the lessee defaults on the rental payments under the lease;

(d) any payments under the security are limited to the amount of the rental payments in default.

(6) For the purposes of this paragraph the lessor and any persons connected with him shall be treated as the same person.

(7) In this paragraph—

"connected person" has the meaning given by section 839 of the Taxes Act 1988; and

"third party" means a person not connected with either the lessor or the lessee.

Sale and lease-back arrangements

92 (1) The lessor under the [F62]... lease is not entitled to capital allowances if the lease is part of sale and lease-back arrangements.

(2) For this purpose "sale and lease-back arrangements" means, **[**F63subject to sub-paragraphs (3) and (3A)**]**, any arrangements that take the following form:

Step One The ship is owned by a tonnage tax company and used for the purposes of its tonnage tax trade.

Step Two A transaction is entered into, as a result of which (apart from this paragraph) capital allowances would become available to the lessor, under which—

(a) the ship (or an interest in it) is sold, or

(b) a person enters into a contract on the performance of which he will or may become the owner of the ship (or an interest in it), or

(c) a person entitled to the benefit of any such contract assigns the benefit of it so far as it relates to the ship (or an interest in it).

Step Three After the time of that transaction the ship is used for the purposes of a tonnage tax trade carried on—

(a) by the original company, or

(b) by another tonnage tax company that is a member of the same group,

without having been used since that time for the purposes of any other trade (except that of leasing).

(3) This paragraph does not apply if the ship is newly-constructed and the transaction mentioned in Step Two in sub-paragraph (2) is effected not more than four months after the first occasion on which the ship is brought into use by any person for any purpose.

[F64(3A) This paragraph does not apply if—

(a) expenditure is incurred on enhancing the ship or on converting it to another use,

(b) the amount of that expenditure—

(i) is greater than 33% of the market value of the ship immediately after completion of the enhancement or conversion, and

(ii) is equal to or greater than the market value of the interest in the ship which is the subject of the transaction mentioned in Step Two in sub-paragraph (2), and

(c) that transaction is effected not more than four months after the first occasion following completion of the enhancement or conversion on which the ship is brought into use by any person for any purpose.**]**

(4) A person is regarded for the purposes of this paragraph as owning a ship if it is treated as **[**F65owned by him for the purposes of Part 2 of the Capital Allowances Act 2001**]**.

Textual Amendments

F62 Word in Sch. 22 para. 92(1) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

F63 Words in Sch. 22 para. 92(2) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 14(2)**, 18(2)

F64 Sch. 22 para. 92(3A) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 14(3)**, 18(2)

F65 Words in Sch. 22 para. 92(4) substituted (22.3.2001) by 2001 c. 2,

Certificates required to support claim by [F66]... lessor

Textual Amendments

F66 Word in Sch. 22 para. 93 heading repealed (10.7.2003) (with effect in accordance with Sch. 43 Pt. 3(11) Note of the amending Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(11)**

93 (1) Any claim by the lessor under a [F67]... lease for capital allowances in respect of expenditure on the provision of a qualifying ship must be accompanied by a certificate by the lessor and the lessee stating [F68]...—

(a) that the ship is not leased, directly or indirectly, to a company subject to tonnage tax, or

(b) that neither paragraph 90 (defeased leasing) nor paragraph 92 (sale and lease-back arrangements) applies in relation to the lease.

(2) If any matter so certified ceases to be the case, the lessor must give notice of that fact to the Inland Revenue.

(3) Any such notice must be given within three months after the end of the chargeable period in which the change takes place.

(4) In the second column of the Table in section 98 of the [M13]Taxes Management Act 1970 (penalty for failure to provide information etc.), after the final entry insert—

	"Paragraph 93(2) of Schedule 22 to the Finance Act 2000.."

Textual Amendments

F67 Word in Sch. 22 para. 93(1) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

F68 Words in Sch. 22 para. 93(1) repealed (10.7.2003) (with effect in accordance with Sch. 43 Pt. 3(11) Note of the amending Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(11)**

Marginal Citations

M13 1970 c. 9.

Quantitative restrictions on allowances

94 (1) Where the lessor under the [F69]... lease is entitled to capital allowances in respect of expenditure on the provision of the ship, the following provisions apply.

(2) There is no entitlement to any first-year allowance.

(3) The lessor is entitled—

(a) in respect of the first £40 million of the cost of providing the ship, to writing-down allowances at a rate of 25% per annum on the reducing balance, and

(b) in respect of the next £40 million, to writing-down allowances at a rate of 10% per annum on the reducing balance.

(4) The expenditure within each of those bands shall be allocated to separate pools and dealt with under **[**F70Part 2 of the Capital Allowances Act 2001**]** in the same way as expenditure allocated to a class pool.

These pools are referred to below as "the 25% pool" and "the 10% pool".

(5) If the cost of providing the ship exceeds £80 million, the lessor is not entitled to capital allowances in respect of the excess.

Textual Amendments

F69 Word in Sch. 22 para. 94(1) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

F70 Words in Sch. 22 para. 94(4) substituted (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. 108(27)**

Quantitative restrictions: further provisions as to rate bands, limit and pooling

95 (1) The rate bands and limit in paragraph 94 (quantitative restrictions on allowances) apply separately in relation to each ship.

(2) The amounts specified in that paragraph apply in relation to the whole cost of providing the ship.

