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SCHEDULES

SCHEDULE 1

Section 6.

MIXING OF REBATED LIGHT OILS

Converting unleaded petrol into leaded petrol

1 (1) In paragraph 1(1) of Schedule 2A to the [M1]Hydrocarbon Oil Duties Act 1979 (converting unleaded petrol into leaded petrol), before paragraph (a) insert—

"(aa) adding lead to unleaded petrol in respect of which duty has been charged at the rate specified in section 6(1A)(a);".

(2) In paragraph 8 of that Schedule (rate for mixtures of light oil), for sub-paragraph (2) substitute—

"(2) In the case of a mixture produced in contravention of paragraph 1 above, the rate is the rate in force under section 6(1A)(b) at the time the mixture is produced.".

Marginal Citations

M1 1979 c. 5.

Converting unleaded petrol into higher octane unleaded petrol

[F1]2 . . . . . .

Textual Amendments

F1 Sch. 1 para. 2 repealed (*retrospective* to 6 p.m. on 7.3.2001) by 2001 c. 9, ss. 2(5), 110(1), **Sch. 33 Pt. I(1)** Note

Mixing different kinds of unleaded petrol

3 (1) After paragraph 2 of that Schedule insert—

" Mixing different kinds of unleaded petrol

2A (1) A mixture which is unleaded petrol is produced in contravention of this paragraph if the mixture is produced by mixing unleaded petrol of any two or more of the following descriptions—

(a) petrol on which duty has been paid at the rate specified in section 6(1A)(a),

(b) petrol in respect of which a rebate has been allowed under section 13A(1A)(b),

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(c) petrol in respect of which a rebate has been allowed under section 13A(1A)(a),

where the mixture produced is petrol of a description subject to a higher effective rate of duty than one or more of the ingredients of the mixture.

(2) The comparison required by sub-paragraph (1) shall be made by reference to the effective rates of duty in force at the time the mixture is produced.

(3) This paragraph is subject to any direction given under paragraph 3.".

(2) In paragraph 3 of that Schedule, for "paragraph 1 above or (as the case may be) paragraph 2 above" substitute " paragraph 1, 2 or 2A above ".

(3) In paragraph 8 of that Schedule, after sub-paragraph (3) insert—

"(3A) In the case of a mixture produced in contravention of paragraph 2A above, the rate is—

(a) in the case of a mixture that is higher octane unleaded petrol, the rate produced by deducting from the rate in force under section 6(1A)(b) at the time the mixture is produced the rebate which at that time is in force under section 13A(1A)(a);

(b) in the case of a mixture that is neither higher octane unleaded petrol nor ultra low sulphur petrol, the rate produced by deducting from the rate in force under section 6(1A)(b) at the time the mixture is produced the rebate which at that time is in force under section 13A(1A)(b).".

F2(4) . . . . . .

Textual Amendments

F2 Sch. 1 para. 3(4) repealed (*retrospective* to 6 p.m. on 7.3.2001) by 2001 c. 9, ss. 2(5), 110(1), **Sch. 33 Pt I(1)** Note

Interpretation

F3 4 . . . . . .

Textual Amendments

F3 Sch. 1 para. 4 repealed (*retrospective*to 6 p.m. on 7.3.2001) by 2001 c. 9, ss. 2(5), 110(1), **Sch. 33 Pt I(1)** Note

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SCHEDULE 2

Section 17.

AMUSEMENT MACHINE LICENCE DUTY

Introduction

1 The [M2]Betting and Gaming Duties Act 1981 is amended as follows.

Marginal Citations
M2 1981 c. 63.

Exceptions from requirement to be licensed

2 In section 21(3A) (types of amusement machine excepted from requirement to be licensed) in paragraph (b) (five-penny machine which is a small-prize machine) for "five-penny machine" substitute " ten-penny machine ".

Amusement machine licence duty

3 (1) In section 22(2) (definition of small-prize machines)—

(a) after "Act" insert " (a) ";

[F4](b) . . . . . .

(c) at the end insert—

"(b) an amusement machine is a medium-prize machine if it is a prize machine and the value or aggregate value of the benefits in money or money's worth, which any player who is successful in a single game played by means of the machine may receive, can exceed £8 but cannot exceed £15.".

(2) In section 22(3) (power of Commissioners to amend the sum mentioned in the definition of prize machines), for "the sum" substitute " a sum ".

Textual Amendments
F4 Sch. 2 para. 3(1)(b) omitted (retrospective to 1.6.2009) by virtue of Finance Act 2009 (c. 10), **s. 22(11)(a)**(12)

Amount of duty

4 (1) In section 23(2) (amount of duty)—

(a) in paragraph (b) for "column 2, column 3 or column 4 of the Table" substitute " Category A, Category B, Category C, Category D or Category E ";

(b) for "the rate in column 2, the rate in column 3, or the rate in column 4" substitute " the rate for the category of machine in question in column 2, 3, 4, 5 or 6 of the Table ";

(c) for the Table substitute—

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" TABLE

(1) Period (in months) for which licence granted	(2) Category A	(3) Category B	(4) Category C	(5) Category D	(6) Category E
	£	£	£	£	£
1	30	80	80	165	220
2	50	150	160	320	425
3	75	220	230	470	615
4	95	285	300	605	800
5	120	345	360	735	970
6	140	400	420	855	1,125
7	160	450	475	965	1,270
8	185	500	525	1,065	1,405
9	205	540	570	1,155	1,525
10	225	580	610	1,240	1,635
11	240	615	650	1,310	1,730
12	250	645	680	1,375	1,815"

(2) At the end of section 23 insert—

"(3) The machines comprised in each category referred to in this section are as follows—

Category A: any machine which is not a gaming machine;

Category B: any gaming machine which is a small-prize machine or five-penny machine;

Category C: any gaming machine which is a medium-prize machine, unless it is also a five-penny machine;

Category D: any gaming machine which is a ten-penny machine, unless it is also—

(a) a five-penny machine,
(b) a small-prize machine, or
(c) a medium-prize machine;

Category E: any machine which is not in any other category.".

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Meaning of amusement machine

5 (1) In section 25 (meaning of amusement machine), in paragraph (b) of subsection (1B) (meaning of video machine) omit ", other than one consisting only in a blank surface onto which light is projected".

(2) In that section, in subsection (7) (application of provisions to a machine that falls to be treated as more than one machine) omit the word "or" at the end of paragraph (c) and after that paragraph insert—

"(cc) medium-prize machines,
(cd) ten-penny machines, or".

Supplementary provisions

6 In section 26(2) (definitions), after the definition of "five-penny machine" insert—

""ten-penny machine" means an amusement machine which can only be played by the insertion into the machine of coins of a denomination, or aggregate denomination, not exceeding 10p;".

Paragraphs 2 to 6: commencement

7 (1) Paragraphs 2 to 4, 5(2) and 6 shall have effect in relation to any amusement machine licence for which an application is received by the Commissioners of Customs and Excise after 4th August 2000.

(2) Paragraph 5(1) shall have effect on and after the day on which this Act is passed.

Seasonal licences: duration

8 (1) Amend paragraph 4 of Schedule 4 as follows.

(2) In sub-paragraph (2) (which provides for a seasonal licence to remain in force during October of the year for which it is granted) for the words from "during October of that year" to the end substitute "the provision of that number of relevant machines on the premises during the period in that year—

(a) beginning with 1st October; and
(b) ending with the Sunday before the first Monday in November.".

(3) In sub-paragraph (8) (meaning of "winter period") for "November to February" substitute " the period beginning with the first Monday in November and ending with the last day of February ".

(4) Sub-paragraph (2) applies in relation to any licence expressed to be granted for a period beginning with 1st April in 2000 or any subsequent year.

(5) Sub-paragraph (3) has effect for determining what was comprised in the winter period beginning in 1999, and for determining what is comprised in any subsequent winter period.

Unlicensed amusement machines: duty chargeable

9 After section 24 insert—

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"**24A Unlicensed machines: duty chargeable.**

Schedule 4A to this Act (which provides for the recovery of amusement machine licence duty in relation to unlawfully unlicensed machines) shall have effect.".

10 (1) After Schedule 4 insert—

"SCHEDULE 4A

UNLICENSED AMUSEMENT MACHINES

Application

1 This Schedule applies where it appears to the Commissioners that an amusement machine is or was provided for play on premises in contravention of section 21(1) or 24(3) or (4) of this Act.

Default notice requesting production of licence

2 (1) The Commissioners may give a notice which complies with the requirements of sub-paragraphs (3) and (4) below.

(2) In this Schedule such a notice is referred to as a "default notice".

(3) The notice shall state that one or more amusement machines appear to have been provided for play on specified premises ("relevant premises") during a specified period (the "alleged default period")—

(a) the first day of which falls not more than three years before the date of the notice, and

(b) the last day of which falls on or before the date of the notice.

(4) The notice shall request the production to the Commissioners on or before a specified date (the "due date") of every relevant amusement machine licence.

(5) For the purposes of sub-paragraph (4) above an amusement machine licence is a relevant licence if, at any time during the alleged default period, it was in force in relation to an amusement machine provided for play on the relevant premises at that time.

(6) A single default notice may relate to—

(a) different alleged default periods, or

(b) different relevant premises.

(7) A default notice shall be deemed to have been given if it is—

(a) left at, or posted to, the relevant premises, or

(b) given to, or posted to or left at the proper address of one or more persons falling within sub-paragraph (8) below.

(8) Those persons are—

(a) one or more of the persons who are or appear to be, or who at any time during the alleged default period were or appear to have

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been, responsible persons in relation to the relevant premises or an amusement machine provided for play on those premises, or

(b) any person who is the representative of such a person.

Failure to produce a licence: grant of default licence

3 (1) In any case where—

(a) the Commissioners give a default notice,

(b) the due date specified in the notice passes, and

(c) it appears to the Commissioners that at some time during the alleged default period specified in the notice one or more amusement machines were provided for play on the relevant premises so specified without an amusement machine licence being in force in relation to the machines,

the Commissioners may grant, in accordance with this paragraph, one or more licences in relation to each of the machines.

(2) In this Schedule—

"default licence" means a licence granted by the Commissioners under sub-paragraph (1) above;

"unlicensed machine" means a machine in relation to which a default licence is granted by the Commissioners.

(3) The Commissioners may grant a separate default licence for each period of consecutive days—

(a) which falls within the alleged default period, and

(b) for which no amusement machine licence in force in relation to the unlicensed machine was produced.

(4) The Commissioners may grant a default licence in relation to an unlicensed machine even though the period of that licence would include a day or days when the unlicensed machine was provided for play in contravention of section 21(1) or 24(3) or (4) of this Act on premises other than the relevant premises specified in the applicable default notice.

(5) In a case where the Commissioners grant a default licence in accordance with sub-paragraph (4) above, references in this Schedule to the relevant premises shall be construed in relation to any particular time as references to the premises on which the machine was provided for play at that time.

(6) The Commissioners may grant a default licence even though no application has been made for it.

(7) A default licence may be granted for a period of any length (whether or not a licence under Schedule 4 to this Act could be granted for a period of that length).

Assessment of amount equivalent to duty

4 (1) This paragraph applies where a default licence is granted in relation to an unlicensed machine.

(2) The Commissioners may, subject to the following provisions of this paragraph, assess to the best of their judgement the amount which would

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have been payable under this Act as amusement machine licence duty if the default licence had been an amusement machine licence granted under Schedule 4 to this Act.

(3) The Commissioners shall make the assessment using the rates of amusement machine licence duty which apply in relation to amusement machine licences granted in consequence of applications received by the Commissioners on the due date.

(4) If the period of the licence is 12 months or less, the assessment shall be made as if an amusement machine licence had been granted in relation to the unlicensed machine for that period.

(5) If the period of the licence is longer than 12 months, the assessment shall be made as if—

(a) a separate amusement machine licence had been granted in relation to the unlicensed machine for each complete period of 12 months falling wholly within the period of the licence, and

(b) a further amusement machine licence had been granted in relation to the unlicensed machine for any remaining part of the period of the licence.

(6) Sub-paragraphs (7) and (8) below shall apply in relation to an assessment to be made in any case where—

(a) the period of a licence mentioned in sub-paragraph (4) above, or

(b) the part of the period mentioned in sub-paragraph (5)(b) above,

is not a period of complete months.

(7) Any period of less than a month comprised in the period or the part of the period shall be treated as a complete month; and accordingly the period or the part of the period in question shall be treated as if it consisted of a complete month or, as the case may be, complete months.

(8) The amusement machine licence treated as granted for such a period, or for such a part of a period, shall be treated as having been—

(a) granted for that period, or that part of the period, as extended in accordance with sub-paragraph (7) above, and

(b) surrendered at the end of the last day of the period mentioned in sub-paragraph (4) above or, as the case may be, of the part of the period mentioned in sub-paragraph (5)(b) above.

Liability to pay

5 (1) Where an amount has been assessed under paragraph 4 above and notified to a responsible person or his representative, that amount—

(a) shall be deemed to be an amount of duty charged in accordance with section 22 of this Act on an amusement machine licence within the meaning of section 21 of this Act,

(b) shall be due from the responsible person, and

(c) may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.

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(2) The responsible persons to whom an assessment may be notified are any one or more of the persons who are or appear to be, or at any time during the period to which the assessment relates were or appear to have been, responsible persons in relation to the unlicensed machine or the relevant premises.

(3) An assessment shall be deemed to have been notified to a person if it is—

(a) given to him, or

(b) left at or posted to his proper address.

(4) But an assessment shall not be deemed to have been notified to a person unless and until—

(a) the default licence in relation to which the assessment has been made, or

(b) a copy of that licence,

has been given to him, or left at or posted to his proper address.

(5) Where an amount has been assessed and notified to more than one responsible person (or his representative), that amount shall be recoverable jointly and severally from any or all of the responsible persons.

(6) Arrangements made in accordance with paragraph 7A of Schedule 4 to this Act do not apply in relation to an amount assessed and notified in accordance with this paragraph.

Reviews and time limits on recovery

6 (1) Section 14 of the [M3]Finance Act 1994 (reviews of decisions) shall apply to so much of any decision by the Commissioners as is of any of the kinds mentioned in sub-paragraph (2) below, as it applies to the decisions mentioned in subsection (1) of that section.

(2) Those decisions are—

(a) any decision that a default licence should be granted,

(b) any decision contained in an assessment under paragraph 4 above that a person is liable to pay an amount of duty, and

(c) any decision contained in an assessment under paragraph 4 above as to the amount of a person's liability.

(3) Sub-paragraph (4) below applies where the Commissioners—

(a) have given a default notice, and

(b) in consequence of so doing have granted a default licence.

(4) An assessment made under paragraph 4 above in relation to the default licence may not be notified to a responsible person (or his representative) at any time after the end of the period of one year beginning with the due date specified in the default notice.

(5) The reference to three years in paragraph 2(3)(a) above shall have effect as if it were a reference to twenty years in any case where sub-paragraph (6) or (7) below applies.

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(6) This sub-paragraph applies where an amusement machine has been provided for play in circumstances where a person—

(a) has, by virtue of conduct engaged in for the purpose of evading any amount of amusement machine licence duty, become liable to a penalty under section 8 of the Finance Act 1994, or

(b) has been convicted of an offence under section 24(6) of this Act.

(7) This sub-paragraph applies where an amusement machine has been provided for play in circumstances where proceedings for an offence under section 24(6) of this Act would have been commenced or continued against a person (whether or not the person assessed), but for their having been compounded under section 152(a) of the [M4]Customs and Excise Management Act 1979.

General interpretation

7 (1) The following provisions of this paragraph apply for the purposes of this Schedule.

(2) A person is a responsible person in relation to an amusement machine at a particular time if, at that time, he is or was—

(a) the owner or hirer of the machine, or

(b) a party to any contract under which the machine may be, or may have been, or is or was required to be, on the relevant premises at that time.

(3) A person is a responsible person in relation to relevant premises at a particular time if, at that time, he is or was—

(a) the owner, lessee or occupier of the premises, or

(b) responsible to the owner, lessee or occupier for the management of the premises, or

(c) responsible for issuing or exchanging coins or tokens for use in playing any amusement machine on the premises, or otherwise for controlling the use of any such machine, or

(d) responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with any goods or services.

(4) A person's representative is—

(a) his personal representative,

(b) his trustee in bankruptcy,

(c) any receiver or liquidator appointed in relation to him or any of his property, or

(d) any other person acting in a representative capacity in relation to him.

(5) The proper address of a person is—

(a) in the case of a body corporate, its registered office or principal office, and

(b) in any other case—

(i) his last known place of abode or business, or

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(ii) any vessel or aircraft to which he may belong or have lately belonged.