(3) If—

(a) the cost is shared by two or more persons, or

(b) a person acquires a part share in the ship,

that paragraph applies as if there were substituted in sub-paragraph (3)(a) and (b) and sub-paragraph (5) in relation to each person the proportion of the figure specified that his share of the cost bears to the whole cost.

(4) The pools referred to in sub-paragraph (4) of that paragraph are class pools of all expenditure of a lessor that falls to be allocated to a 25% or 10% pool in respect of ships leased by him.

Quantitative restrictions: meaning of "cost of providing shi"p

96 (1) For the purposes of paragraph 94 (quantitative restrictions on allowances) the cost of providing the ship means the total cost of providing it in a state ready to be brought into use for the purposes for which it is normally to be used.

This includes the cost of any accessories or additional equipment, or fitting out, necessary for the operation of the ship for those purposes.

(2) The cost of providing the ship shall be determined without regard to the provisions of **[**F71the Capital Allowances Act 2001**]** as to—

(a) when expenditure is treated as incurred, or

(b) when expenditure may be brought into account as qualifying expenditure.

(3) Further capital expenditure by the lessor on the ship shall be added to the original cost of providing the ship to determine—

(a) whether the lessor is entitled to capital allowances in respect of the further expenditure, and

(b) if he is, the rate of writing-down allowances to which he is entitled.

References to the cost of providing the ship shall accordingly be read as including any such further expenditure.

(4) The amounts to be taken into account under this paragraph are limited to the amounts that would otherwise have been qualifying expenditure for the purposes of capital allowances.

Textual Amendments

F71 Words in Sch. 22 para. 96(2) substituted (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. 108(28)**

Quantitative restrictions: treatment of disposal proceeds

97 (1) The following provisions apply where—

(a) there is a disposal of a ship in relation to which paragraph 94 applies to restrict the capital allowances available, and

(b) a disposal value falls fall to be brought into account.

The reference in paragraph (a) to a disposal of ship includes a disposal of a part of a ship, or of an interest in a ship or a part of a ship.

(2) The disposal value is first allocated between the 25% pool and the 10% pool in the same proportions as the cost of providing the ship was allocated to those pools.

(3) If the amount allocated to the 25% pool exceeds the amount of qualifying expenditure remaining in that pool, any excess shall be taken to the 10% pool.

(4) A balancing charge arises only if the amount taken to the 10% pool exceeds the amount of qualifying expenditure remaining in that pool.

Quantitative restrictions: change of circumstances bringing case within restrictions

98 (1) The provisions of this paragraph apply where—

(a) the lessor under a [F72]... lease has been entitled to capital allowances in circumstances in which paragraph 94 (quantitative restrictions on allowances) did not apply, and

(b) a change of circumstances brings the case within paragraph 89(1) so that the restrictions in paragraph 94 do apply.

(2) In this paragraph—

"the relevant period" means the period beginning—

(a) with the beginning of the accounting period of the lessor in which there occurs the change of circumstances in relation to which this paragraph applies, or

(b) if since the beginning of that period there has been a change of circumstances in relation to which paragraph 99 applied (change taking case out of restrictions), with the time of that change (or if there has been more than one such change, the last of them),

and ending with the time of the change of circumstances in relation to which this paragraph applies; and

"the lessor's normal pool" means the lessor's pool that contains the qualifying expenditure relating to the ship at the beginning of the relevant period.

(3) At the beginning of the relevant period an amount ("amount A") equal to—

(a) the tax written down value of the ship as at that time, or

(b) if less, the amount of unrelieved qualifying expenditure in the lessor's normal pool at that time,

shall be brought into account as a disposal value in the lessor's normal pool.

(4) At the same time an amount of qualifying expenditure equal to amount A shall be taken to a separate single-asset pool ("the temporary pool").

(5) Any qualifying expenditure or other items relating to the ship that would otherwise have been brought into account in the lessor's normal pool in the relevant period shall instead be brought into account in the temporary pool.

(6) At the end of the relevant period, the temporary pool shall be closed as if the ship had been disposed of by the lessor for an amount equal to its tax written down value at that time ("amount B"), and any resulting balancing allowance or balancing charge shall be given effect.

(7) The lessor shall be treated as if he had incurred qualifying expenditure equal to amount B on the provision of the ship for the purposes of the lessee's tonnage tax trade immediately after the end of the relevant period.

(8) There shall be allocated to the lessor's 25% and 10% pools the same proportions of amount B as the proportions of the actual cost of providing the ship that would have been so allocated if the case had been within paragraph 89(1) at all material times.

Textual Amendments

F72 Word in Sch. 22 para. 98(1)(a) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

Quantitative restrictions: change of circumstances taking case out of restrictions

99 (1) The provisions of this paragraph apply where—

(a) the lessor under a [F73]... lease has been entitled to capital allowances in circumstances in which paragraph 94 (quantitative restrictions on allowances) applied, and

(b) a change of circumstances takes the case out of paragraph 89(1) so that the restrictions in paragraph 94 no longer apply.

(2) When the change of circumstances occurs a disposal value shall be brought into account by the lessor equal to the tax written down value of the ship as at that time.

The provisions of paragraph 97 (treatment of disposal proceeds) apply as regards the allocation of that amount to the lessor's 25% and 10% pools.

(3) The lessor shall be treated as if he had incurred qualifying expenditure on the provision of the ship for the purposes of the lessee's non-tonnage tax trade immediately after the change of circumstances occurs.

(4) The amount of that expenditure shall be taken to be the whole of the expenditure on the ship that would have qualified for capital allowances if paragraph 94 had never applied, written down at 25% per annum on the reducing balance for the period beginning with the time when it was actually incurred and ending when the change of circumstances occurs.

Textual Amendments

F73 Word in Sch. 22 para. 99(1)(a) repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 1(2), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

Determination of tax written down value, etc.

100 (1) This paragraph supplements paragraphs 98 and 99.

(2) The "tax written down value" of the ship at any time means what would be the amount of unrelieved qualifying expenditure at that time determined on the following assumptions—

(a) that the qualifying expenditure relating to the ship had been held in a single asset pool, and

(b) that there had been made to the lessor—

(i) the first-year allowance (if any) that was actually made to him,

(ii) any first-year allowance falling to be made to him that was postponed under **[**F74section 130 of the Capital Allowances Act 2001**]**, and

(iii) the maximum amount of any writing-down allowances that, on the preceding assumptions, could have been made.

(3) The references in paragraph 98(3)(b) and sub-paragraph (2) above to the amount of "unrelieved qualifying expenditure" are to **[**F75the unrelieved qualifying expenditure that would otherwise have been carried forward under Chapter 5 of Part 2 of the Capital Allowances Act 2001**]**.

(4) For the purpose of determining that amount at a time other than the beginning or end of an accounting period of the lessor, it shall be assumed that an accounting period of the lessor began or ended at that time.

Textual Amendments

F74 Words in Sch. 22 para. 100(2)(b)(ii) substituted (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. 108(29)**

F75 Words in Sch. 22 para. 100(3) substituted (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. 108(30)**

Quantitative restrictions: power to alter amounts by regulations

101 (1) The Inland Revenue may by regulations alter the amounts for the time being specified in sub-paragraph (3)(a) and (b) and sub-paragraph (5) of paragraph 94 (quantitative restrictions on allowances).

(2) The regulations may contain such incidental, supplementary and transitional provisions as appear to the Inland Revenue to be appropriate.

Exclusion of leases entered into on or before 23rd December 1999

102 The provisions of this Part do not apply in relation to a finance lease entered into on or before 23rd December 1999.

PART XI

SPECIAL RULES FOR OFFSHORE ACTIVITIES

Introduction

103 (1) This Part of this Schedule sets out special rules that apply where a qualifying ship operated by a tonnage tax company is engaged in offshore activities.

(2) The rules in this Part of this Schedule do not apply in an accounting period unless the total number of days in that period on which qualifying ships operated by that company are engaged in offshore activities exceeds 30.

Meaning of "offshore activitie"s

104 (1) In this Part of this Schedule "offshore activities" means activities in connection with the exploration or exploitation of so much of the seabed or subsoil or their natural resources as is situated in the UK sector of the continental shelf.

[F76(1A) But none of the following activities is to be regarded as an offshore activity—

(a) offshore supply services;
(b) towage, salvage or other marine assistance;
(c) anchor handling;
(d) carriage of liquids or gases;
(e) safety or rescue services;
(f) the carriage of cargo in connection with dredging.

(1B) The Treasury may make provision by order amending sub-paragraph (1A) by—

(a) adding, or
(b) varying,

any description of activity.**]**

(2) The "UK sector of the continental shelf" means—

(a) any area designated by Order in Council under section 1(7) of the M14Continental Shelf Act 1964, and
(b) any waters within the seaward limits of the territorial sea of the United Kingdom.

Textual Amendments

F76 Sch. 22 para. 104(1A), (1B) inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 15(2)**, 18(1) (with Sch. 7 paras. 19-21)

Marginal Citations

M14 1964 c. 29.

Vessels to which special provisions do not apply

F77 105 . . . . . .

Textual Amendments

F77 Sch. 22 para. 105 repealed (1.7.2005) by Finance Act 2005 (c. 7), Sch. 7 paras. 16, 18(1), **Sch. 11 Pt. 2(10)** (with Sch. 7 paras. 19-21)

Treatment of periods of inactivity

106 A period between contracts when a qualifying ship is not working shall not be taken to be a period during which the ship is engaged in offshore activities unless—

(a) the period of inactivity is specifically related to a forthcoming offshore activity, and

(b) it is impractical for the vessel to undertake other work in the meantime.

Profits from offshore activities to be computed according to ordinary rules

107 (1) The profits of a tonnage tax company from a qualifying ship in respect of periods during which the ship is engaged in offshore activities (its "offshore profits") are computed and charged to tax in accordance with ordinary corporation tax principles as if they were not part of the company's relevant shipping profits.

(2) Accordingly, the number of days in an accounting period during which a qualifying ship is so engaged shall be left out of account for the purposes of paragraph 4 (calculation of tonnage tax profits by reference to daily profit).

Application of ring fence provisions

108 (1) The provisions of Part VII (the ring fence: general provisions) apply in relation to a company's offshore activities as if they were not tonnage tax activities.

(2) The provisions of this Schedule apply in relation to a company's offshore profits as they apply to profits other than relevant shipping profits.

Chargeable gains from assets used for offshore activities

109 A period during which an asset is used for the purposes of offshore activities is treated for the purposes of paragraph 65 (chargeable gains on disposal of tonnage tax asset) as if it were a period during which the asset was not a tonnage tax asset.