(6) An item is only to be treated as posted to an address or place if it has been sent there by registered post or the recorded delivery service.

Saving for liability

8 The grant of a default licence in relation to an unlicensed machine shall be without prejudice to any liability arising under section 24 of this Act in relation to the machine.".

(2) This paragraph has effect in relation to amusement machines which appear to the Commissioners of Customs and Excise to have been provided for play on premises in contravention of section 21(1) or 24(3) or (4) of the [M5]Betting and Gaming Duties Act 1981 on or after the day falling three years before the day on which this Act is passed.

Marginal Citations

M3 1994 c. 9.
M4 1979 c. 2.
M5 1981 c. 63.

SCHEDULE 3

Section 22.

VEHICLE EXCISE DUTY ON NEW CARS AND VANS

After Part I of Schedule 1 to the [M6]Vehicle Excise and Registration Act 1994, insert—

"**PART IA**

LIGHT PASSENGER VEHICLES: GRADUATED RATES OF DUTY

Vehicles to which this Part applies

1A (1) This Part of this Schedule applies to a vehicle which—

(a) is first registered on or after 1st March 2001, and

(b) is so registered on the basis of an EC certificate of conformity or UK approval certificate that—

(i) identifies the vehicle as having been approved as a light passenger vehicle, and

(ii) specifies a CO_2 emissions figure in terms of grams per kilometre driven.

(2) In sub-paragraph (1)(b)(i) a "light passenger vehicle" means a vehicle within Category M1 of Annex II to Council Directive 70/156/EEC (vehicle with at least four wheels used for carriage of passengers and comprising no more than 8 seats in addition to the driver's seat).

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(3) For the purposes of this Part of this Schedule "the applicable CO_2 emissions figure" is—

(a) where the EC certificate of conformity or UK approval certificate specifies only one CO_2 emissions figure, that figure, and

(b) where it specifies more than one, the figure specified as the CO_2 emissions (combined) figure.

(4) Where the car is registered on the basis of an EC certificate of conformity, or UK approval certificate, that specifies separate CO_2 emissions figures in terms of grams per kilometre driven for different fuels, "the applicable CO_2 emissions figure" is the lowest figure specified or, in a case within sub-paragraph (3)(b), the lowest CO_2 emissions (combined) figure specified.

(5) If a vehicle is on first registration a vehicle to which this Part of this Schedule applies—

(a) its status as such a vehicle, and

(b) the applicable CO_2 emissions figure,

are not affected by any subsequent modification of the vehicle.

Graduated rates of duty

1B The annual rate of vehicle excise duty applicable to a vehicle to which this Part of this Schedule applies shall be determined in accordance with the following table by reference to—

(a) the applicable CO_2 emissions figure, and

(b) whether the vehicle qualifies for the reduced rate of duty, or is liable to the standard rate or the premium rate of duty.

CO_2 emissions figure		**Rate**		
(1)	**(2)**	**(3)**	**(4)**	**(5)**
Exceeding	**Not Exceeding**	**Reduced rate**	**Standard rate**	**Premium rate**
g/km	**g/km**	**£**	**£**	**£**
	150	90	100	110
150	165	110	120	130
165	185	130	140	150
185		150	155	160

The reduced rate

1C (1) A vehicle qualifies for the reduced rate of duty if condition A, B or C below is met.

(2) Condition A is that the vehicle is constructed or modified—

(a) so as to be propelled by a prescribed type of fuel, or

(b) so as to be capable of being propelled by any of a number of prescribed types of fuel,

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and complies with any other requirements prescribed for the purposes of this condition.

(3) Condition B is that the vehicle—

(a) incorporates before its first registration equipment enabling it to meet such vehicle emission standards as may be prescribed for the purposes of this condition, and

(b) has incorporated such equipment since its first registration.

(4) Condition C is that the vehicle is of a description certified by the Secretary of State, before the vehicle's first registration, as meeting such vehicle emission standards as may be prescribed for the purposes of this condition.

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

(a) for the making of an application to the Secretary of State for the issue of a certificate under sub-paragraph (4);

(b) for the manner in which any determination of whether to issue such a certificate on such an application is to be made;

(c) for the examination of one or more vehicles of the description to which the application relates, for the purposes of the determination mentioned in paragraph (b), by such persons, and in such manner, as may be prescribed;

(d) for a fee to be paid for such an examination;

(e) for the form and content of such a certificate;

(f) for the revocation, cancellation or surrender of such a certificate;

(g) for the fact that such a certificate is, or is not, in force in respect of a description of vehicle to be treated as having conclusive effect for the purposes of this Act as to such matters as may be prescribed; and

(h) for appeals against any determination not to issue such a certificate.

The standard rate

1D A vehicle is liable to the standard rate of duty if it does not qualify for the reduced rate and is not liable to the premium rate.

The premium rate

1E (1) A vehicle is liable to the premium rate of duty if—

(a) it is constructed or modified so as to be propelled solely by diesel, and

(b) it is not of a prescribed description.

(2) In sub-paragraph (1)(a) "diesel" means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council.

Meaning of "prescribe"d

1F In this Part of this Schedule "prescribed" means prescribed by regulations made by the Secretary of State with the consent of the Treasury.

Meaning of "EC certificate of conformit"y and "UK approval certificat"e

1G (1) References in this Part of this Schedule to an "EC certificate of conformity" are to a certificate of conformity issued by a manufacturer under any provision of the

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law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as amended.

(2) References in this Part of this Schedule to a "UK approval certificate" are to a certificate issued under—

(a) section 58(1) or (4) of the [M7]Road Traffic Act 1988, or

(b) Article 31A(4) or (5) of the [M8]Road Traffic (Northern Ireland) Order 1981.

PART IB

LIGHT GOODS VEHICLES

Vehicles to which this Part applies

1H (1) This Part of this Schedule applies to a vehicle which—

(a) is first registered on or after 1st March 2001, and

(b) is so registered on the basis of an EC certificate of conformity or UK approval certificate that identifies the vehicle as having been approved as a light goods vehicle.

(2) In sub-paragraph (1)(b) a "light goods vehicle" means a vehicle within Category N1 of Annex II to Council Directive 70/156/EEC (vehicle with four or more wheels used for carriage of goods and having a maximum mass not exceeding 3.5 tonnes).

(3) If a vehicle is on first registration a vehicle to which this Part of this Schedule applies its status as such a vehicle is not affected by a subsequent modification of the vehicle.

(4) In this paragraph "EC certificate of conformity" and "UK approval certificate" have the same meaning as in Part IA of this Schedule.

Annual rate of duty

1J The annual rate of vehicle excise duty applicable to a vehicle to which this Part of this Schedule applies is £160.".

Marginal Citations

M6 1994 c. 22.

M7 1988 c. 52.

M8 S.I. 1981/154 (N.I. 1).

Marginal Citations

M6 1994 c. 22.

M7 1988 c. 52.

M8 S.I. 1981/154 (N.I. 1).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 4

Section 23.

VEHICLE EXCISE DUTY: ENFORCEMENT PROVISIONS FOR GRADUATED RATES

Introduction

1 (1) This Schedule applies to vehicles in respect of which different rates of vehicle excise duty are, under the provisions listed below, chargeable in respect of vehicles by reference to characteristics of the vehicle.

(2) The provisions referred to in sub-paragraph (1) are—

Part I of Schedule 1 to the [M9]Vehicle Excise and Registration Act 1994 (the general rate),

Part IA of that Schedule (graduated rates for light passenger vehicles first registered on or after 1st March 2001), or

Part II of that Schedule (motorcycles).

Marginal Citations

M9 1994 c. 22.

Particulars to be furnished on application for licence

2 (1) The Secretary of State may make provision by regulations as to the particulars to be furnished on an application for a vehicle licence in respect of a vehicle to which this Schedule applies.

(2) The regulations may make different provision for different descriptions of vehicle and different descriptions of licence.

(3) The prescribed particulars may include—

(a) particulars other than those required for the purposes of vehicle excise duty, and

(b) particulars other than with respect to the vehicle in respect of which the licence is to be taken out.

(4) Every person making an application with respect to which regulations under this paragraph are in force shall—

(a) furnish such particulars as may be prescribed by the regulations, and

(b) make such a declaration as may be specified by the Secretary of State.

(5) A person applying for a licence need not make the declaration specified for the purposes of sub-paragraph (4)(b) if he agrees to comply with such conditions as may be specified in relation to him by the Secretary of State.

The conditions which may be specified include—

(a) a condition that the prescribed particulars are furnished by being transmitted to the Secretary of State by such electronic means as he may specify; and

(b) a condition requiring such payments as may be specified by the Secretary of State to be made to him in respect of—

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) steps taken by him for facilitating compliance by any person with any condition falling within paragraph (a); and

(ii) in such circumstances as may be so specified, the processing of applications for vehicle licences where particulars are transmitted in accordance with that paragraph.

(6) In relation to applications with respect to which regulations under this paragraph are in force, the preceding provisions of this paragraph have effect in place of the provisions of subsections (1) to (3B) of section 7 of the [M10]Vehicle Excise and Registration Act 1994.

Marginal Citations

M10 1994 c. 22.

Power to require evidence in support of application

3 The Secretary of State may make provision by regulations—

(a) requiring an application for a vehicle licence in respect of a vehicle to which this Schedule applies to be supported by such documentary or other evidence as may be specified in the regulations, and

(b) authorising him to refuse to issue the licence applied for if such evidence is not provided.

Powers exercisable where licence issued on basis of incorrect application

4 The powers conferred by paragraphs 5 to 11 below are exercisable in a case where—

(a) a vehicle licence is issued to a person on the basis of an application stating that the vehicle—

(i) is a vehicle to which this Schedule applies, or

(ii) is a vehicle to which this Schedule applies in respect of which a particular amount of vehicle excise duty falls to be paid, and

(b) the vehicle is not such a vehicle or, as the case may be, is one in respect of which duty falls to be paid at a higher rate.

Power to declare licence void

5 The Secretary of State may by notice sent by post to the person inform him that the licence is void as from the time when it was granted.

If he does so, the licence shall be void as from the time when it was granted.

Power to require payment of balance of duty

6 (1) The Secretary of State may by notice sent by post to the person require him to secure that the additional duty payable is paid within such reasonable period as is specified in the notice.

(2) If that requirement is not complied with, the Secretary of State may by notice sent by post to the person inform him that the licence is void as from the time when it was granted.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

If he does so, the licence shall be void as from the time when it was granted.

Power to require delivery up of licence

7 The Secretary of State may in a notice under paragraph 5 or 6(2) require the person to whom it is sent to deliver up the licence within such reasonable period as is specified in the notice.

Power to require delivery up of licence and payment in respect of duty

8 (1) The Secretary of State may in a notice under paragraph 5 or 6(2) require the person to whom it is sent—

(a) to deliver up the licence within such reasonable period as is specified in the notice, and

(b) on doing so to pay an amount equal to the monthly duty shortfall for each month, or part of a month, in the relevant period.

(2) The "monthly duty shortfall" means one-twelfth of the difference between—

(a) the duty that would have been payable for a licence for a period of twelve months if the vehicle had been correctly described in the application, and

(b) that duty payable in respect of such a licence on the basis of the description in the application as made.

For this purpose the amount of the duty payable shall be ascertained by reference to the rates in force at the beginning of the relevant period.

Failure to deliver up licence

9 (1) A person who—

(a) is required by notice under paragraph 7 or 8(1)(a) above to deliver up a licence, and

(b) fails to comply with the requirement contained in the notice,

commits an offence.

(2) A person committing such an offence is liable on summary conviction to a penalty not exceeding whichever is the greater of—

(a) level 3 on the standard scale, and

(b) five times the annual duty shortfall.

(3) The "annual duty shortfall" means the difference between—

(a) the duty that would have been payable for a licence for a period of twelve months if the vehicle had been correctly described in the application, and

(b) that duty payable in respect of a licence for a period of twelve months in respect of the vehicle as described in the application.

For this purpose the amount of the duty payable shall be ascertained by reference to the rates in force at the beginning of the relevant period.

Failure to deliver up licence: additional liability

10 (1) Where a person has been convicted of an offence under paragraph 9, the court shall (in addition to any penalty which it may impose under that paragraph) order him

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to pay an amount equal to the monthly duty shortfall for each month, or part of a month, in the relevant period (or so much of the relevant period as falls before the making of the order).

(2) In sub-paragraph (1) the "monthly duty shortfall" has the meaning given by paragraph 8(2).

(3) Where—

(a) a person has been convicted of an offence under paragraph 9, and

(b) a requirement to pay an amount with respect to that licence has been imposed on that person by virtue of paragraph 8(1)(b),

the order to pay an amount under this paragraph has effect instead of that requirement and the amount to be paid under the order shall be reduced by any amount actually paid in pursuance of the requirement.

Meaning of the "relevant perio"d

11 References in this Schedule to the "relevant period" are to the period—

(a) beginning with the first day of the period for which the licence was applied for or, if later, the day on which the licence first was to have effect, and

(b) ending with whichever is the earliest of the following times—

(i) the end of the month during which the licence was required to be delivered up;

(ii) the end of the month during which the licence was actually delivered up;

(iii) the date on which the licence was due to expire;

(iv) the end of the month preceding that in which there first had effect a new vehicle licence for the vehicle in question.

Construction and effect

12 (1) This Schedule and the [M11]Vehicle and Excise Registration Act 1994 shall be construed and have effect as if this Schedule were contained in that Act.

(2) References in any other enactment to that Act shall be construed and have effect accordingly as including references to this Schedule.

Marginal Citations

M11 1994 c. 22.

SCHEDULE 5

Section 24.

RATES OF VEHICLE EXCISE DUTY ON GOODS VEHICLES

1 Part VIII of Schedule 1 to the Vehicle Excise and Registration Act 1994 (annual rates of vehicle excise duty: goods vehicles) is amended as follows.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 For the Table in paragraph 9(1) (rigid goods vehicles not satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

"**Revenue weight of vehicle**		**Rate**		
(1)	**(2)**	**(3)**	**(4)**	**(5)**
Exceeding	**Not Exceeding**	**Two axle vehicle**	**Three axle vehicle**	**Four or more axle vehicle**
kgs	**kgs**	**£**	**£**	**£**
3,500	7,500	165	165	165
7,500	12,000	300	300	300
12,000	13,000	470	490	350
13,000	14,000	650	490	350
14,000	15,000	840	490	350
15,000	17,000	1,320	490	350
17,000	19,000	1,600	850	350
19,000	21,000	1,600	1,020	350
21,000	23,000	1,600	1,470	510
23,000	25,000	1,600	2,230	830
25,000	27,000	1,600	2,340	1,470
27,000	29,000	1,600	2,340	2,320
29,000	31,000	1,600	2,340	3,360
31,000	44,000	1,600	2,340	4,400"

3 For the Table in paragraph 9B (rigid goods vehicles satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

"**Revenue weight of vehicle**		**Rate**		
(1)	**(2)**	**(3)**	**(4)**	**(5)**
Exceeding	**Not Exceeding**	**Two axle vehicle**	**Three axle vehicle**	**Four or more axle vehicle**
kgs	kgs	£	£	£
3,500	7,500	160	160	160
7,500	12,000	160	160	160
12,000	13,000	160	160	160
13,000	14,000	160	160	160
14,000	15,000	160	160	160

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15,000	17,000	320	160	160
17,000	19,000	600	160	160
19,000	21,000	600	160	160
21,000	23,000	600	470	160
23,000	25,000	600	1,230	160
25,000	27,000	600	1,340	470
27,000	29,000	600	1,340	1,320
29,000	31,000	600	1,340	2,360
31,000	44,000	600	1,340	3,400”

4 For the Table in paragraph 11(1) (tractive units not satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

“**Revenue weight of tractive unit**		**Rate for tractive unit with two axles**			**Rate for tractive unit with three or more axles**		
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**
Exceeding	**Not exceeding**	**Any no. of semi-trailer axles**	**2 or more semi-trailer axles**	**3 or more semi-trailer axles**	**Any no. of semi-trailer axles**	**2 or more semi-trailer axles**	**3 or more semi-trailer axles**
kgs	**kgs**	**£**	**£**	**£**	**£**	**£**	**£**
3,500	7,500	165	165	165	165	165	165
7,500	12,000	300	300	300	300	300	300
12,000	16,000	460	460	460	460	460	460
16,000	20,000	520	460	460	460	460	460
20,000	23,000	810	460	460	460	460	460
23,000	26,000	1,190	590	460	590	460	460
26,000	28,000	1,190	1,130	460	1,130	460	460
28,000	31,000	1,740	1,740	1,090	1,740	660	460
31,000	33,000	2,530	2,530	1,740	2,530	1,000	460
33,000	34,000	5,170	5,170	1,740	2,530	1,470	570
34,000	35,000	5,170	5,170	2,340	2,530	2,100	860
35,000	36,000	6,750	6,750	2,340	2,530	2,100	860
36,000	38,000	9,250	9,250	2,710	2,820	2,820	1,280
38,000	41,000	9,250	9,250	3,950	3,750	4,250	2,500
41,000	44,000	9,250	9,250	3,950	7,250	7,250	2,950”

Status: *Point in time view as at 21/07/2009.*
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5 For the Table in paragraph 11B (tractive units satisfying reduced pollution requirements and with a revenue weight exceeding 3,500 kilograms but not exceeding 44,000 kilograms) substitute—

"**Revenue weight of tractive unit**		**Rate for tractive unit with two axles**			**Rate for tractive unit with three or more axles**		
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**
Exceeding	**Not exceeding**	**Any no. of semi-trailer axles**	**2 or more semi-trailer axles**	**3 or more semi-trailer axles**	**Any no. of semi-trailer axles**	**2 or more semi-trailer axles**	**3 or more semi-trailer axles**
kgs	**kgs**	**£**	**£**	**£**	**£**	**£**	**£**
3,500	7,500	160	160	160	160	160	160
7,500	12,000	160	160	160	160	160	160
12,000	16,000	160	160	160	160	160	160
16,000	20,000	160	160	160	160	160	160
20,000	23,000	160	160	160	160	160	160
23,000	26,000	190	160	160	160	160	160
26,000	28,000	190	160	160	160	160	160
28,000	31,000	740	740	160	740	160	160
31,000	33,000	1,530	1,530	740	1,530	160	160
33,000	34,000	4,170	4,170	740	1,530	470	160
34,000	35,000	4,170	4,170	1,340	1,530	1,100	160
35,000	36,000	5,750	5,750	1,340	1,530	1,100	160
36,000	38,000	8,250	8,250	1,710	1,820	1,820	280
38,000	41,000	8,250	8,250	2,950	2,750	3,250	1,500
41,000	44,000	8,250	8,250	2,950	6,250	6,250	1,950"

6 (1) In the following provisions—

(a) in paragraph 11(1), after "Subject to sub-paragraphs (2) and (3)", and

(b) in paragraph 11A(2), after "Subject to sub-paragraph (3)",

insert " and paragraph 11C ".