Capital allowances: general

110 (1) A tonnage tax company may claim capital allowances for capital expenditure incurred in providing plant or machinery for the purposes of its offshore activities.

(2) In such a case **[**F78Part 2 of the Capital Allowances Act 2001 applies**]** as if—

(a) an asset used for the purposes of the company's offshore activities were provided by the company for those purposes on the first occasion after entry into tonnage tax on which it is brought into use for those purposes, and

(b) an amount of capital expenditure (the "notional qualifying expenditure") had been incurred at that time on its provision.

(3) The amount of the notional qualifying expenditure is given by paragraph 112 (existing assets) or paragraph 113 (new assets).

(4) Where an asset to which this paragraph applies ceases permanently to be used for the purposes of the company's offshore activities, it is treated for the purposes of **[**F79Part 2 of the Capital Allowances Act 2001**]** as it applies by virtue of this paragraph as if it had been disposed of at market value.

This does not apply if a disposal value is required to be brought into account under **[**F80section 61(1)**]** of that Act apart from this sub-paragraph.

Textual Amendments

F78 Words in Sch. 22 para. 110(2) substituted (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. 108(31)

F79 Words in Sch. 22 para. 110(4) substituted (22.3.2001 with effect as noted in 579(1)) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(32)(a)**

F80 Words in Sch. 22 para. 110(4) substituted (22.3.2001 with effect as mentioned in s. 579 of the amending Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(32)(b)**

Capital allowances: proportionate reduction of allowances

111 (1) This paragraph applies where in an accounting period of the company an asset to which paragraph 110 applies is used for the purposes of the company's offshore activities on some only of the days in the period.

(2) The amount of any writing-down allowance for that period in respect of expenditure incurred on the provision of the asset is restricted to the relevant proportion of the full allowance.

(3) Any writing-down allowance for a subsequent accounting period of the company in respect of such expenditure shall be calculated as if an allowance had been made of an amount equal to the full allowance, whether or not that amount (or any amount) was in fact claimed.

(4) For the purposes of this paragraph the full allowance means the allowance (if any) that would have been available apart from this paragraph.

(5) For the purposes of this paragraph the relevant proportion of the full allowance is given by:

$$\frac{\text{OSD}}{\text{APD}}$$

where:

OSD is the number of days in the accounting period on which the asset was used for the purposes of the company's offshore activities; and

APD is the number of days in that period.

Capital allowances: notional qualifying expenditure: existing assets

112 (1) This paragraph applies to determine the amount of notional qualifying expenditure for the purposes of paragraph 110 where the company was entitled before entry into tonnage tax to capital allowances in respect of expenditure on providing the asset.

(2) If the asset was brought into use for the purposes of the company's offshore activities immediately on entry into tonnage tax, the notional qualifying expenditure is equal to any unrelieved qualifying expenditure attributable to the asset.

[[F81](3) In this paragraph "unrelieved qualifying expenditure" means the unrelieved qualifying expenditure that would otherwise have been carried forward under Chapter 5 of Part 2 of the Capital Allowances Act 2001.**]**

(4) The amount of unrelieved qualifying expenditure attributable to plant or machinery in a class pool, or the main pool, is the proportion of the whole given by:

$$\frac{\text{AV}}{\text{PV}}$$

where:

AV is the market value of the asset concerned immediately before entry into tonnage tax, and

PV is the aggregate market value at that time of all the assets in the pool.

(5) References in this paragraph to unrelieved qualifying expenditure include qualifying expenditure to the extent to which it is unrelieved by virtue of notice having been given under **[**[F82]section 130 of the Capital Allowances Act 2001 (notice postponing first-year or writing-down allowance)**]**—

(6) If the asset was not brought into use for the purposes of the company's offshore activities immediately on entry into tonnage tax, the notional qualifying expenditure is the amount given by sub-paragraph (2) but written down in respect of the period between the company's entry into tonnage tax and the asset being brought into use for those purposes.

(7) The Inland Revenue shall make provision by regulations as to the basis on which the writing down mentioned in sub-paragraph (6) is to be done.

The regulations may make different provision for different descriptions of asset.

Textual Amendments

F81 Sch. 22 para. 112(3) substituted (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. 108(33)**

F82 Words in Sch. 22 para. 112(5) substituted (22.3.2001 with effect as mentioned in 579(1) of the amended Act) by 2001 c. 2, ss. 578, 579, **Sch. 2 para. 108(34)**

Capital allowances: notional qualifying expenditure: new assets

113 (1) This paragraph applies to determine the amount of notional qualifying expenditure for the purposes of paragraph 110 where the company was not entitled before entry into tonnage tax to capital allowances in respect of expenditure on providing the asset.

(2) If the asset was brought into use for the purposes of the company's offshore activities immediately on being acquired by the company, the notional qualifying expenditure is equal to the amount that would fall to be brought into account as qualifying expenditure under **[**[F83]Part 2 of the Capital Allowances Act 2001**]** apart from this Schedule.

(3) If the asset was not brought into use for the purposes of the company's offshore activities immediately on being acquired by the company, the notional qualifying expenditure is the amount referred to in sub-paragraph (2) written down in respect of the period between its acquisition by the company and its being brought into use for those purposes.

(4) The Inland Revenue shall make provision by regulations as to the basis on which the writing down mentioned in sub-paragraph (3) is to be done.

The regulations may make different provision for different descriptions of asset.