(2) After paragraph 11B insert—

"11C(1) This paragraph applies to a tractive unit that—

(a) has a revenue weight exceeding 41,000 kilograms but not exceeding 44,000 kilograms,

(b) has 3 or more axles and is used exclusively for the conveyance of semi-trailers with 3 or more axles,

(c) is of a type that could lawfully be used on a public road immediately before 21st March 2000, and

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(d) complies with the requirements in force immediately before that date for use on a public road.

(2) The annual rate of vehicle excise duty applicable to a vehicle to which this paragraph applies is—

(a) in the case of a vehicle with respect to which the reduced pollution requirements are not satisfied, £1,280;

(b) in the case of a vehicle with respect to which those requirements are satisfied, £280.".

SCHEDULE 6

Section 30.

CLIMATE CHANGE LEVY

PART I

THE LEVY

Climate change levy

1 (1) A tax to be known as climate change levy ("the levy") shall be charged in accordance with this Schedule.

(2) The levy is under the care and management of the Commissioners of Customs and Excise.

Levy charged on taxable supplies

2 (1) The levy is charged on taxable supplies.

(2) Any supply of a taxable commodity is a taxable supply, subject to the provisions of Part II of this Schedule.

Meaning of "taxable commodit"y

3 (1) The following are taxable commodities for the purposes of this Schedule, subject to sub-paragraph (2) and to any regulations under sub-paragraph (3)—

(a) electricity;

(b) any gas in a gaseous state that is of a kind supplied by a gas utility;

(c) any petroleum gas, or other gaseous hydrocarbon, in a liquid state;

(d) coal and lignite;

(e) coke, and semi-coke, of coal or lignite;

(f) petroleum coke.

(2) The following are not taxable commodities—

(a) hydrocarbon oil or road fuel gas within the meaning of the [M12]Hydrocarbon Oil Duties Act 1979;

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(b) waste within the meaning of Part II of the [M13]Environmental Protection Act 1990 or the meaning given by Article 2(2) of the [M14]Waste and Contaminated Land (Northern Ireland) Order 1997.

(3) The Treasury may by regulations provide that a commodity of a description specified in the regulations is, or is not, a taxable commodity for the purposes of this Schedule.

Marginal Citations

M12 1979 c. 5.
M13 1990 c. 5.
M14 S.I. 1997/2778 (N.I. 19).

PART II

TAXABLE SUPPLIES

Introduction

4 (1) A supply of a taxable commodity (or part of such a supply) is a taxable supply for the purposes of the levy if levy is chargeable on the supply under—

paragraph 5 (supplies of electricity),
paragraph 6 (supplies of gas), or
paragraph 7 (other supplies in course or furtherance of business),

and the supply (or part) is not excluded under paragraphs 8 to 10 or exempt under paragraphs 11 to 22.

(2) In this Schedule—

(a) references to a supply of a taxable commodity include a supply that is deemed to be made under paragraph 23, and

(b) references to a taxable supply include a supply that is deemed to be made under paragraph 24 **[**[F5]or 45A**]**,

but paragraphs 23 and 24 have effect subject to any exceptions provided for under paragraph 21.

Textual Amendments

F5 Words in Sch. 6 para. 4(2)(b) inserted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 2**, 13(1); S.I. 2007/2902, art. 2(1)

Supplies of electricity

5 (1) Levy is chargeable on a supply of electricity if—

(a) the supply is made by an electricity utility, and

(b) the person to whom the supply is made—

(i) is not an electricity utility, or

(ii) is the utility itself.

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(2) Levy is chargeable on a supply made from a combined heat and power station of electricity produced in the station if—

(a) the station is a partly exempt combined heat and power station,

(b) the supply is not one that is deemed to be made under paragraph 23(3) (self-supply by producer), and

(c) the person to whom the supply is made is not an electricity utility.

(3) Levy is chargeable on a supply of electricity that is deemed to be made under **[**F6paragraph 20(6)(a), 20B(6)(a), 23(3)**[**F7, 24 or 45A**]]** .

(4) Except as provided by sub-paragraphs (1) to (3), levy is not chargeable on a supply of electricity.

Textual Amendments

F6 Words in Sch. 6 para. 5(3) substituted (10.7.2003) (with effect in accordance with s. 191(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 191(2)**

F7 Words in Sch. 6 para. 5(3) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 3**, 13(1); S.I. 2007/2902, art. 2(1)

Supplies of gas

6 (1) Levy is chargeable on a supply of any gas if—

(a) the supply is made by a gas utility, and

(b) the person to whom the supply is made—

(i) is not a gas utility, or

(ii) is the utility itself.

(2) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 23(3) (self-supply by producer) if the gas—

(a) is held in a gaseous state immediately prior to being released for burning, and

(b) is of a kind supplied by a gas utility.

[F8(2A) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 24 **[**F9or 45A**].]**

(3) Except as provided by **[**F10sub-paragraph (1), (2) or (2A)**]**, levy is not chargeable on a supply of any gas that is supplied in a gaseous state.

Textual Amendments

F8 Sch. 6 para. 6(2A) inserted (10.7.2003) (with effect in accordance with s. 191(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 191(3)(a)**

F9 Words in Sch. 6 para. 6(2A) inserted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 4**, 13(1); S.I. 2007/2902, art. 2(1)

F10 Words in Sch. 6 para. 6(3) substituted (10.7.2003) (with effect in accordance with s. 191(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 191(3)(b)**

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Other supplies made in course or furtherance of business

7 (1) This paragraph applies to a supply of a taxable commodity other than—

(a) electricity, or

(b) gas in a gaseous state.

(2) Levy is chargeable on any such supply if the supply is made in the course or furtherance of a business.

Excluded supplies: supply for domestic or charity use

8 (1) A supply is excluded from the levy if it is—

(a) for domestic use (see paragraph 9), or

(b) for charity use.

(2) For the purposes of this paragraph, a supply is for charity use if the commodity supplied is for use by a charity otherwise than in the course or furtherance of a business.

(3) If a supply is partly for domestic or charity use and partly not, the part of the supply that is for domestic or charity use is excluded from the levy.

(4) Where a supply of a commodity is partly for domestic or charity use and partly not—

(a) if at least 60 per cent. of the commodity is supplied for domestic or charity use, the whole supply is treated as a supply for domestic or charity use, and

(b) in any other case, an apportionment shall be made to determine the extent to which the supply is for domestic or charity use.

Excluded supplies: meaning of "for domestic us"e

9 (1) For the purposes of paragraph 8 the following supplies are always for domestic use—

(a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;

(b) a supply to a person at any premises of—

(i) any gas in a gaseous state that is provided through pipes and is of a kind supplied by a gas utility, or

(ii) petroleum gas in a gaseous state provided through pipes,

where the gas or petroleum gas (together with any other gas or petroleum gas provided through pipes to him at the premises by the same supplier) was not provided at a rate exceeding 4397 kilowatt hours a month;

(c) a supply of petroleum gas in a liquid state where the petroleum gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the petroleum gas is not intended for sale by the recipient;

(d) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such petroleum gas;

(e) a metered supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month;

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(f) an unmetered supply of electricity to a person where the electricity (together with any other unmetered electricity provided to him by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.

(2) For the purposes of paragraph 8, supplies not within sub-paragraph (1) are for domestic use if and only if the commodity supplied is for use in—

(a) a building, or part of a building, which consists of a dwelling or number of dwellings,

(b) a building, or part of a building, used for a relevant residential purpose,

(c) self-catering holiday accommodation (including any accommodation advertised or held out as such),

(d) a caravan,

(e) a houseboat (that is to say, a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion), or

(f) an appliance that—

(i) is not part of a combined heat and power station,

(ii) is located otherwise than in premises of a description mentioned in any of paragraphs (a) to (e), and

(iii) is used to heat air or water that, when heated, is supplied to premises of, or each of, such a description.

(3) For the purposes of this paragraph use for a relevant residential purpose means use as—

(a) a home or other institution providing residential accommodation for children,

(b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder,

(c) a hospice,

(d) residential accommodation for students or school pupils,

(e) residential accommodation for members of any of the armed forces,

(f) a monastery, nunnery or similar establishment, or

(g) an institution which is the sole or main residence of at least 90 per cent. of its residents,

except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.

F11(4) . . . . . .

[F12(5) The power to make provision under section 29A(3) of the Value Added Tax Act 1994 varying Schedule 7A to that Act (charge at reduced rate) includes power to make provision for any appropriate corresponding variation of this paragraph.**]**

Textual Amendments

F11 Sch. 6 para. 9(4) repealed (1.11.2001) by 2001 c. 9, s. 110, **Sch. 33 Pt. 3(1)**

F12 Sch. 6 para. 9(5) inserted (1.11.2001) by 2001 c. 9, s. 99, **Sch. 31 Pt. 2 para. 7**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Excluded supplies: supply before 1st April 2001

10 Any supply made before 1st April 2001 is excluded from the levy.

Exemption: supply not for burning in the UK

11 (1) A supply of a taxable commodity to which this sub-paragraph applies is exempt from the levy if the person to whom the supply is made [F13]...—

(a) [F14]... intends to use the commodity in making supplies of it to any other person, or

(b) [F14]... intends to cause the commodity to be exported from the United Kingdom and has no intention to cause it to be thereafter brought back into the United Kingdom.

(2) Sub-paragraph (1) applies to supplies of a taxable commodity other than—

(a) electricity, or

(b) any gas in a gaseous state.

(3) A supply of electricity, or of gas in a gaseous state, is exempt from the levy if the person to whom the supply is made [F15]...—

(a) [F16]... intends to cause the commodity to be exported from the United Kingdom, and

(b) has no intention to cause it to be thereafter brought back into the United Kingdom.

(4) Regulations under paragraph 22 may, in particular, include provision as to the application of sub-paragraph (3) in cases where a person who is both an exporter and an importer of a commodity intends to be a net exporter of the commodity.

Textual Amendments

F13 Words in Sch. 6 para. 11(1) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 2 para. 11(2)(a), **Sch. 27 Pt. 1(2)**

F14 Words in Sch. 6 para. 11(1) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 2 para. 11(2)(b), **Sch. 27 Pt. 1(2)**

F15 Words in Sch. 6 para. 11(3) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 2 para. 11(3)(a), **Sch. 27 Pt. 1(2)**

F16 Word in Sch. 6 para. 11(3) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 2 para. 11(3)(b), **Sch. 27 Pt. 1(2)**

[F17Exemption: Northern Ireland gas supplies

Textual Amendments

F17 Sch. 6 para. 11A and cross-heading inserted (11.5.2001 with effect as mentioned in S. 105(7)) by 2001 c. 9, **s. 105(2)(7)**

11A A supply of gas is exempt from the levy if—

(a) the supply is made by a gas utility, and

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the person to whom the supply is made intends to cause the gas to be burned in Northern Ireland.**]**

Exemption: supply used in transport

12 (1) A supply of a taxable commodity is exempt from levy if the commodity is to be burned (or, in the case of electricity, consumed)—

(a) in order to propel a train,

(b) in order to propel a non-railway vehicle while it is being used for, or for purposes connected with, transporting passengers,

(c) in a railway vehicle, or a non-railway vehicle, while it is being used for, or for purposes connected with, transporting passengers,

(d) in a railway vehicle while it is being used for, or for purposes connected with, transporting goods, or

(e) in a ship while it is engaged on a journey any part of which is beyond the seaward limit of the territorial sea.

Paragraphs (a) to (c) are subject to the exception in sub-paragraph (3).

(2) In this paragraph—

"railway vehicle" and "train" have the meaning given by section 83 of the [M15]Railways Act 1993;

"non-railway vehicle" means—

(a) any vehicle other than a railway vehicle, or

(b) any ship,

that is designed or adapted to carry not less than 12 passengers.

(3) Sub-paragraph (1)(a) to (c) does not apply in relation to the transporting of passengers to, from or within—

(a) a place of entertainment, recreation or amusement, or

(b) a place of cultural, scientific, historical or similar interest,

that is a place to which rights of admission, or where rights to use facilities at it, are supplied by the person to whom the commodity is supplied or by a person connected with him within the meaning of section 839 of the Taxes Act 1988.

Marginal Citations

M15 1993 c. 43.

Exemption: supplies to producers of commodities other than electricity

13 A supply of a taxable commodity to a person is exempt from the levy if—

(a) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3), and

(b) the commodity is to be used by that person—

(i) in producing taxable commodities other than electricity,

(ii) in producing hydrocarbon oil or road fuel gas,

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F18(iia) in producing biodiesel for chargeable use within the meaning of section 6AA of the Hydrocarbon Oil Duties Act 1979 (excise duty on biodiesel),

(iib) in producing bioblend for delivery for home use from any place mentioned in section 6AB(1)(b) of that Act (excise duty on bioblend),

(iic) in producing bioethanol for chargeable use within the meaning of section 6AD of that Act (excise duty on bioethanol),

(iid) in producing bioethanol blend for delivery for home use from any place mentioned in section 6AE(1)(b) of that Act (excise duty on bioethanol blend),**]**

(iii) in producing, for chargeable use within the meaning of section 6A of the M16Hydrocarbon Oil Duties Act 1979 (fuel substitutes), **[**F19liquids (within the meaning of that section) in respect of which a charge is capable of arising under that section**]**, or

(iv) in producing uranium for use in an electricity generating station.

[F20Expressions which are used in this paragraph and the Hydrocarbon Oil Duties Act 1979 have the same meaning in this paragraph as they have in that Act.**]**

Textual Amendments

F18 Sch. 6 paras. 13(b)(iia)-(iid) inserted (22.7.2004) (with effect in accordance with s. 289(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 289(2)**

F19 Words in Sch. 6 para. 13(b)(iii) substituted (22.7.2004) (with effect in accordance with s. 289(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 289(3)**

F20 Words in Sch. 6 para. 13 substituted (22.7.2004) (with effect in accordance with s. 289(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 289(4)**

Marginal Citations

M16 1979 c. 5.

[F21**13A**(1) The Commissioners may by regulations make provision amending paragraph 13 for the purpose of—

(a) extending the circumstances in which a supply of a taxable commodity is exempt from the levy, or

(b) restricting the circumstances in which a supply of a taxable commodity is exempt from the levy.

(2) Regulations under this paragraph that include provision made for the purpose mentioned in sub-paragraph (1)(a) may provide for the provision to have retrospective effect.