Textual Amendments

F83 Words in Sch. 22 para. 113(2) substituted (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. 108(35)**

The training requirement

114 (1) The fact that a qualifying ship is used for the purposes of offshore activities does not affect the training requirement but an allowance is made under this paragraph.

(2) The amount of the allowance in an accounting period is equal to the aggregate of—

(a) the cash equivalent of the training provided that would not have had to be provided, and

(b) any payments in lieu of training made that would not have had to be made,

if the days on which the ship was engaged in offshore activities had been days on which it was not engaged in tonnage tax activities.

For the purposes of paragraph (a) the cash equivalent of training shall be calculated by reference to the current rate of payments in lieu of training.

(3) The amount of the allowance may be deducted by the company in computing the amount of corporation tax payable for that accounting period, so far as that is attributable to offshore activities.

(4) If in any accounting period the company is unable to deduct the full amount of—

(a) any allowance to which it is entitled under this paragraph for that period, and

(b) any amount brought forward under this sub-paragraph,

the balance may be carried forward and set against the amount of corporation tax payable in the next accounting period, so far as that is attributable to offshore activities.

(5) No deduction may be made by a company in computing its profits from offshore activities in respect of expenditure incurred in meeting the training requirement.

Interpretation

115 Expressions used in this Part of this Schedule that are defined for the purposes of Part VIII or IX of this Schedule have the same meaning in this Part.

PART XII

GROUPS, MERGERS AND RELATED MATTERS

Meaning of "grou"p and "member of grou"p

116 In this Schedule a "group" means—

(a) all the companies controlled by an individual, or

(b) where a company that is not controlled by another person controls one or more other companies, that company and all the companies controlled by it.

References to membership of a group shall be construed accordingly.

Companies treated as controlled by an individual

117 (1) For the purposes of this Schedule an individual is treated as controlling any company that is controlled—

(a) by him alone, or

(b) by him together with one or more associates of his, or

(c) subject to sub-paragraph (2), by any associate of his, with or without any other such associates.

(2) An individual shall not be treated as controlling a company by virtue of sub-paragraph (1)(c) if he does not have any significant influence over the affairs of the company in question.

Meaning of "contro"l

118 (1) In this Schedule "control", in relation to a company, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) For the purposes of this paragraph there shall be attributed to a person—

(a) any rights or powers which another person holds on his behalf or may be required to exercise at his direction or on his behalf,

(b) any rights or powers—

(i) of a company of which he has, or he and his associates have, control, or

(ii) of any two or more such companies, and

(c) any rights or powers of any associate of his, or of any two or more associates of his.

(3) The references in paragraphs (b) and (c) of sub-paragraph (2) to rights or powers of a company or associate include rights or powers attributed to the company or associate under paragraph (a) of that sub-paragraph.

(4) The references in paragraphs (b) and (c) of sub-paragraph (2) to rights or powers of an associate do not include rights or powers attributed to the associate under those paragraphs.

Company not to be treated as member of more than one group

119 (1) For the purposes of this Schedule a company may not, at the same time, be a member—

(a) of a tonnage tax group and a qualifying non-tonnage tax group, or

(b) of more than one tonnage tax group.

(2) If the rules in paragraphs 116 to 118 would produce that result in relation to a company, the following rules apply.

(3) As between a tonnage tax group and a qualifying non-tonnage tax group, the company shall be treated as a member of the tonnage tax group and not of the non-tonnage tax group.

(4) As between two tonnage tax groups, the company shall be treated as a member of the group whose tonnage tax election was made first and not of the other tonnage tax group.

(5) In the case of group elections made at the same time, the company may choose which election it joins in.

It is treated for the purposes of this Schedule as a member of the group in respect of which that election is made and not of any other tonnage tax group.

Arrangements for dealing with group matters

120 (1) The Inland Revenue may enter into arrangements with the qualifying companies in a group for one of those companies to deal on behalf of the group in relation to matters arising under this Schedule that may conveniently be dealt with on a group basis.

(2) Any such arrangements—

(a) may make provision in relation to cases where companies become or cease to be members of a group;

(b) may make provision for or in connection with the termination of the arrangements; and

(c) may make such supplementary, incidental, consequential or transitional provision as is necessary or expedient for the purposes of the arrangements.

(3) Any such arrangements do not affect—

(a) any requirement under this Schedule that an election be made jointly by all the qualifying companies in the group; or

(b) any liability under this Schedule or any other provision of the Tax Acts of a company to which the arrangements relate.

(4) The Secretary of State may also make such arrangements in relation to matters arising under this Schedule in relation to which he has functions.

Meaning of "merge"r and "demerge"r

121 (1) In this Schedule—

"merger" means a transaction by which one or more companies become members of a group, and

"demerger" means a transaction by which one or more companies cease to be members of a group.

(2) References to a merger to which a group is a party include any merger affecting a member of the group.

Merger: between tonnage tax groups or companies

122 (1) This paragraph applies where there is a merger—

(a) between two or more tonnage tax groups,

(b) between one or more tonnage tax groups and one or more tonnage tax companies, or

(c) between two or more tonnage tax companies.

(2) In all those cases the group resulting from the merger is a tonnage tax group as if a group election had been made.

(3) That deemed election continues in force, subject to the provisions of this Schedule—

(a) if there is a dominant party to the merger, until that party's tonnage tax election would have expired;

(b) if there is no dominant party, until whichever of the existing tonnage tax elections had the longest period left to run would have expired.

Merger: tonnage tax group or company and qualifying non-tonnage tax group or company

123 (1) This paragraph applies where there is a merger between a tonnage tax group or company ("T") and a qualifying non-tonnage tax group or company ("QNT").

(2) If T is the dominant party, the group resulting from the merger is a tonnage tax group as if a group election had been made.

That deemed election continues in force, subject to the provisions of this Schedule, until T's election would have expired.

(3) If QNT is the dominant party, T's tonnage tax election ceases to be in force as from the date of the merger.

(4) If there is no dominant party—

(a) the group resulting from the merger may elect that T shall be treated as the dominant party (with the result that sub-paragraph (2) applies), and

(b) if it does not do so, T's tonnage tax election ceases to be in force as from the date of the merger.

(5) Any election under sub-paragraph (4)(a) must be made—

(a) jointly by all the qualifying companies in the group resulting from the merger,

(b) by notice to the Inland Revenue,

(c) within twelve months of the merger.

Merger: tonnage tax group or company and non-qualifying group or company

124 (1) This paragraph applies where there is a merger between a tonnage tax group or company ("T") and a non-qualifying group or company.

(2) In that case the group resulting from the merger is a tonnage tax group by virtue of T's election.

Merger: non-qualifying group or company and qualifying non-tonnage tax group or company

125 (1) This paragraph applies where there is a merger between a non-qualifying group or company ("NQ") and a qualifying non-tonnage tax group or company.

(2) In that case, if NQ is the dominant party the group resulting from the merger may make a tonnage tax election having effect as from the date of the merger.

(3) Any such election must be made—

(a) jointly by all the qualifying companies in the group resulting from the merger,

(b) by notice to the Inland Revenue,

(c) within twelve months of the merger.

Meaning of "dominant part"y in relation to merger

126 (1) This paragraph explains what is meant by the references in this Schedule to the "dominant party" in relation to a merger.

(2) The "dominant party" is determined as follows—

(a) if the turnover generated by the relevant activities of one of the parties to the merger is more than twice that of the other, that one is the dominant party;

(b) if not, there is no dominant party.

(3) The relevant activities of a party to a merger are—

(a) for the purposes of—

(i) paragraph 122 (merger between tonnage tax groups or companies), or

(ii) paragraph 123 (merger between tonnage tax group or company and qualifying non-tonnage tax group or company),

the tonnage tax activities of that party;

(b) for the purposes of paragraph 125 (merger between non-qualifying group or company and qualifying non-tonnage tax group or company), all the activities of that party.

(4) The basis on which (and the periods by reference to which) the turnover from relevant activities is to be determined for the purposes of those paragraphs shall be such as may be agreed between the parties and the Inland Revenue.

(5) In default of such agreement—

(a) the Inland Revenue shall decide, and

(b) an appeal lies to the Special Commissioners against their decision.

(6) Notice of appeal must be given to the Inland Revenue within 30 days of their decision being notified to the parties.

Demerger: single company

127 (1) This paragraph applies where a tonnage tax company ceases to be a member of a tonnage tax group and does not become a member of another group.

(2) In that case—

(a) the company in question remains a tonnage tax company as if a single company election had been made, and

(b) that deemed election continues in force, subject to the provisions of this Schedule, until the group election would have expired.

(3) If two or more members of the previous group remain, and any of them is a qualifying company, the group consisting of those companies is a tonnage tax group by virtue of the previous group election.

Demerger: group

128 (1) This paragraph applies where a tonnage tax group splits into two or more groups.

(2) In that case each new group that contains a qualifying company that was a tonnage tax company before the demerger is a tonnage tax group as if a group election had been made.

(3) That deemed election continues in force, subject to the provisions of this Schedule, until the group election would have expired.

Duty to notify Inland Revenue of group changes

129 (1) A tonnage tax company that becomes or ceases to be a member of a group, or of a particular group, must give notice to the Inland Revenue of that fact.

(2) The notice must be given within the period of twelve months beginning with the date on which the company became or ceased to be a member of the group.

(3) In the second column of the Table in section 98 of the [M15]Taxes Management Act 1970 (penalties for failure to provide information etc.), after the final entry insert—

	"Paragraph 129 of Schedule 22 to the Finance Act 2000.."

Marginal Citations
M15 1970 c. 9.

PART XIII

APPLICATION OF PROVISIONS TO PARTNERSHIPS

Introduction

130 (1) The Inland Revenue may make provision by regulations as to the application of this Schedule in relation to activities carried on by a company in partnership.

(2) Nothing in the following provisions of this Part of this Schedule shall be read as restricting the generality of this power.

Calculation of partnership profits

131 The regulations may provide that—

(a) for the purpose of calculating the profits of a partner which is a tonnage tax company, the profits of the partnership shall be calculated as if the partnership were a tonnage tax company, and

(b) for the purpose of calculating the profits of a partner which is not a tonnage tax company, the profits of the partnership shall be calculated as if the partnership were not a tonnage tax company.

Qualifying partnerships

132 (1) The regulations may provide that activities carried on by a company in partnership are not to be regarded as qualifying activities of that company unless the partnership is a qualifying partnership.

"Qualifying activities" here means core qualifying activities, qualifying secondary activities or qualifying incidental activities.

(2) Subject to any provision made by the regulations, a "qualifying partnership" means a partnership that if it were a company would meet the requirements in paragraph 16(1) (qualifying companies).