(3) A statutory instrument that contains (whether alone or with other provisions) regulations under this paragraph made for the purpose mentioned in sub-paragraph (1)(b) shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of the House of Commons.**]**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F21 Sch. 6 para. 13A inserted (22.7.2004) (with effect in accordance with s. 289(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 289(5)**

Exemption: supplies (other than self-supplies) to electricity producers

14 (1) A supply of a taxable commodity to a person is exempt from the levy if—(a) the commodity is to be used by that person in producing electricity in a generating station that is neither—

(i) a fully exempt combined heat and power station, nor

(ii) a partly exempt combined heat and power station,

and

(b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).

(2) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—

(a) is an exempt unlicensed electricity supplier of a description prescribed by regulations made by the Treasury, [F22]...

(b) uses the commodity supplied in producing electricity**[**[F23], and

(c) uses the electricity produced otherwise than in exemption-retaining ways.**]**

(3) Sub-paragraph (1) does not exempt a supply where the person to whom the supply is made—

(a) is an auto-generator,

(b) uses the commodity supplied in producing electricity, and

[[F24](c) uses the electricity produced otherwise than in exemption-retaining ways.**]**

[[F25](3A) For the purposes of this paragraph, electricity is used in an "exemption-retaining" way if it is used—

(a) in making supplies that are excluded under paragraphs 8 to 10 or exempt under any of paragraphs 11, 12**[**[F26], 18 and 18A**]**, or

(b) in any of the ways mentioned in sub-paragraphs (i) to (iv) of paragraph 13(b).**]**

(4) In this paragraph "exempt unlicensed electricity supplier" means a person—

(a) to whom an exemption from section 4(1)(c) of the [M17]Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under section 5 of that Act, or

(b) to whom an exemption from Article 8(1)(c) of the [M18]Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order,

except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

(5) Sub-paragraph (4) applies subject to—

(a) any direction under paragraph 151(1), and

(b) any regulations under paragraph 151(2).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F22 Word in Sch. 6 para. 14(2)(a) repealed (11.5.2001) by 2001 c. 9, s. 110, **Sch. 33 Pt. 3(3)**

F23 Sch. 6 para 14(2)(c) and preceding word inserted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, **s. 105(3)(7)**

F24 Sch. 6 para. 14(3)(c) substituted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, **s. 105(4)(7)**

F25 Sch. 6 para. 14(3A) inserted (11.5.2001) with effect as mentioned in **s. 105(7)** of the amending Act) by 2001 c. 9, s. 105(5)(7)

F26 Words in Sch. 6 para. 14(3A)(a) substituted (10.7.2003) by Finance Act 2003 (c. 14), **s. 188(2)(a)**

Marginal Citations

M17 1989 c. 29.

M18 S.I. 1992/231 (N.I. 1)

Exemption: supplies (other than self-supplies) to combined heat and power stations

15 (1) A supply of a taxable commodity to a person is exempt from the levy if—

(a) **[**F27that person intends to cause the commodity to be used**]** in—

(i) a fully exempt combined heat and power station, or

(ii) a partly exempt combined heat and power station,

in producing any outputs of the station, and

(b) the supply is not a supply of electricity that is deemed to be made under paragraph 23(3).

For this purpose "outputs" has the meaning given by paragraph 148(9).

(2) Where—

(a) a supply of a taxable commodity to a person would (apart from this sub-paragraph) be exempted in full by sub-paragraph (1), and

(b) at the time the supply is made, the efficiency percentage for the combined heat and power station in which the commodity is to be used F28... is less than the threshold efficiency percentage for the station,

sub-paragraph (1) only exempts the relevant fraction of the supply.

(3) For the purposes of sub-paragraph (2), the "relevant fraction" of a supply of a taxable commodity that is to be used in a combined heat and power station is the fraction—

(a) whose numerator is the efficiency percentage for the station at the time the supply is made, and

(b) whose denominator is the threshold efficiency percentage for the station at that time.

(4) For the purposes of this paragraph—

(a) the "threshold efficiency percentage" for a combined heat and power station is the percentage set as the threshold efficiency percentage for the station by regulations made by the Treasury;

[F29(b) the "efficiency percentage" for a combined heat and power station shall be determined in accordance with regulations under paragraph 149.**]**

F30(5) . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F27 Words in Sch. 6 para. 15(1)(a) substituted (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, **s. 105(6)**

F28 Words in Sch. 6 para. 15(2)(b) repealed (11.5.2001 with effect as mentioned in s. 105(7) of the amending Act) by 2001 c. 9, ss. 105(7), 110, **Sch. 33 Pt. 3(3)** Note

F29 Sch. 6 para. 15(4)(b) substituted (22.7.2005) (with effect in accordance with s. 189(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 189(2)(a)**; S.I. 2005/1713

F30 Sch. 6 para. 15(5) repealed (22.7.2005) (with effect in accordance with s. 189(5) of the amending Act) by Finance Act 2003 (c. 14), s. 189(2)(b), **Sch. 43 Pt. 4(2)**; S.I. 2005/1713

Exemption: supplies (other than self-supplies) of electricity from partly exempt combined heat and power stations

16 (1) This paragraph applies to a supply that—

(a) is a supply made from a partly exempt combined heat and power station of electricity produced in the station, and

(b) is not a supply that is deemed to be made under paragraph 23(3).

(2) The supply is exempt from the levy if the quantity of electricity supplied by the supply is not such as causes the exceeding of any specified limit that, by virtue of regulations made by the Treasury, applies in relation to the station for any specified period.

(3) In this paragraph "specified" means prescribed by, or determined in accordance with, regulations made by the Treasury.

Exemption: self-supplies by electricity producers

17 (1) This paragraph applies to a supply of electricity that is deemed to be made under paragraph 23(3) by a person ("the producer") to himself.

(2) If the producer is an auto-generator, the supply is exempt from the levy unless—

(a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and

(b) the quantity of electricity supplied by the supply is such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.

(3) If the producer is not an auto-generator, the supply is exempt from the levy if it is a supply made from a fully exempt combined heat and power station of electricity produced in the station.

(4) If the producer is not an auto-generator, the supply is exempt from the levy if—

(a) it is a supply from a partly-exempt combined heat and power station of electricity produced in the station, and

(b) the quantity of electricity supplied by the supply is not such as causes the exceeding of any such limit as is mentioned in paragraph 16(2) that applies in relation to the station.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Exemption: supply not used as fuel

18 (1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used otherwise than as fuel.

(2) The Treasury may by regulations specify, in relation to any commodity, uses of that commodity that, for the purposes of sub-paragraph (1), are to be taken as being, or as not being, uses of that commodity as fuel.

(3) The uses of a commodity that may be specified under sub-paragraph (2) as being uses of that commodity as, or otherwise than as, fuel include uses ("mixed uses") of the commodity that involve it being used partly as fuel and partly not; but the Treasury must have regard to the object of securing that a mixed use is not specified as being a use of the commodity otherwise than as fuel if it involves the use of the commodity otherwise than as fuel in a way that is merely incidental to its use as fuel.

[F31 Exemption: supply for use in recycling processes

Textual Amendments

F31 Sch. 6 para. 18A and cross-heading inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 188(1)**

18A (1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used as fuel in a prescribed recycling process falling within sub-paragraph (2).

(2) A recycling process falls within this sub-paragraph if there is another process ("the competing process") that—

(a) is not a recycling process,

(b) uses taxable commodities otherwise than as fuel,

(c) produces a product of the same kind as one produced by the recycling process,

(d) uses a greater amount of energy than the recycling process to produce a given quantity of that product, and

(e) involves a lesser charge to levy for a given quantity of that product than would, but for this paragraph, be the case for the recycling process.

(3) For the purposes of sub-paragraph (2)(b) taxable commodities are used "otherwise than as fuel" only if the supplies of those commodities to the person using them are exempted from the levy by virtue of paragraph 18.

(4) Sub-paragraphs (5) and (6) apply where the recycling process or the competing process, as well as producing a product that is of the same kind as one produced by the other process ("the corresponding product"), also produces one or more products that are not ("different products").

(5) If the production of the different products is merely incidental to the production of the corresponding product, the different products shall be treated for the purposes of sub-paragraph (2)(d) and (e) as being of the same kind as the corresponding product.

(6) If the production of the different products is not merely incidental to the production of the corresponding product—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the amounts of energy referred to in sub-paragraph (2)(d), and the amounts of the charge to levy referred to in sub-paragraph (2)(e), shall be determined on a just and reasonable apportionment;

(b) the exemption conferred by sub-paragraph (1) shall be restricted to the proportion of the supply that is the same as the proportion of the energy used by the recycling process to produce the corresponding product (as determined for the purposes of paragraph (a)).

(7) In this paragraph "prescribed" means prescribed by regulations made by the Treasury.**]**

Exemption: electricity from renewable sources

19 (1) A supply of electricity is exempt from the levy if—

(a) the supply is not one that is deemed to be made under paragraph 23(3),

(b) the supply is made under a contract that contains a renewable source declaration given by the supplier,

(c) prescribed conditions are fulfilled, and

(d) the supplier, and each other person (if any) who is a generator of any renewable source electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.

(2) In this paragraph "renewable source declaration" means a declaration that, in each averaging period, the amount of electricity supplied by exempt renewable supplies made by the supplier in the period will not exceed the difference between—

(a) the total amount of renewable source electricity that during that period is either acquired or generated by the supplier, and

(b) so much of that total amount as is allocated by the supplier otherwise than to exempt renewable supplies made by him in the period.

In this sub-paragraph "averaging period" has the same meaning as in paragraph 20 and "exempt renewable supplies" means supplies made on the basis that they are exempt under this paragraph.

(3) For the purposes of this paragraph and paragraph 20, electricity is "renewable source electricity" if—

(a) it is generated in a prescribed manner, and

(b) prescribed conditions are fulfilled.

A manner of generating electricity may be prescribed by reference to the means by which the electricity is generated or the materials from which it is generated (or both).

(4) In prescribing a manner of generating electricity under sub-paragraph (3), the Commissioners must have regard to the object of securing that exemption under this paragraph is only available for supplies of electricity that has a renewable source.

F32(4A) . . . . . .

(5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—

(a) the giving of effect to renewable source declarations;

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the supply of information;

(c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;

(d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;

(e) the doing of things to or by a person authorised by the Authority or the Director General (as well as to or by the Authority or the Director General);

(f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.

(6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.

(7) The conditions that may be prescribed under sub-paragraph (3)(b) include, in particular, conditions in connection with—

(a) the generation of the electricity;

(b) the materials from which the electricity is generated;

(c) any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).

(8) Each of—

(a) the Gas and Electricity Markets Authority, and

(b) the Director General of Electricity Supply for Northern Ireland,

shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application (whether generally or in relation to any particular case) of any relevant provisions.

(9) In sub-paragraph (8) "relevant provisions" means provisions of or made under—

(a) this paragraph or paragraph 20, or

(b) paragraph 23(3) so far as relating to electricity, or paragraph 23(4).

(10) None of—

(a) section 57(1) of the [M19]Electricity Act 1989,

(b) section 42(1) of the [M20]Gas Act 1986, and

(c) Article 61(1) of the [M21]Electricity (Northern Ireland) Order 1992,

(provisions restricting disclosure of information) applies to any disclosure of information made in pursuance of sub-paragraph (8).

Textual Amendments

F32 Sch. 6 para. 19(4A) omitted (with effect in accordance with s. 149(3) of the amending Act) by virtue of Finance Act 2008 (c. 9), **s. 149(1)**

Marginal Citations

M19 1989 c. 29.

M20 1986 c. 44.

M21 S.I. 1992/231 (N.I. 1).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Exemption under paragraph 19: averaging periods

20 (1) This paragraph applies where a person ("the supplier") makes supplies of electricity on the basis that they are exempt under paragraph 19 ("exempt renewable supplies").

(2) The rules about balancing and averaging periods are—

(a) a balancing period is a period of 3 months;

(b) when a balancing period ends, a new one begins;

(c) the first balancing period and the first averaging period begin at the same time;

(d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt renewable supplies;

(e) when an averaging period ends, a new one begins;

(f) an averaging period ends once it has run for 2 years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));

(g) if the supplier stops making exempt renewable supplies, the end of the balancing period in which he makes the last exempt renewable supply is also the end of the averaging period in which that balancing period falls.

(3) At the end of each balancing period calculate—

(a) the total of—

(i) the quantity of renewable source electricity that the supplier acquired or generated in that period, and

(ii) any balancing credit carried forward to that balancing period; and

(b) the total of—

(i) the quantity of electricity supplied by exempt renewable supplies made by him in that period, and

(ii) any balancing debit carried forward to that balancing period.

(4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—

(a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

(b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.

(5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—

(a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

(b) no balancing credit or debit is carried forward to the next balancing period.

[[F33](6) If the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a), then—

(a) in a case where, at the time when the balancing period ends, an averaging period also ends because of sub-paragraph (2)(f) or (g), the supplier is for the purposes of this Schedule deemed to make at that time a taxable supply of a quantity of electricity equal to the excess;

(b) in any other case, a balancing debit equal to the excess is carried forward to the next balancing period.**]**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F33 Sch. 6 para. 20(6) substituted (10.7.2003) for Sch. 6 paras. 20(6)-(8) (with effect in accordance with s.193(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 193(2)**

[F34Exemption: electricity produced in combined heat and power stations

Textual Amendments

F34 Sch. 6 para. 20A and cross-heading inserted (24.7.2002 with effect as mentioned in s. 123(2) of the amending Act) by 2002 c. 23, s. 123; S.I. 2003/603, **art. 2**

20A (1) A supply of electricity is exempt from the levy chargeable under paragraph 5(1) if—

(a) the supply is not one that is deemed to be made under paragraph 23(3),

(b) the supply is made under a contract that contains a CHP declaration given by the supplier,

(c) prescribed conditions are fulfilled, and

(d) the supplier, and each other person (if any) who is a generator of any CHP electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners agreed that he will fulfil those conditions so far as they may apply to him.

(2) Sub-paragraph (1) does not apply in relation to a supply to a person of electricity produced in a wholly or partly exempt combined heat and power station where the supply is made to that person from the station.

(3) In this paragraph "CHP declaration" means a declaration that, in each averaging period, the amount of electricity supplied by exempt CHP supplies made by the supplier in the period will not exceed the difference between—

(a) the total amount of CHP electricity that during that period is either acquired or generated by the supplier, and

(b) so much of that total amount as is allocated by the supplier otherwise than to exempt CHP supplies made by him in the period.

In this sub-paragraph "averaging period" has the same meaning as in paragraph 20B; and "exempt CHP supplies" means supplies made on the basis that they are exempt under this paragraph.

(4) For the purposes of this paragraph and paragraph 20B, electricity is "CHP electricity" if—

(a) the electricity was—

(i) produced in a fully exempt combined heat and power station, or

(ii) produced in a partly exempt combined heat and power station and originally supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded,

(b) the electricity is not renewable source electricity (within the meaning of paragraph 19), and

(c) prescribed conditions are fulfilled.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—

(a) the giving of effect to CHP declarations;

(b) the supply of information;

(c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;

(d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;

(e) the doing of things to or by a person authorised by the Authority or the Director General (as well as the doing of things to or by the Authority or the Director General);

(f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.

(6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.

(7) The conditions that may be prescribed under sub-paragraph (4)(c) include in particular conditions in connection with any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).

(8) Each of—

(a) the Gas and Electricity Markets Authority, and

(b) the Director General of Electricity Supply for Northern Ireland,

shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application of this paragraph (whether generally or in relation to any particular case).

(9) Paragraph 19(10) (disclosure of information) applies in relation to sub-paragraph (8) above as it applies in relation to paragraph 19(8).**]**

[F35 Exemption under paragraph 20A: averaging periods

Textual Amendments

F35 Sch. 6 para. 20B and cross-heading inserted (24.7.2002 with effect as mentioned in s. 123(2) of the amending Act) by 2002 c. 23, s. 123; S.I. 2003/603, **art. 2**

20B (1) This paragraph applies where a person ("the supplier") makes supplies of electricity on the basis that they are exempt under paragraph 20A ("exempt CHP supplies").

(2) The rules about balancing and averaging periods are—

(a) a balancing period is a period of three months;

(b) when a balancing period ends, a new one begins;

(c) the first balancing period and the first averaging period begin at the same time;

(d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt CHP supplies;

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(e) when an averaging period ends, a new one begins;

(f) an averaging period ends once it has run for two years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));

(g) if the supplier stops making exempt CHP supplies, the end of the balancing period in which he makes the last exempt CHP supply is also the end of the averaging period in which the balancing period falls.

(3) At the end of each balancing period calculate—

(a) the total of—

(i) the quantity of CHP electricity that the supplier acquired or generated in that period, and

(ii) any balancing credit carried forward to that balancing period; and

(b) the total of—

(i) the quantity of electricity supplied by exempt CHP supplies made by him in that period, and

(ii) any balancing debit carried forward to that balancing period.

(4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—

(a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

(b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.

(5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—

(a) the averaging period within which the balancing period fell ends at the end of the balancing period, and

(b) no balancing credit or debit is carried forward to the next balancing period.

[F36(6) If the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a), then—

(a) in a case where, at the time when the balancing period ends, an averaging period also ends because of sub-paragraph (2)(f) or (g), the supplier is for the purposes of this Schedule deemed to make at that time a taxable supply of a quantity of electricity equal to the excess;

(b) in any other case, a balancing debit equal to the excess is carried forward to the next balancing period.**]]**

Textual Amendments

F36 Sch. 6 para. 20B(6) substituted (10.7.2003) for Sch. 6 paras. 20B(6)-(8) (with effect in accordance with s.193(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 193(3)**

Regulations to avoid double charges to levy

21 (1) The Commissioners may by regulations make provision for avoiding, counteracting or mitigating double charges to levy.

(2) For the purposes of this paragraph there is a double charge to levy where—

(a) a supply of a taxable commodity ("the produced commodity") is a taxable supply, and

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) a taxable commodity used directly or indirectly in producing the produced commodity has been the subject of a taxable supply.

(3) Regulations under this paragraph may, in particular, make provision for a supply of a taxable commodity to be wholly or to any extent—

(a) exempt from the levy, or

(b) deemed not a supply of the commodity.

(4) The provision mentioned in sub-paragraph (3) includes provision for exceptions to any of sub-paragraphs (1) to (3) of paragraph 23 or paragraph 24(3).

(5) The powers conferred by this paragraph are in addition to the powers to make provision by tax credit regulations in relation to any such case as is mentioned in paragraph 62(1)(g).

Regulations giving effect to exemptions

22 (1) The Commissioners may by regulations make provision for giving effect to the exclusions and exemptions provided for by paragraphs 8 to 21.

(2) Regulations under this paragraph may, in particular, include provision for—

(a) determining the extent to which a supply of a taxable commodity is, or is to be treated as being, a taxable supply;

(b) authorising a person making supplies of a taxable commodity to another person to treat the supplies to that other person as being taxable supplies only to an extent certified by the Commissioners.

Deemed supply: use of commodities by utilities and producers

23 (1) Where an electricity utility—

(a) has electricity available to it, and

(b) as regards a quantity of the electricity, makes no supply of that quantity to another person but causes it to be consumed in the United Kingdom,

the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the electricity.

(2) Where a gas utility—

(a) holds gas in a gaseous state, and

(b) as regards a quantity of the gas, makes no supply of that quantity to another person but causes it to be burned in the United Kingdom,

the utility is for the purposes of this Schedule deemed to make a supply to itself of that quantity of the gas.

(3) Where—

(a) a person has produced a taxable commodity,

(b) the commodity is either—

(i) a taxable commodity other than electricity, or

(ii) electricity that has been produced from taxable commodities, and

(c) as regards a quantity of the commodity, the person makes no supply of that quantity to another person but causes it to be burned (or, in the case of electricity, consumed) in the United Kingdom,

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

the person is for the purposes of this Schedule deemed to make a supply to himself of that quantity of the commodity.

(4) The Commissioners may by regulations make provision for electricity to be treated for the purposes of sub-paragraph (3)(b)(ii)—

(a) as produced from taxable commodities unless prescribed conditions are fulfilled, or

(b) as produced otherwise than from taxable commodities only where prescribed conditions are fulfilled.

(5) The conditions that may be prescribed under sub-paragraph (4) include, in particular, conditions in connection with the materials from which the electricity is produced.

*Deemed supply: **[**F37change of circumstances etc**]***

Textual Amendments

F37 Words in Sch. 6 para. 24 cross-heading substituted (22.7.2005) (with effect in accordance with s. 190(8) of the amending Act) by Finance Act 2003 (c. 14), **s. 190(2)**; S.I. 2005/1713

24 **[**F38(1) This paragraph applies in the following cases.

(1A) The first case is where—

(a) a supply of a taxable commodity has been made,

(b) the supply was not a taxable supply, and

(c) there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would have been a taxable supply.

(1B) The second case is where—

(a) a supply of a taxable commodity has been made,

(b) the supply was made on the basis that it was not a taxable supply, and

(c) it is later determined that the supply was (to any extent) a taxable supply.

(2) This paragraph does not apply where the reason that—

(a) the supply was not a taxable supply, or

(b) the supply was made on the basis that it was not a taxable supply,

is that it was, or was thought to be, exempt from the levy under paragraph 19 or 20A (exemption for supply of electricity produced from renewable sources or in combined heat and power stations) (but see paragraph 20 or 20B).**]**

(3) **[**F39Where this paragraph applies,**]** The person to whom the supply was made is for the purposes of this Schedule deemed to make a taxable supply of the commodity to himself.

[F40(3A) Where—

(a) had matters been as mentioned in sub-paragraph (1A)(c), only part of the supply would have been a taxable supply, or

(b) the determination referred to in sub-paragraph (1B)(c) is that only part of the supply was a taxable supply,

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the reference in sub-paragraph (3) to the commodity shall be read as a reference to a corresponding part of it.**]**

(4) Where—

(a) a supply of a taxable commodity was not a taxable supply by virtue of being supplied for use in premises of a description mentioned in any of paragraphs (a) to (f) of paragraph 9(2), and

(b) those premises cease to be premises of any of those descriptions,

sub-paragraph (3) only applies to so much (if any) of the commodity supplied as was not used in the premises before they ceased to be premises of any of those descriptions.

(5) The Commissioners may by regulations make provision specifying descriptions of occurrences and non-occurrences that are to be taken as being, or as not being, changes of circumstances or intentions for the purposes of **[**F41sub-paragraph (1A)(c)**]**.

Textual Amendments

F38 Sch. 6 para. 24(1) (1A) (1B) (2) substituted (22.7.2005) for Sch. 6 para. 24(1) para. 24(2) (with effect in accordance with s. 190(8) of the amending Act) by Finance Act 2003 (c. 14), **s. 190(3)**; S.I. 2005/1713

F39 Words in Sch. 6 para. 24(3) inserted (22.7.2005) (with effect in accordance with s. 190(8) of the amending Act) by Finance Act 2003 (c. 14), **s. 190(4)**; S.I. 2005/1713

F40 Sch. 6 para. 24(3A) inserted (22.7.2005) (with effect in accordance with s. 190(8) of the amending Act) by Finance Act 2003 (c. 14), **s. 190(5)**; S.I. 2005/1713

F41 Words in Sch. 6 para. 24(5) substituted (22.7.2005) (with effect in accordance with s. 190(8) of the amending Act) by Finance Act 2003 (c. 14), **s. 190(6)**; S.I. 2005/1713

PART III

TIME OF SUPPLY

Introduction

25 This Part of this Schedule applies to determine when a supply of a taxable commodity is treated as taking place.

Electricity or gas: supply when climate change levy accounting document issued

26 (1) This paragraph applies—

(a) to supplies of electricity, and

(b) to supplies of gas where the gas is supplied in a gaseous state and is of a kind supplied by a gas utility.

(2) Where this paragraph applies, a supply is treated as taking place each time a climate change levy accounting document in respect of a supply is issued by the person making the supply.

(3) A supply that is treated as taking place under this paragraph is a supply of the electricity or gas covered by the accounting document.

Status: *Point in time view as at 21/07/2009.*
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(4) Nothing in this paragraph applies to any electricity or gas that is covered by a special utility scheme (see paragraph 29).

Electricity or gas: duty to issue climate change levy accounting document

27 (1) This paragraph applies where on any day—

(a) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person ("the consumer"),

(b) the supply by which the electricity or gas is supplied is a taxable supply, and

(c) the person liable to account for the levy on that supply is the person making the supply ("the supplier").

(2) A climate change levy accounting document covering the electricity or gas actually supplied on that day must be issued by the supplier no later than—

(a) the end of the period of 15 weeks beginning with that day, if on that day the consumer is a small-scale user of the commodity supplied;

(b) the end of the period of 6 weeks beginning with that day, if on that day the consumer is not a small-scale user of the commodity supplied.

(3) A climate change levy accounting document issued under this paragraph that covers the electricity, or the gas of any kind, actually supplied on any day must also cover any electricity or (as the case may be) any gas of that kind that—

(a) has been actually supplied by the supplier to the consumer on any earlier day, and

(b) has not been covered by a previous climate change levy accounting document.

(4) For the purposes of this paragraph—

(a) an accounting document shall be taken to cover the electricity or gas actually supplied on a day if it covers the electricity or gas actually supplied during a period that includes that day; and

(b) an accounting document shall be taken to cover the electricity or gas actually supplied on a day or during a period if it is an accounting document for a quantity of electricity or gas that is a reasonable estimate of the quantity actually supplied.

(5) A climate change levy accounting document issued under this paragraph must contain a statement of—

(a) the quantity of electricity or gas that it covers,

(b) the period during which, or during which it is estimated that, that quantity was actually supplied,

(c) the supplier's name and address,

(d) the customer's name and address, and

(e) the reference number used by the supplier for the customer.

(6) For the purposes of this paragraph a person is, on any day, a small-scale user of a commodity if the rate at which he is taken to be supplied with that commodity on that day does not exceed the prescribed rate.

(7) The Commissioners may make provision by regulations as to the rate at which a person is, for the purposes of sub-paragraph (6), taken to be supplied with a commodity on any day.

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) Regulations under sub-paragraph (7) may, in particular, include provision for—

(a) rates to be determined or estimated in accordance with the regulations;

(b) rates to be so determined or estimated by reference to the quantity of a commodity actually supplied, or estimated to have been actually supplied, during a period ending with, or at any time before or after, the day in question;

(c) cases where a person is supplied with a commodity of any kind by two or more suppliers.

(9) Nothing in this paragraph applies to any electricity or gas—

(a) that is covered by a special utility scheme (see paragraph 29), or

(b) that is actually supplied before 1st April 2001.

(10) This paragraph applies subject to paragraph 36(5).

Electricity or gas: actual supply not followed by climate change levy accounting document

28 (1) This paragraph applies where on any day—

(a) electricity, or gas that is in a gaseous state and is of a kind supplied by a gas utility, is actually supplied to a person ("the consumer"),

(b) the supply by which the electricity or gas is supplied is a taxable supply,

(c) the person liable to account for the levy on that supply is the person making the supply ("the supplier"), and

(d) the supplier does not within the period applicable under sub-paragraph (2) of paragraph 27 issue a climate change levy accounting document under that paragraph covering the electricity or gas.

(2) Where this paragraph applies, a supply is treated as taking place at the end of that period.

(3) A supply that is treated as taking place under this paragraph is a supply of all the electricity or (as the case may be) gas of the same kind that—

(a) has been actually supplied by the supplier to the consumer before the end of that period, and

(b) has not been covered by a climate change levy accounting document.

(4) Sub-paragraph (4) of paragraph 27 (interpretation of "covered by an accounting document") applies for the purposes of this paragraph as for those of that paragraph.

(5) Nothing in this paragraph applies to any electricity or gas—

(a) that is covered by a special utility scheme (see paragraph 29),

(b) that is actually supplied before 1st April 2001, or

(c) that is treated under paragraph 36(3) as supplied on that day.

Electricity or gas: special utility schemes

29 (1) For the purposes of this Schedule a "special utility scheme" is a scheme for determining when—

(a) a supply of electricity, or

(b) a supply of gas that is in a gaseous state and is of a kind supplied by a gas utility,

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is treated as taking place in cases where the electricity or gas is covered by the scheme.

(2) If in the opinion of the Commissioners it is reasonable to do so, they may in accordance with the provisions of this paragraph prepare a special utility scheme for a utility or for two or more utilities.

In this paragraph "utility" includes a person who makes supplies on which levy is chargeable by virtue of paragraph 5(2) (partly exempt combined heat and power stations).

(3) A special utility scheme shall specify the period for which it is to have effect.

(4) No special utility scheme shall be of any effect in relation to any electricity or gas supplied by a utility unless the utility elects in writing to be bound by it for the specified period.

(5) If a utility makes such an election—

(a) the scheme shall have effect for the specified period in relation to such electricity or gas supplied by the utility as is covered by the scheme, and

(b) during the specified period the scheme applies to determine when a supply of a taxable commodity is treated as taking place if the commodity is electricity or gas covered by the scheme.

(6) A special utility scheme may—

(a) cover all or any of the electricity or gas supplied by a utility for which the scheme is prepared;

(b) provide for paragraph 36 or 37 not to apply, or to apply with modifications, to electricity or gas covered by the scheme.

(7) The Commissioners may by regulations make further provision with respect to special utility schemes, including (in particular) provision amending this paragraph.

Other commodities: general rules for supply by UK residents

30 (1) This paragraph applies to supplies that are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state).

(2) The general rules as to when such supplies are taken to be made are, in cases where the supply is made by a person resident in the United Kingdom, as follows—

(a) if the commodity is to be removed, the supply takes place at the time of the removal;

(b) if the commodity is not to be removed, the supply takes place when the commodity is made available to the person to whom it is supplied;

(c) if the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place, the supply takes place when it becomes certain that the supply has taken place or, if sooner, 12 months after the removal.

(3) These general rules are subject to—

paragraph 31 (earlier invoice),

paragraph 32 (later invoice),

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paragraph 34 (deemed supplies), and

paragraph 36 (directions by Commissioners).

Other commodities: earlier invoice

31 (1) If before the time applicable under paragraph 30(2) the person making the supply—

(a) issues an invoice in respect of the supply, or

(b) receives a payment in respect of it,

the supply is treated, to the extent that it is covered by the invoice or payment, as taking place when the invoice is issued or the payment is received.

(2) Sub-paragraph (1) does not apply where the commodity (being sent or taken on approval or sale or return or similar terms) is removed before it is known whether a supply will take place.

(3) Sub-paragraph (1) applies subject to any direction under paragraph 35(3).

Other commodities: later invoice

32 (1) If within 14 days after the time applicable under paragraph 30(2) the person making the supply issues an invoice in respect of it, the supply is treated as taking place at the time the invoice is issued.

(2) This does not apply—

(a) to the extent that the supply is treated as taking place at the time mentioned in paragraph 31(1) (earlier invoice), or

(b) if the person liable to account for any levy charged on the supply has notified the Commissioners in writing that he elects not to avail himself of sub-paragraph (1).

(3) The Commissioners may, at the request of a person liable to account for any levy charged on any supplies, direct that sub-paragraph (1) shall apply—

(a) in relation to those supplies, or

(b) in relation to such of those supplies as may be specified in the direction,

with the substitution for the period of 14 days of such longer period as may be specified in the direction.

(4) Sub-paragraphs (1) to (3) apply subject to any direction under paragraph 35.

Other commodities: supply by non-UK residents

33 (1) This paragraph applies to supplies that—

(a) are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state), and

(b) are made by a person who is not resident in the United Kingdom.

(2) The supply is treated as taking place—

(a) when the commodity is delivered to the person to whom it is supplied, or

(b) if earlier, when it is made available in the United Kingdom to that person.

(3) Sub-paragraph (2) applies subject to—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) sub-paragraph (4),
(b) paragraph 34 (deemed supplies), and
(c) any direction under paragraph 35.

(4) If within 14 days after the time applicable under sub-paragraph (2) the person to whom the supply is made elects in writing for the supply to be treated as taking place at the time the election is made, the supply is treated as taking place at the time the election is made.

Other commodities: deemed supplies

34 (1) This paragraph applies to supplies that—
(a) are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state), and
(b) are deemed to be made under paragraph 23**[**F42, 24 or 45A**]**.

(2) A supply that is deemed to be made under paragraph 23 is treated as taking place when the commodity is burned F43....

(3) A supply that is deemed to be made under paragraph 24 is treated as taking place upon the occurrence of the change in circumstances or intentions **[**F44or, as the case may be, upon the later determination**]**.

[F45(4) A supply that is deemed to be made under paragraph 45A is treated as taking place upon the later determination.**]**

Textual Amendments

F42 Words in Sch. 6 para. 34(1)(b) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 5(2)**, 13(1); S.I. 2007/2902, art. 2(1)

F43 Words in Sch. 6 para. 34(2) repealed (19.7.2006) by Finance Act 2006 (c. 25), s. 172(7), **Sch. 26 Pt. 8(1)**

F44 Words in Sch. 6 para. 34(3) inserted (22.7.2005) (with effect in accordance with s. 190(8) of the amending Act) by Finance Act 2003 (c. 14), **s. 190(7)**; S.I. 2005/1713

F45 Sch. 6 para. 34(4) inserted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 5(3)**, 13(1); S.I. 2007/2902, art. 2(1)

Other commodities: directions by Commissioners

35 (1) This paragraph applies to supplies that are not of either of the descriptions mentioned in paragraphs (a) and (b) of paragraph 26(1) (electricity and gas in a gaseous state).