Ships owned by or chartered to partners

133 The regulations may provide that a ship which is not partnership property but which—

(a) is owned by or chartered to a member (or two or more members) of a partnership, and

(b) is a ship in relation to which activities of the partnership business are carried on,

shall be treated as if it were owned by or chartered to every member of the partnership and as if everything done by or to any of the partners in relation to it had been done by or to all the partners.

Transactions not at arm's length

134 The regulations may provide that for the purposes of paragraphs 58 and 59 (transactions not at arm's length) the partnership shall be treated—

(a) as an entity separate and distinct from the persons that are its members, and

(b) as if it were a tonnage tax company.

Adjustments for capital allowance purposes

135 The regulations may provide that where a partner leaves tonnage tax, such adjustments shall be made for capital allowance purposes, in relation to that partner and all or any of the other partners, with respect to—

(a) the amount of qualifying expenditure under **[**F84Part 2 of the Capital Allowances Act 2001 (plant and machinery allowances)**]**, and

(b) the amount of **[**F85the residue of qualifying expenditure under Part 3 of that Act(industrial buildings allowances)**]**,

as may be specified in the regulations.

Textual Amendments

F84 Words in Sch. 22 para. 135(a) substituted (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. 108(36)**

F85 Words in Sch. 22 para. 135(b) substituted (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. 108(36)**

General

136 Regulations under this Part of this Schedule—

(a) may make different provision for different cases, and

(b) may contain such supplementary, incidental and transitional provision as appears to the Inland Revenue to be appropriate.

PART XIV

WITHDRAWAL OF RELIEF ETC. ON COMPANY LEAVING TONNAGE TAX

Introduction

137 (1) This Part of this Schedule applies where a company ceases to be a tonnage tax company.

(2) The provisions of paragraphs 138 and 139 (exit charges: chargeable gains and balancing charges) apply where a company ceases to be a tonnage tax company—

(a) on ceasing to be a qualifying company for reasons relating wholly or mainly to tax, or

(b) under paragraph 42 (exclusion from tonnage tax where tax avoidance arrangements entered into).

(3) Paragraph 140 (ten year disqualification from re-entry into tonnage tax) applies in every case where a company ceases to be a tonnage tax company otherwise than on the expiry of a tonnage tax election.

Exit charge: chargeable gains

138 (1) Paragraph 65(1)(a) (chargeable gain: disposal of tonnage tax assets) has effect in relation to gains (but not losses) on all relevant disposals as if the company had never been a tonnage tax company.

(2) For this purpose a "relevant disposal" means a disposal—

(a) on or after the day on which the company ceases to be a tonnage tax company, or

(b) at any time during the period of six years immediately preceding that day when the company was a tonnage tax company.

(3) Where sub-paragraph (1) operates to increase the amount of the chargeable gain on a disposal made at a time within the period mentioned in sub-paragraph (2)(b), the gain is treated to the extent of the increase—

(a) as arising immediately before the company ceased to be a tonnage tax company, and

(b) as not being relevant shipping profits of the company.

(4) No relief, deduction or set-off of any description is allowed against the amount of that increase or the corporation tax on that amount.

Exit charge: balancing charges

139 (1) This paragraph applies if in a relevant accounting period during which the company was a tonnage tax company it was liable to a balancing charge in relation to which paragraph 78 (phasing-out of balancing charges) applied to reduce the amount of the charge.

(2) For this purpose a "relevant accounting period" means an accounting period ending not more than six years before the day on which the company ceased to be a tonnage tax company.

(3) The company is treated as having received an additional amount of profits chargeable to corporation tax equal to the aggregate of the amounts by which those balancing charges were reduced.

(4) Those additional profits are treated—

(a) as arising immediately before the company ceased to be a tonnage tax company, and

(b) as not being relevant shipping profits of the company.

(5) No relief, deduction or set-off of any description is allowed against those profits or against corporation tax on them.

Ten year disqualification from re-entry into tonnage tax

140 (1) A company election made by a former tonnage tax company is ineffective if made before the end of the period of ten years beginning with the date on which the company ceased to be a tonnage tax company.

(2) A group election that—

(a) is made in respect of a group whose members include a former tonnage tax company, and

(b) would result in that company becoming a tonnage tax company,

is ineffective if made before the end of the period of ten years beginning with the date on which that company ceased to be a tonnage tax company.

(3) Sub-paragraphs (1) and (2) do not prevent a company becoming a tonnage tax company under and in accordance with the rules in Part XII of this Schedule (groups, mergers and related matters).

(4) In this paragraph "former tonnage tax company" means a company that is not a tonnage tax company but has previously been a tonnage tax company.

Second or subsequent application of this Part

141 Where this Part of this Schedule applies on a second or subsequent occasion on which a company ceases to be a tonnage tax company (whether or not this Part applied on any of the previous occasions)—

(a) the references to the company ceasing to be a tonnage tax company shall be read as references to the last occasion on which it did so, and

(b) the references to the period during which the company was a tonnage tax company do not include any period before its most recent entry into tonnage tax.

PART XV

SUPPLEMENTARY PROVISIONS

Meaning of "shi"p

142 In this Schedule "ship" means any vessel used in navigation, and includes a hovercraft.

Meaning of "on bareboat charter term"s

143 In this Schedule a charter "on bareboat charter terms" means a hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew.