(2) The Commissioners may, at the request of the person liable to account for any levy charged on any supplies to which this paragraph applies, make a direction under sub-paragraph (3) or (4) altering the time at which those supplies (or such of those supplies as may be specified in the direction) are to be treated as taking place.

(3) The Commissioners may direct that the supplies shall be treated as taking place—
(a) at times or on dates determined by or by reference to the occurrence of some event described in the direction, or
(b) at times or on dates determined by or by reference to the time when some event so described would in the ordinary course of events occur,

Status: *Point in time view as at 21/07/2009.*
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provided the resulting times or dates are in every case earlier than would otherwise apply.

(4) The Commissioners may direct that the supplies shall be treated as taking place—

(a) at the beginning of the relevant working period (as defined in the case of the person making the request in and for the purposes of the direction), or

(b) at the end of the relevant working period (as so defined).

(5) A direction under sub-paragraph (4) shall not apply to the extent that the time when the supplies in question are made is determined by paragraph 31(1).

Supplies invoiced or paid for before 1st April 2001

36 (1) This paragraph applies where—

(a) the taxable commodities covered by an invoice issued, or payment received, before 1st April 2001 are to any extent commodities that have not been burned (or, in the case of electricity, consumed) before the invoice is issued or payment is received, and

(b) the advance invoicing or payment is not acceptable normal practice.

It does not matter whether the invoice mentioned in paragraph (a) is, or is not, a climate change levy accounting document.

(2) A fair apportionment shall be made to determine the quantity of the taxable commodities covered by the invoice or payment that will not be, or was not, burned (or consumed) before 1st April 2001.

(3) Where this paragraph applies, a supply is treated as taking place on 1st April 2001.

That supply is a supply of the quantity of the taxable commodities that is mentioned in, and determined under, sub-paragraph (2).

(4) For the purposes of this paragraph advance invoicing or payment is "acceptable normal practice" if—

(a) the supply is of a kind in the case of which it is normal practice for invoices to be issued, or payments made, in respect of taxable commodities not already burned (or consumed),

(b) that practice does not involve issuing invoices, or making payments, more than 15 weeks in advance of the burning (or consumption) of any of the taxable commodities in respect of which the invoice is issued or payment is made, and

(c) the advance invoicing or payment is in accordance with the practice.

(5) Nothing in paragraph 27 requires a climate change levy accounting document to be issued to cover any commodities that are supplied by a supply that, under sub-paragraph (3), is treated as made on 1st April 2001.

(6) This paragraph applies to invoices issued, and payments received, before the passing of this Act (as well as to those issued or received after its passing).

Supplies of electricity or gas spanning change of rate etc.

37 (1) This paragraph applies in the case of a supply of electricity, or of gas that is in a gaseous state and is of a kind supplied by a gas utility, affected by—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a change in the descriptions of supplies that are taxable supplies,

(b) a change in any rate of levy in force,

(c) a change consisting in the rate of levy applicable to the supply ceasing to be, or becoming, the rate that is applicable to [F46]... reduced-rate supplies, or

(d) the change consisting in the transition from 31st March 2001 to 1st April 2001.

(2) For the purposes of this paragraph a supply is affected by a change if the electricity or gas of which it is a supply ("the supplied commodity") is actually supplied partly before the change and partly after.

However, this paragraph does not apply in the case of a supply that, under paragraph 36(3), is treated as made on 1st April 2001.

(3) If the person liable to account for any levy on the supply so elects—

(a) the rate at which levy is chargeable on any part of the supply, or

(b) any question whether, or to what extent, the supply is a taxable supply,

shall be determined in accordance with sub-paragraph (5) or (6).

(4) An election for determination in accordance with sub-paragraph (6) may be made only where—

(a) there is such a change as is mentioned in sub-paragraph (1)(c), and

(b) all the supplied commodity is actually supplied before the supply is treated as taking place.

(5) Where the election is for determination in accordance with this sub-paragraph, the rules are—

(A) Treat the fraction of the supplied commodity actually supplied before the change ("the pre-change fraction") as supplied by a supply made before the change and treat the fraction of the supplied commodity actually supplied after the change ("the post-change fraction") as supplied by a supply made after the change.

(B) Where the pre-change and post-change fractions are not known (because, for example, there are no relevant meter readings available)—

"the pre-change fraction" is calculated by dividing—

(a) the number of days in the period over which the supply is actually made that fall before the change, by

(b) the number of days in that period; and

"the post-change fraction" is the difference between 1 and the pre-change fraction.

(C) If use of the fractions given by rule B would produce an inequitable result, the pre-change and post-change fractions may be derived from a reasonable estimate of the fractions of the supplied commodity actually supplied before and after the change.

(6) Where the election is for determination in accordance with this sub-paragraph, treat the change as taking place immediately after the time at which the last of the supplied commodity was actually supplied.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F46 Words in Sch. 6 para. 37(1)(c) repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(9)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

Other supplies spanning change of rate etc.

38 (1) This paragraph applies where there is—

(a) a change in the descriptions of supplies that are taxable supplies,

(b) a change in the rate of levy in force,

(c) a change consisting in the rate of levy applicable to any supply ceasing to be, or becoming, the rate that is applicable to [F47]... reduced-rate supplies, or

(d) the change consisting in the transition from 31st March 2001 to 1st April 2001.

(2) Where—

(a) a supply affected by the change would apart from special provisions be treated under paragraph 30(2) or 33(2) as made wholly or partly at a time when it would not have been affected by the change, or

(b) a supply not so affected would apart from special provisions be treated under paragraph 30(2) or 33(2) as made wholly or partly at a time when it would have been so affected,

the rate at which levy is chargeable on the supply, or any question whether it is a taxable supply, shall, if the person liable to account for any levy on the supply so elects, be determined without regard to the special provisions.

(3) In this paragraph "special provisions" means the provisions of paragraphs 31, 32, 33(4) and 35.

Textual Amendments

F47 Words in Sch. 6 para. 38(1)(c) repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(10)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

Regulations as to time of supply

39 (1) The Commissioners may make provision by regulations as to the time at which a supply is to be treated as taking place—

(a) in cases where the supply is for a consideration and the whole or part of the consideration—

(i) is determined or payable periodically, or from time to time, or at the end of any period, or

(ii) is determined at the time when the commodity is appropriated for any purpose;

(b) in the case of a supply otherwise than for consideration;

(c) in the case of any supply that is deemed to be made under paragraph 23**[**[F48], 24 or 45A**]**.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In any such case as is mentioned in sub-paragraph (1) the regulations may provide that a taxable commodity shall be treated as separately and successively supplied at prescribed times or intervals.

(3) Paragraphs 26 to 36 (main rules as to time of supply) have effect subject to any regulations under this paragraph.

(4) The power to make regulations under this paragraph includes power to provide for specified provisions of the regulations to be treated as special provisions for the purposes of paragraph 38 (supplies spanning change of rate etc.).

Textual Amendments

F48 Words in Sch. 6 para. 39(1)(c) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 6**, 13(1); S.I. 2007/2902, art. 2(1)

PART IV

PAYMENT AND RATE OF LEVY

Persons liable to account for levy

40 (1) The person liable to account for the levy charged on a taxable supply is, except in a case where sub-paragraph (2) **[**F49or (3)**]** applies, the person making the supply.

(2) In the case of a taxable supply made by a person who—

(a) is not resident in the United Kingdom, and

(b) is not a utility,

the person liable to account for the levy charged on the supply is the person to whom the supply is made.

[F50(3) In the case of levy charged on a taxable supply under paragraph 45B, the person liable to account for the levy is the operator of the facility to which the supply was made.**]**

Textual Amendments

F49 Words in Sch. 6 para. 40(1) inserted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 3(2)**

F50 Sch. 6 para. 40(3) inserted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 3(3)**

Returns and payment of levy

41 (1) The Commissioners may by regulations make provision—

[F51(a) for persons liable to account for levy to do so—

(i) by reference to such periods ("accounting periods") as may be determined by or under the regulations, or

(ii) in such other way as may be so determined;**]**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) for persons who are or are required to be registered for the purposes of the levy to be subject to such obligations to make returns for those purposes for such periods, at such times and in such form as may be so determined; and

(c) for persons who are required to account for levy F52... to become liable to pay the amounts due from them at such times and in such manner as may be so determined.

(2) Without prejudice to the generality of the powers conferred by sub-paragraph (1), regulations under this paragraph may contain provision—

(a) for levy falling in accordance with the regulations to be accounted for by reference to one accounting period to be treated in prescribed circumstances, and for prescribed purposes, as levy due for a different period;

(b) for the correction of errors made when accounting for levy by reference to any period;

(c) for the entries to be made in any accounts in connection with the correction of any such errors and for the financial adjustments to be made in that connection;

(d) for a person, for purposes connected with the making of any such entry or financial adjustment, to be required to provide to any prescribed person, or to retain, a document in the prescribed form containing prescribed particulars of the matters to which the entry or adjustment relates;

(e) for enabling the Commissioners, in such cases as they may think fit, to dispense with or relax a requirement imposed by regulations made by virtue of paragraph (d);

(f) for the amount of levy which, in accordance with the regulations, is treated as due for a later period than that by reference to which it should have been accounted for to be treated as increased by an amount representing interest at the rate applicable under section 197 of the Finance Act 1996 for such period as may be determined in accordance with the regulations.

[F53(2A) Paragraph 91(5) provides for the application of Part 7 of this Schedule (recovery and interest) in relation to cases where, by virtue of regulations under sub-paragraph (1)(a)(ii) above **[**F54or by virtue of paragraph 45B(8)**]**, a person is liable to account for levy otherwise than by reference to accounting periods.

(2B) Regulations under this paragraph may provide for the application of any provision of this Schedule in relation to such cases.**]**

(3) Subject to the following provisions of this paragraph, if any person ("the taxpayer") fails—

(a) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to make a return for any accounting period, or

(b) to comply with so much of any regulations under this paragraph as requires him, at or before a particular time, to pay an amount of levy due from him,

he shall be liable to a penalty of £250.

(4) Liability to a penalty under sub-paragraph (3) shall not arise if the taxpayer satisfies the Commissioners or, on appeal, an appeal tribunal—

(a) that there is a reasonable excuse for the failure to make the return or to pay the levy in accordance with the regulations; and

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) that there is not an occasion after the last day on which the return or payment was required by the regulations to be made when there was a failure without a reasonable excuse to make it.

(5) Where, by reason of any failure falling within paragraph (a) or (b) of sub-paragraph (3)—

(a) a person is convicted of an offence (whether under this Schedule or otherwise), or

(b) a person is assessed to a penalty under paragraph 98 (penalty for evasion) **[**F55or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)**]**,

that person shall not, by reason of that failure, be liable also to a penalty under that sub-paragraph (3).

Textual Amendments

F51 Sch. 6 para. 41(1)(a) substituted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(2)(a)**

F52 Words in Sch. 6 para. 41(1)(c) repealed (10.7.2003) by Finance Act 2003 (c. 14), s. 192(2)(b), **Sch. 43 Pt. 4(2)**

F53 Sch. 6 para. 41(2A), (2B) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(2)(c)**

F54 Words in Sch. 6 para. 41(2A) inserted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 4**

F55 Words in Sch. 6 para. 41(5)(b) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 20(2)**

Amount payable by way of levy

42 (1) The amount payable by way of levy on a taxable supply is—

(a) if the supply is **[**F56not**]** a reduced-rate supply, the amount ascertained from the Table in accordance with sub-paragraph (2);

F57(b) . . . . . .

(c) if the supply is a reduced-rate supply, 20 per cent. of the amount that would be payable if the supply were **[**F58not**]** a reduced-rate supply.

[F59 TABLE

Taxable commodity supplied	*Rate at which levy payable if supply is not a reduced-rate supply*
Electricity	£0.00470 per kilowatt hour
Gas supplied by a gas utility or any gas supplied in a gaseous state that is of a kind supplied by a gas utility	£0.00164 per kilowatt hour
Any petroleum gas, or other gaseous hydrocarbon, supplied in a liquid state	£0.01050 per kilogram
Any other taxable commodity	£0.01281 per kilogram**]**

[F60(1A) Sub-paragraph (1) is subject to paragraph 45B.**]**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The levy payable on a fraction of a quantity of a commodity is that fraction of the levy payable on that quantity of the commodity.

Textual Amendments

F56 Word in Sch. 6 para. 42(1)(a) substituted (1.11.2007) by Finance Act 2006 (c. 25), **s. 172(11)(a)(16)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F57 Sch. 6 para. 42(1)(b) repealed (1.11.2007) by Finance Act 2006 (c. 25), **s. 172(11)(b)(16)**, **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F58 Word in Sch. 6 para. 42(1)(c) substituted (1.11.2007) by Finance Act 2006 (c. 25), **s. 172(11)(c)(16)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F59 Sch. 6 para. 42(1) Table substituted (with effect in relation to supplies treated as taking place on or after 1.4.2009) by Finance Act 2008 (c. 9), **s. 19**

F60 Sch. 6 para. 42(1A) inserted (with effect where the certification period begins on or after 1.4.2009) by Finance Act 2009 (c. 10), s. 118(2), **Sch. 59 para. 5**

Half-rate for supplies to horticultural producers

F61 43 . . . . . .

Textual Amendments

F61 Sch. 6 para. 43 repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(12)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

Reduced-rate for supplies covered by climate change agreement

[F62 44 (1) For the purposes of this Schedule, a taxable supply is a reduced-rate supply if—

(a) the taxable commodity is supplied to a facility specified in a certificate given by the Secretary of State to the Commissioners as a facility which is to be taken as being covered by a climate change agreement for a period specified in the certificate, and

(b) the supply is made at a time falling in that period.

(2) Sub-paragraph (1) has effect subject to **[**F63 sub-paragraphs (2A) to (2D) and**][**F64 paragraphs 45 and 45B**]**.

[F65 (2A) The Secretary of State may—

(a) give a certificate that includes provision specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply,

(b) vary a certificate so that it includes provision (or further provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply, or

(c) vary a certificate so that it ceases to include the provision (or some of the provision) specifying one or more descriptions of taxable commodity as being ineligible for reduced-rate supply.

(2B) A taxable supply of a taxable commodity to a facility is not a reduced-rate supply if, at the time of the supply, the commodity falls within a description that is specified (by virtue of sub-paragraph (2A)(a) or (b)) in the certificate relating to the facility.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2C) The Secretary of State may only include provision in a certificate by virtue of sub-paragraph (2A)(a) or (b)—

(a) if the Treasury consents in writing to the specification before the specification is made, and

(b) if, and for as long as, the result is compatible with the common market by virtue of Commission Regulation (EC) No. 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty establishing the European Community (General block exemption Regulation) (O.J. 2008 No. L214/3).

(2D) In sub-paragraphs (2A) to (2C) "certificate" means such a certificate as is mentioned in sub-paragraph (1)(a).**]**

(3) The Commissioners may by regulations make provision for giving effect to sub-paragraph (1).

(4) Regulations under this paragraph may, in particular, include provision for determining whether any taxable commodity is supplied to a facility.

(5) The provision that may be made by virtue of sub-paragraph (4) includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility.**]**

Textual Amendments

F62 Sch. 6 para. 44 substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 7**, 13(1); S.I. 2007/2902, art. 2(1) (with art. 2(2)(4))

F63 Words in Sch. 6 para. 44(2) inserted (21.7.2009) by Finance Act 2009 (c. 10), **s. 117(3)(a)**

F64 Words in Sch. 6 para. 44(2) substituted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 6**

F65 Sch. 6 para. 44(2A)-(2D) inserted (21.7.2009) by Finance Act 2009 (c. 10), **s. 117(2)**

[F66 Reduced-rate supplies: variation of certificates under paragraph 44]

Textual Amendments

F66 Sch. 6 para. 45 cross-heading substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 8(6)**, 13(1); S.I. 2007/2902, art. 2(1)

45 (1) This paragraph applies where the Secretary of State, after having given in respect of a facility such a certificate as is mentioned in paragraph 44(1) ("the original certificate"), gives a certificate (a "variation certificate") to the Commissioners stating—

(a) that, throughout the period ("the original period") specified for the facility in the original certificate, the facility is to be taken as not being covered by a climate change agreement; or

(b) that, for so much of the original period as falls on or after a day specified in the variation certificate (being a day falling within the original period), the facility is to be taken as no longer being covered by a climate change agreement.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F67(2) . . . . . .

F67(3) . . . . . .

F67(4) . . . . . .

(5) If—

(a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and

(b) the day on which **[**F68the variation certificate is given**]** falls before the beginning of the original period,

[F69the original certificate has effect as if the facility had never been specified in it**]**.

(6) If—

(a) the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(a), and

(b) the day on which **[**F70the variation certificate is given**]** falls during the original period,

[F71the original certificate has effect as if the last day of the period specified for the facility in the original certificate were the day on which the variation certificate is given**]**.

(7) If the statement in the variation certificate in respect of the facility is of the type described in sub-paragraph (1)(b), **[**F72the original certificate has effect as if the last day of the period specified for the facility in the original certificate were the later of—

(a) the day on which the variation certificate is given, and

(b) the day specified in the variation certificate.**]**

Textual Amendments

F67 Sch. 6 para. 45(2)-(4) repealed (1.11.2007) by Finance Act 2007 (c. 11), Sch. 2 paras. 8(2), 13(1), **Sch. 27 Pt. 1(2)**; S.I. 2007/2902, art. 2(1)

F68 Words in Sch. 6 para. 45(5)(b) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 8(3)(a)**, 13(1); S.I. 2007/2902, art. 2(1)

F69 Words in Sch. 6 para. 45(5) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 8(3)(b)**, 13(1); S.I. 2007/2902, art. 2(1)

F70 Words in Sch. 6 para. 45(6)(b) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 8(4)(a)**, 13(1); S.I. 2007/2902, art. 2(1)

F71 Words in Sch. 6 para. 45(6) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 8(4)(b)**, 13(1); S.I. 2007/2902, art. 2(1)

F72 Words in Sch. 6 para. 45(7) substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 8(5)**, 13(1); S.I. 2007/2902, art. 2(1)

[F73Reduced-rate supplies: deemed supply

Textual Amendments

F73 Sch. 6 para. 45A and cross-heading inserted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 9**, 13(1); S.I. 2007/2902, art. 2(1) (with art. 2(3)(4))

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

45A (1) This paragraph applies where—

(a) a taxable supply has been made to any person ("the recipient"),

(b) the supply was made on the basis that it was a reduced-rate supply, and

(c) it is later determined that the supply was not a reduced-rate supply.

(2) For the purposes of this Schedule—

(a) the recipient is deemed to make a taxable supply to itself of the taxable commodity, and

(b) the amount payable by way of levy on that deemed supply is 80 per cent. of the amount that would be payable if the supply were not a reduced-rate supply.

[F74(3) This paragraph does not apply where a supply is treated as not being a reduced-rate supply by virtue of paragraph 45B.**]]**

Textual Amendments

F74 Sch. 6 para. 45A(3) inserted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 7**

[*F75Removal of reduced rate where targets set by climate change agreement not met*

Textual Amendments

F75 Sch. 6 para. 45B inserted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 1**

45B (1) This paragraph applies where, by virtue of such a certificate as is mentioned in paragraph 44(1), a facility is to be taken as being covered by a climate change agreement for a period specified in that certificate ("the certification period").

(2) If it appears to the Secretary of State that the progress made in the certification period towards meeting targets set for the facility by the agreement has been such as under the provisions of the agreement is unsatisfactory, the Secretary of State may issue a certificate under this paragraph.

(3) The certificate must (in addition to specifying the facility, agreement and certification period to which it applies) specify—

(a) T, that is, the value (expressed in terms of a reduction in tonnes of carbon dioxide equivalent) of achieving the targets set for the facility by the agreement, and

(b) P, that is, the value (expressed in the same terms) of the progress made by the facility, during the certification period, towards meeting those targets.

(4) Where a certificate has been issued under this paragraph—

(a) each taxable supply made to the facility at any time falling within the certification period is to be treated as not being a reduced-rate supply, and

(b) accordingly, an amount (determined in accordance with sub-paragraph (5)) is payable by way of levy on that taxable supply.

(5) The amount payable under this paragraph on a taxable supply is—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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where—
T and P have the values mentioned in sub-paragraph (3), and
R is the amount which would have been payable by way of levy on the supply (had it not been a reduced-rate supply) at the time that it was made, in accordance with paragraph 42(1)(a).

(6) The Secretary of State must send the certificate to—
(a) the Commissioners, and
(b) the person who is the operator of the facility.

(7) A certificate under this paragraph may be issued after the certification period ends.

(8) A person liable to account for levy under this paragraph—
(a) is liable to account for it otherwise than by reference to an accounting period, and
(b) must not (by virtue of regulations under paragraph 41) become liable to pay it as from a date before the date on which the certificate under this paragraph is issued.

(9) Levy due under this paragraph is payable in addition to any levy already payable on any supply made in the certification period.

(10) In this paragraph—
"certification period", in a case where the certificate referred to in sub-paragraph (1) has been varied under paragraph 45, means the period for which that certificate has effect as varied;
"tonne of carbon dioxide equivalent" has the meaning given in the Climate Change Act 2008.**]**

Climate change agreements

46 In this Schedule "climate change agreement" means—
(a) an agreement that falls within paragraph 47, or
(b) a combination of agreements that falls within paragraph 48.

Climate change agreements: direct agreement with Secretary of State

47 (1) An agreement (including one entered into before the passing of this Act) falls within this paragraph if it is an agreement—
(a) entered into with the Secretary of State,
(b) expressed to be entered into for the purposes of the reduced rate of climate change levy,
(c) identifying the facilities to which it applies,
(d) to which a representative of each facility to which it applies is a party,
(e) setting, or providing for the setting of, targets for the facilities to which it applies,
(f) specifying certification periods (as to which see paragraph 49(1)) for the facilities to which it applies, and

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(g) providing for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreement for those facilities and for giving effect to outcomes of such reviews.

(2) In this paragraph and paragraph 48 "representative", in relation to a facility to which an agreement applies, means—

(a) the person who is the operator of the facility at—

(i) the time the agreement is entered into, or

(ii) if later, the time the facility last became a facility to which the agreement applies,

or

(b) a person authorised by that operator to agree to the facility being a facility to which the agreement applies.

Climate change agreement: combination of umbrella and underlying agreements

48 (1) A combination of agreements falls within this paragraph if the following conditions are satisfied.

(2) The first condition is that the combination is a combination of—

(a) an umbrella agreement (including one entered into before the passing of this Act), and

(b) an agreement (including one entered into before the passing of this Act) that, in relation to the umbrella agreement, is an underlying agreement.

(3) The second condition is that between them the two agreements—

(a) set, or provide for the setting of, targets for the facilities to which the underlying agreement applies,

(b) specify certification periods (as to which see paragraph 49(1)) for the facilities to which the underlying agreement applies, and

(c) provide for five-yearly (or more frequent) reviews by the Secretary of State of targets set by or under the agreements for those facilities and for giving effect to outcomes of such reviews.

(4) For the purposes of this paragraph an "umbrella agreement" is an agreement—

(a) entered into with the Secretary of State,

(b) expressed to be entered into for the purposes of the reduced rate of climate change levy,

(c) identifying the facilities to which it applies, and

(d) to which a representative of each facility to which it applies is a party.

(5) For the purposes of this paragraph an agreement is an "underlying agreement" in relation to an umbrella agreement if it is an agreement—

(a) expressed to be entered into for the purposes of the umbrella agreement,

(b) entered into—

(i) with the Secretary of State, or

(ii) with a party to the umbrella agreement other than the Secretary of State,

(c) approved by the Secretary of State if he is not a party to it,

(d) identifying which of the facilities to which the umbrella agreement applies are the facilities to which it applies, and

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(e) to which a representative of each facility to which it applies is a party.

(6) In the case of a climate change agreement that is a combination of agreements that falls within this paragraph, references to the facilities to which the climate change agreement applies are references to the facilities to which the underlying agreement applies.

Climate change agreement: supplemental provisions

49 (1) The first certification period specified by a climate change agreement for a facility to which it applies shall begin with the later of—

(a) the date on which the agreement, so far as relating to the facility, is expressed to take effect, and

(b) 1st April 2001;

and each subsequent certification period so specified shall begin immediately after the end of a previous certification period.

(2) Where a climate change agreement (the "new agreement") applies to a facility to which another climate change agreement previously applied, the first certification period specified by the new agreement for the facility shall be—

(a) a period beginning as provided by sub-paragraph (1), or

(b) a period that—

(i) begins earlier than that, and

(ii) is a period that was a certification period specified for the facility by any climate change agreement that previously applied to the facility.

A period such as is mentioned in paragraph (b) includes a period beginning, or beginning and ending, before the date on which the new agreement, so far as relating to the facility, is expressed to take effect.

(3) For the purposes of giving certificates such as are mentioned in paragraphs 44(1) and 45(1), the Secretary of State may take a facility as being covered by a climate change agreement for a period if the facility is one to which the agreement applies and either—

(a) that period is the first certification period specified by the agreement for the facility, or

(b) that period is a subsequent certification period for the facility and it appears to the Secretary of State that progress made in the immediately preceding certification period towards meeting targets set for the facility by the agreement or by a climate change agreement that previously applied to the facility is, or is likely to be, such as under the provisions of the agreement in question is to be taken as being satisfactory.

(4) For the purposes of sub-paragraph (3)(b) a climate change agreement may (in particular) provide that progress towards meeting any targets for a facility is to be taken as being satisfactory if, in the absence (or partial absence) of any such progress required under the agreement, alternative requirements provided for by the agreement are satisfied.

(5) For the purposes of sub-paragraphs (2) and (3), the circumstances in which a facility to which a climate change agreement applies is one to which another such agreement previously applied include those where the facility is—

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(a) a part, or a combination of parts, of a facility to which another such agreement previously applied,
(b) a combination of two or more such facilities,
(c) any combination of parts of such facilities, or
(d) any combination of such facilities and parts of such facilities.

(6) Paragraphs 47 and 48 and sub-paragraph (4) above are not to be taken as meaning that an agreement, or combination of agreements, containing provision in addition to any mentioned in those paragraphs and that sub-paragraph is not a climate change agreement.

(7) For the purposes of paragraphs 47 and 48 and this paragraph "target", in relation to a facility to which a climate change agreement applies, means a target relating to—
(a) energy, or energy derived from a source of any description, used in the facility or an identifiable group of facilities within which the facility falls, or
(b) emissions, or emissions of any description, from the facility or such a group of facilities;

and for this purpose "identifiable group" means a group that is identified in the agreement or that at any relevant time can be identified under the agreement.

(8) Nothing in this Schedule is to be taken as requiring the Secretary of State to—
(a) enter into any climate change agreement,
(b) enter into a climate change agreement with any particular person or persons, in respect of any particular facility or facilities or on any particular terms, or
(c) approve any, or any particular, proposed climate change agreement.

Facilities to which climate change agreements can apply

50 (1) This paragraph applies where, in connection with concluding or varying a climate change agreement, it falls to be determined whether a facility is to be, or is to continue to be, identified in the agreement as a facility to which the agreement applies.

(2) For the purposes of such a determination "facility" is (subject to any regulations under sub-paragraph (3) or (4)) to be taken as meaning—
(a) an installation covered by paragraph 51; or
(b) a site on which there is or are—
(i) such an installation or two or more such installations,
(ii) a part, or parts, of such an installation,
(iii) a part, or parts, of each of two or more such installations, or
(iv) any combination of such installations and parts of such installations.

(3) The Secretary of State may by regulations make provision for an installation covered by paragraph 51 to be taken to be a facility for those purposes only if—
(a) the taxable commodities supplied to the installation by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—
(i) in the installation, or
(ii) on the site where the installation is situated but not in the installation,
and
(b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.

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(4) The Secretary of State may by regulations make provision for a site to be taken to be a facility for those purposes only if—

(a) the taxable commodities supplied to the site by taxable supplies are intended to be burned (or, in the case of electricity, consumed)—

(i) in installations on the site that are covered by paragraph 51 (or in parts of such installations), or

(ii) on the site but not in any such installation (or part of such an installation),

and

(b) the amounts of taxable commodities, and of any other commodities specified in the regulations, subject to each of those intentions are such that any conditions specified in the regulations are satisfied.

(5) Regulations under sub-paragraph (3) or (4) may make provision for deeming, for the purposes of the regulations, commodities to be intended to be burned (or, in the case of electricity, consumed) in circumstances specified in the regulations.

(6) In this paragraph and paragraph 51 "installation" means a stationary technical unit.

Energy-intensive installations

51 (1) An installation is covered by this paragraph if it falls within any one or more of the descriptions of installation set out in the Table.

[F76(2) Sub-paragraph (2A) applies where—

(a) an installation falls within any one or more of those descriptions, and

(b) there is, on the same site as the installation, a location at which ancillary activities are carried out.

(2A) The installation (taken alone) is not covered by this paragraph, but the combination—

(a) of the installation and that location, or

(b) where there is more than one such location, of the installation and all of those locations,

is to be taken as being an installation covered by this paragraph.

(2B) In sub-paragraph (2) "ancillary activities" means activities that—

(a) are directly associated with any of the primary activities carried out in the installation,

(b) have a technical connection with those primary activities, and

(c) could have an effect on environmental pollution.**]**

(3) **[**F77sub-paragraphs (1) to (2B)**]** are subject to any regulations under paragraph 52.

F78(4) . . . . . .

F78(5) . . . . . .

(6) **[**F79sub-paragraph (2B)**]**—

"environmental pollution" has the same meaning as in the M22Pollution Prevention and Control Act 1999;

"primary activity", in relation to an installation falling within any one or more of the descriptions of installation set out in the Table, means an activity

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the carrying out of which at the installation results in the installation falling within one or more of those descriptions.

TABLE

[F80*Installations regulated under the Environmental Permitting (England and Wales) Regulations 2007****]***	
F81[1	1. Part A installations.
Installations that would be so regulated but for a threshold or exception	
2	Installations that would be Part A installations but for— (a) a relevant numeric threshold, or (b) a relevant exception.
Installations that would be so regulated if certain modifications were made to the Regulations	
3	Installations that would be Part A installations if the relevant modifications were made.
Corresponding installations in Scotland and Northern Ireland	
4	Installations that are situated in Scotland or Northern Ireland, but if situated in England and Wales— (a) would be Part A installations, (b) would be Part A installations but for— (i) a relevant numeric threshold, or (ii) a relevant exception, or (c) would be Part A installations if the relevant modifications were made.
Interpretation of entries 1 to 4	
5	**[**F82(1) In this entry "the Schedule" means Schedule 1 to the Environmental Permitting (England and Wales) Regulations 2007.**]** (2) In entries 1 to 4— **[**F83(a) "Part A installation" has the meaning given in regulation 3(2) of the Environmental Permitting (England and Wales) Regulations 2007;**]** (b) "relevant exception" means— (i) the exception in paragraph (b)(i) **[**F84or (ii)**]** of Part A(1) of Section 2.1 of **[**F85Part 2 of the Schedule**]**, F86(ii) . . . . . . F86(iii) . . . . . . (c) "the relevant modifications" means the omission of the following provisions of **[**F85Part 2 of the Schedule**]**: (i) the final twelve words of paragraph (b) of Part A(1) of Section 4.4; (ii) the final twelve words of paragraph (b) of Part A(1) of Section 4.5;

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[in the interpretation of Section 5.1, in relation
F87(iia) to the definitions of "co-incineration plant" and "incineration plant", the final nine words in the sentence beginning "This definition covers;**]**

[F88(iii) paragraph 1 of the Interpretation and application of Part A(1) of Section 5.4;**]**

(iv) the final fourteen words of paragraph (c) of Part A(1) of Section 6.1;

(v) the final fourteen words of paragraph (c) of Part A(1) of Section 6.4; and

(vi) the final fourteen words of paragraph (f)(ii) of Part A(1) of Section 6.8; and

(d) "relevant numeric threshold" means a numeric threshold specified in any of the following provisions of **[**F85Part 2 of the Schedule**]**:

(i) paragraphs (c) and (d) of Part A(1) of Section 2.1;

(ii) Part A(2) of Section 2.1;

(iii) paragraph (b) of Part A(1) of Section 2.2;

(iv) Part A(1) of Section 2.3;

(v) paragraph (b) of Part A(1) of Section 3.1;

(vi) paragraph (b) of Part A(2) of Section 3.1;

(vii) paragraph (b) of Part A(1) of Section 3.3;

(viii) Part A(2) of Section 3.3;

(ix) paragraph (a) of Part A(1) of Section 3.4;

[Part A(1) of Section 3.6;**]**

F89(ixa)

(x) Part A(2) of Section 3.6;