Meaning of "associat"e

144 (1) In this Schedule "associate", in relation to an individual, means—

(a) a relative of that individual;

(b) a partner of that individual;

(c) the trustee or trustees of any settlement in relation to which—

(i) that individual, or

(ii) any relative (whether living or dead) of that individual,

is or was a settlor;

(d) where that individual is interested in any shares or obligations of a company that are subject to a trust, the trustee or trustees of the settlement concerned;

(e) where that individual is interested in any shares or obligations of a company that are part of the estate of a deceased person, the personal representatives of the deceased.

(2) In sub-paragraph (1)(a) and (c)(ii) "relative" means **[**[F86]spouse or civil partner**]**, parent or remoter forebear, child or remoter issue, or brother or sister.

Section 831(4) of the Taxes Act 1988 applies for the purposes of this paragraph as it applies for the purposes of that Act.

(3) In sub-paragraph (1)(c) and (d) "settlement" and "settlor" have the same meaning as in **[**[F87]Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)**]**.

Textual Amendments

F86 Words in Sch. 22 para. 144(2) substituted (5.12.2005) by Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **133**

F87 Words in Sch. 22 para. 144(3) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 522** (with Sch. 2)

Exercise of functions conferred on "the Inland Revenu"e

145 (1) Any power to make regulations conferred by this Schedule on "the Inland Revenue" is exercisable only by the Board.

(2) Subject to that, references in this Schedule to "the Inland Revenue" are to any officer of the Board.

Meaning of "compan"y and related expressions

146 In this Schedule—

"company" means a body corporate or unincorporated association, but does not include a partnership;

"controlled foreign company" has the same meaning as in Chapter IV of Part XVII of the Taxes Act 1988 (tax avoidance: controlled foreign companies);

"single company" means a company that is not a member of a group.

Index of defined expressions

147 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

associate (of an individual)	paragraph 144
bareboat charter terms	paragraph 143
capital allowances (in Part IX)	paragraph 88(1)
certificate of non-compliance (with training requirement)	paragraph 32
company	paragraph 146
company election	paragraph 7(1)(a)
control	paragraph 118 (and see paragraph 117)
controlled foreign company	paragraph 146
core qualifying activities	paragraph 46
cost of providing the ship (in Part X)	paragraph 96
demerger	paragraph 121(1)
dominant party (in relation to a merger)	paragraph 126
entering (or leaving) tonnage tax	paragraph 2(2)
finance costs (in paragraphs 61 and 62)	paragraph 63
F88	**F88**
. . .	. . .
group	paragraph 116
group election	paragraph 7(1)(b)
initial period	paragraph 10(1) (and see paragraph 11(2))
Inland Revenue	paragraph 145
[F89lease (and lessor and lessee) (in Part X)**]**	**[**F89paragraph 89(2)**]**
leaving (or entering) tonnage tax	paragraph 2(2)
member of group	paragraph 116
[F90Member States' registers**]**	**[**F90paragraph 22B(7)**]**
merger	paragraph 121(1)
minimum training obligation	paragraph 24
offshore activities (in Part XI)	paragraph 104
offshore profits (in Part XI)	paragraph 107(1)
payments in lieu of training	paragraph 29

pooling and related expressions (in Parts IX, X and XI)	paragraph 88(2) and (3)
operating (a ship)	paragraph 18
qualifying activity and qualifying expenditure (in Parts IX, X and XI)	paragraph 88(1)
qualifying company	paragraph 16(1) (and see paragraph 17)
[[F90]qualifying dredger**]**	**[**[F90]paragraph 20(7)**]**
qualifying group	paragraph 16(2)
qualifying incidental activities	paragraph 48
qualifying secondary activities	paragraph 47
qualifying ship	paragraphs 19 to 22
relevant shipping income	paragraph 44(2)
relevant shipping profits	paragraph 44(1) (and see paragraph 108(2))
renewal election	paragraph 15(1)
the 75% limit (on chartered-in tonnage)	paragraph 37
ship	paragraph 142
single company	paragraph 146
subject to tonnage tax	paragraph 2(2)
tonnage	paragraph 6(1)
tonnage tax	paragraph 1(1)
tonnage tax activities	paragraph 45 (and see paragraph 108(1))
tonnage tax asset (in Parts VIII and XI)	paragraph 64
tonnage tax company	paragraph 2(1)
tonnage tax election	paragraph 1(2) (and see Part II)
tonnage tax group	paragraph 2(1)
tonnage tax pool (in Part IX)	paragraph 69
tonnage tax profits	paragraphs 3 to 5 (and see Part XI)
tonnage tax trade	paragraph 53(1)
training commitment	paragraph 25 (and see paragraphs 27(4) and (5) and 28(2))

Textual Amendments

F88 Words in Sch. 22 para. 147 repealed (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 2(2)(a), **Sch. 43 Pt. 3(11)** (with Sch. 32 para. 4)

F89 Words in Sch. 22 para. 147 inserted (10.7.2003) (with effect in accordance with Sch. 32 para. 3 of the amending Act) by Finance Act 2003 (c. 14), Sch. 32 para. 2(2)(b) (with Sch. 32 para. 4)

F90 Words in Sch. 22 para. 147 inserted (1.7.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 17(2)**, 18(1) (with Sch. 7 paras. 19-21)

Status:
Point in time view as at 12/07/2006.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2000, SCHEDULE 22.