(xi) paragraphs (c) and (d) of Part A(1) of Section 4.1;

(xii) paragraphs **[**F90(c)**]** and (e) of Part A(1) of Section 5.1;

[paragraphs (a) and (c) of Part A(2) of Section 5.1;**]**

F91(xiai)

(xiii) Part A(1) of Section 5.2;

(xiv) Part A(1) of Section 5.3;

(xv) paragraph (c) of Part A(1) of Section 5.4;

(xvi) paragraph (b) of Part A(1) of Section 6.1;

(xvii) Part A(1) of Section 6.3;

(xviii) paragraphs (a) and (b) of Part A(1) of Section 6.4;

(xix) Part A(2) of Section 6.4;

(xx) Part A(2) of Section 6.7;

(xxi) paragraphs (a) to (e) of Part A(1) of Section 6.8;

(xxii) Part A(2) of Section 6.8; and

(xxiii) Part A(1) of Section 6.9; and

(e) any reference to a part of the United Kingdom includes the territorial waters adjacent to that part.**]**

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Textual Amendments

F76 Sch. 6 para. 51(2)(2A)(2B) substituted for Sch. 6 para. 51(2) (23.3.2001) by S.I. 2001/1139, **reg. 2(2)**

F77 Words in Sch. 6 para. 51(3) substituted (23.3.2001) by S.I. 2001/1139, **reg. 2(3)**

F78 Sch. 6 para. 51(4)(5) omitted (23.3.2001) by S.I. 2001/1139, **reg. 2(4)**

F79 Words in Sch. 6 para. 51(6) substituted (23.3.2001) by S.I. 2001/1139, **reg. 2(5)**

F80 Words in Sch. 6 para. 51 Table cross-heading substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(a)** (with reg. 72, Sch. 4)

F81 Sch. 6 para. 51: Table entries 1-5 substituted for entries 1-33 (23.3.2001) by S.I. 2001/1139, **reg. 2(6)**

F82 Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(b)** (with reg. 72, Sch. 4)

F83 Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(c)** (with reg. 72, Sch. 4)

F84 Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(2)**

F85 Words in Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(d)** (with reg. 72, Sch. 4)

F86 Sch. 6 para. 51 Table entry 5 omitted (12.7.2006) by virtue of The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(3)**

F87 Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(4)**

F88 Sch. 6 para. 51 Table entry 5 substituted (E.W.) (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 1(1)(b), **Sch. 21 para. 27(2)(e)** (with reg. 72, Sch. 4)

F89 Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(5)**

F90 Word in Sch. 6 para. 51 Table entry 5 substituted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(6)**

F91 Words in Sch. 6 para. 51 Table entry 5 inserted (12.7.2006) by The Climate Change Agreements (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/1848), regs. 1, **2(7)**

Marginal Citations

M22 1999 c. 24.

Power to vary the installations covered by paragraph 51

52 (1) The Treasury may make provision by regulations for varying the installations covered by paragraph 51.

(2) The provision that may be made by regulations under this paragraph includes, in particular, provision—

(a) for the installations covered by paragraph 51 to include, or not to include, any installation of a description specified in the regulations;

(b) amending the Table in paragraph 51 by adding a description of installation to the Table, removing a description of installation from the Table or altering a description of installation set out in the Table;

(c) amending paragraph 51.

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PROSPECTIVE

PART V

REGISTRATION

Requirement to be registered

53 (1) A person is required to be registered with the Commissioners for the purposes of the levy if a taxable supply is made in respect of which he is the person liable to account for the levy charged.

(2) The Commissioners shall, for the purposes of sub-paragraph (1) and in accordance with the provisions of this Part of this Schedule, establish and maintain a register of persons liable to account for levy.

(3) The Commissioners shall keep such information in the register as they consider appropriate for the care and management of the levy.

[F92(4) Regulations made by the Commissioners may provide that, in such cases or circumstances and subject to such conditions or requirements as may be prescribed in the regulations, the Commissioners may exempt a person from the requirement to be registered.**]**

Textual Amendments

F92 Sch. 6 para. 53(4) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(3)**

Interpretation of Part V

54 In this Part of this Schedule—

(a) references to the register are references to the register maintained under paragraph 53(2);

(b) references to registering a person are references to registering him in that register; and

(c) references to a person's registration are references to his registration in that register.

Notification of registrability etc.

55 (1) A person who—

(a) intends to make, or have made to him, any taxable supply in respect of which (if made) he will be the person liable to account for the levy charged, or

[F93(aa) expects to be deemed to make a taxable supply to himself under paragraph 24A or 24B, or**]**

(b) is required to be registered for the purposes of the levy,

shall (if he is not so registered) notify the Commissioners of that fact.

F94(2) . . . . . .

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F94(3) . . . . . .

F94(4) . . . . . .

F94(5) . . . . . .

F94(6) . . . . . .

Textual Amendments

F93 Sch. 6 para. 55(1)(aa) inserted (retrospective to 26.3.2013) by Finance Act 2013 (c. 29), **Sch. 42 paras. 15**, 21

F94 Sch. 6 para. 55(2)-(6) omitted (with effect in accordance with art. 3 of the commencing S.I.) by virtue of Finance Act 2008 (c. 9), s. 123(2), **Sch. 41 para. 25(k)(ii)**; S.I. 2009/511, art. 2 (with art. 4)

Form of registration

56 (1) The Commissioners shall register a person if—

(a) they receive from him a notification given in pursuance of paragraph 55, or

(b) although they have not received from him such a notification, it appears to them that he is required to be registered.

Where the Commissioners register a person who is required to be registered, they shall register him with effect from the time when the requirement arose.

(2) Where any two or more bodies corporate are members of the same group they shall be registered together as one person in the name of the representative member.

(3) The registration of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Commissioners see fit, be in the names of those divisions.

(4) The registration of—

(a) any two or more persons carrying on a business in partnership, or

(b) an unincorporated body,

may be in the name of the firm or body concerned.

Notification of loss or prospective loss of registrability

57 (1) Where a person who has become liable to give a notification by virtue of paragraph 55 ceases (whether before or after being registered for the purposes of the levy) to intend to make, or to intend to have made to him, taxable supplies in respect of which (if made) he would be the person liable to account for the levy charged, he shall notify the Commissioners of that fact.

(2) A person who fails to comply with sub-paragraph (1) shall be liable to a penalty of £250.

Cancellation of registration

58 (1) If the Commissioners are satisfied that a registered person—

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(a) has ceased to make, or have made to him, taxable supplies on which he is liable to account for the levy charged, and

(b) does not intend to make, or have made to him, any such supplies,

they may cancel his registration with effect from such time after he last made, or had made to him, taxable supplies as appears to them to be appropriate.

(2) Sub-paragraph (1) applies whether or not the registered person has notified the Commissioners under paragraph 57.

(3) The Commissioners shall be under a duty to exercise the power conferred by sub-paragraph (1) with effect from any time if, where the power is exercisable, they are satisfied that the conditions specified in sub-paragraph (4) are satisfied and were or will be satisfied at that time.

(4) Those conditions are—

(a) that the person in question has given a notification under paragraph 57;

(b) that no levy due from that person, and no amount recoverable as if it were levy, remains unpaid;

(c) that no tax credit to which that person is entitled by virtue of any tax credit regulations is outstanding; and

(d) that that person is not subject to any outstanding liability to make a return for the purposes of the levy.

(5) Where—

(a) a registered person notifies the Commissioners under paragraph 57, and

(b) they are satisfied that (if he had not been registered) he would not have been required to be registered at any time since the time when he was registered,

they shall cancel his registration with effect from the date of his registration.

Correction of the register etc.

59 (1) The Commissioners may by regulations make provision for and with respect to the correction of entries in the register.

(2) Regulations under this paragraph may, to such extent as appears to the Commissioners appropriate for keeping the register up to date, make provision requiring—

(a) registered persons, and

(b) persons who are required to be registered,

to notify the Commissioners of changes in circumstances relating to themselves, their businesses or any other matter with respect to which particulars are contained in the register (or would be, were the person registered).

Supplemental regulations about notifications

60 (1) For the purposes of any provision made by or under this Part of this Schedule for any matter to be notified to the Commissioners, regulations made by the Commissioners may make provision—

(a) as to the time within which the notification is to be given;

(b) as to the form and manner in which the notification is to be given; and

(c) as to the information and other particulars to be contained in or provided with any notification.

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(2) For those purposes the Commissioners may also by regulations impose obligations requiring a person who has given a notification to notify the Commissioners if any information contained in or provided in connection with that notification is or becomes inaccurate.

(3) The power under this paragraph to make regulations as to the time within which any notification is to be given shall include power to authorise the Commissioners to extend the time for the giving of a notification.

Publication of information on the register

61 (1) The Commissioners may publish, by such means as they think fit, any information which—

(a) is derived from the register; and

(b) falls within any of the descriptions set out below.

(2) The descriptions are—

(a) the names of registered persons;

(b) the fact (where it is the case) that the registered person is a body corporate which is a member of a group;

(c) the names of the other bodies corporate which are members of the group.

(3) Information may be published in accordance with this paragraph notwithstanding any obligation not to disclose the information that would otherwise apply.

PART VI

CREDITS AND REPAYMENTS

Tax credits

62 (1) The Commissioners may, in accordance with the following provisions of this paragraph, by regulations make provision in relation to cases where—

(a) after a taxable supply has been made, there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would not have been a taxable supply;

(b) after a supply of a taxable commodity is made on the basis that it is a taxable supply, it is determined that the supply was not (to any extent) a taxable supply;

(c) after a taxable supply has been made on the basis that it was **[**F95not**]** a reduced-rate supply, it is determined that the supply was (to any extent) a F96... reduced-rate supply;

F97(d) . . . . . .

(e) after a charge to levy has arisen on a supply of a taxable commodity ("the original commodity") to a person who uses the commodity supplied in producing taxable commodities primarily for his own consumption, that person makes supplies of any of the commodities in whose production he has used the original commodity;

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(f) after a person has become entitled to a debt as a result of making a taxable supply, the debt turns out to be bad (in whole or in part);

(g) the making of a taxable supply gives rise to a double charge to levy within the meaning of paragraph 21.

(2) The provision that may be made in relation to any such case as is mentioned in sub-paragraph (1) is provision—

(a) for such person as may be specified in the regulations to be entitled to a tax credit in respect of any levy charged on the supply (or, in such a case as is mentioned in sub-paragraph (1)(g), one of the supplies) in question;

(b) for a tax credit to which any person is entitled under the regulations to be brought into account when he is accounting for **[**F98such levy due from him**]** as may be determined in accordance with the regulations; and

(c) for a person entitled to a tax credit to be entitled, in any prescribed case where he cannot bring the tax credit into account so as to set it against a liability to levy, to a repayment of levy of an amount so determined.

(3) Regulations under this paragraph may contain any or all of the following provisions—

(a) provision making any entitlement to a tax credit conditional on the making of a claim by such person, within such period and in such manner as may be prescribed;

(b) provision making entitlement to bring a tax credit into account, or to receive a repayment in respect of such a credit, conditional on compliance with such requirements (including the making of a claim) as may be determined in accordance with the regulations;

(c) provision requiring a claim for a tax credit to be evidenced and quantified by reference to such records and other documents as may be so determined;

(d) provision requiring a person claiming any entitlement to a tax credit to keep, for such period and in such form and manner as may be so determined, those records and documents and a record of such information relating to the claim as may be so determined;

(e) provision for the withdrawal of a tax credit where any requirement of the regulations is not complied with;

(f) provision for interest at the rate applicable under section 197 of the Finance Act 1996 to be treated as added, for such period and for such purposes as may be prescribed, to the amount of any tax credit;

(g) provision for determining whether, and to what extent, a debt is to be taken as bad;

(h) provision for the withdrawal of a tax credit to which a person has become entitled in a case within sub-paragraph (1)(f) where any part of the debt that has been taken to be bad falls to be regarded as not having been bad;

(i) provision for determining whether, and to what extent, any part of a debt that has been taken to be bad should be regarded as not having been bad;

(j) provision for anything falling to be determined in accordance with the regulations to be determined by reference to a general or specific direction given in accordance with the regulations by the Commissioners.

(4) Regulations made under this paragraph shall have effect subject to the provisions of paragraph 64.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F95 Word in Sch. 6 para. 62(1)(c) substituted (1.11.2007) by Finance Act 2006 (c. 25), **s. 172(13)(a)(i)**(16); S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F96 Words in Sch. 6 para. 62(1)(c) repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(13)(a)(ii)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F97 Sch. 6 para. 62(1)(d) repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(13)(b)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F98 Words in Sch. 6 para. 62(2)(b) substituted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(4)**

Repayments of overpaid levy

63 (1) Where a person has paid an amount to the Commissioners by way of levy which was not levy due to them, they shall be liable to repay the amount to him.

(2) The Commissioners shall not be liable to repay an amount under this paragraph if, or to the extent that, any person has become entitled to a tax credit in respect of that amount by virtue of tax credit regulations.

(3) The Commissioners shall not be liable to repay an amount under this paragraph except on the making of a claim for that purpose.

(4) A claim under this paragraph must be made in such form and manner, and must be supported by such documentary evidence, as may be required by regulations made by the Commissioners.

(5) The preceding provisions of this paragraph are subject to the provisions of paragraph 64.

(6) Except as provided by this paragraph or tax credit regulations, the Commissioners shall not, by virtue of the fact that it was not levy due to them, be liable to repay any amount paid to them by way of levy.

Supplemental provisions about repayments etc.

64 (1) The Commissioners shall not be liable, on any claim for a repayment of levy, to repay any amount paid to them more than three years before the making of the claim.

(2) It shall be a defence to any claim for a repayment of an amount of levy that the repayment of that amount would unjustly enrich the claimant.

(3) Sub-paragraph (4) applies for the purposes of sub-paragraph (2) where—

(a) there is an amount paid by way of levy which (apart from sub-paragraph (2)) would fall to be the subject of a repayment of levy to any person ("person A"); and

(b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than person A.

(4) Where, in a case to which this sub-paragraph applies, loss or damage has been or may be incurred by person A as a result of mistaken assumptions made in his case about the operation of any provisions relating to levy, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination as to—

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(a) whether or to what extent the repayment of an amount to person A would enrich him; or

(b) whether or to what extent any enrichment of person A would be unjust.

(5) In sub-paragraph (4) "the quantified amount" means the amount (if any) which is shown by person A to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions.

(6) The reference in sub-paragraph (4) to provisions relating to levy is a reference to any provisions of—

(a) any enactment or subordinate legislation (whether or not still in force) which relates to the levy or to any matter connected with it; or

(b) any notice published by the Commissioners under or for the purposes of any enactment or subordinate legislation relating to the levy.

Reimbursement arrangements

65 (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of paragraph 64(2) except where the arrangements—

(a) contain such provision as may be required by the regulations; and

(b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Commissioners.

(2) In this paragraph "reimbursement arrangements" means any arrangements for the purposes of a claim to a repayment of levy which—

(a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and

(b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Commissioners.

(3) Without prejudice to the generality of sub-paragraph (1), the provision that may be required by regulations under this paragraph to be contained in reimbursement arrangements includes—

(a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;

(b) provision for the repayment of amounts to the Commissioners where those amounts are not reimbursed in accordance with the arrangements;

(c) provision requiring interest paid by the Commissioners on any amount repaid by them to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Commissioners;

(d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Commissioners, or to an officer of theirs.

(4) Regulations under this paragraph may impose obligations on such persons as may be specified in the regulations—

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(a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of sub-paragraph (3)(b) or (c);

(b) to comply with any requirements contained in any such arrangements by virtue of sub-paragraph (3)(d).

(5) Regulations under this paragraph may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.

Interest payable by the Commissioners

66 (1) Where, due to an error on the part of the Commissioners, a person—

(a) has paid to them by way of levy an amount which was not levy due and which they are in consequence liable to repay to him,

(b) has failed to claim a repayment of levy to which he was entitled, under any tax credit regulations, in respect of any tax credits, or

(c) has suffered delay in receiving payment of an amount due to him from them in connection with levy,

then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.

(2) In sub-paragraph (1), the reference in paragraph (a) to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied.

(3) In that sub-paragraph the amounts referred to in paragraph (c)—

(a) do not include any amount payable under this paragraph;

(b) do not include the amount of any interest for which provision is made by virtue of paragraph 62(3)(f); but

(c) do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under paragraph 87(3) or 110(3).

(4) The applicable period, in a case falling within sub-paragraph (1)(a), is the period—

(a) beginning with the date on which the payment is received by the Commissioners; and

(b) ending with the date on which they authorise payment of the amount on which the interest is payable.

(5) The applicable period, in a case falling within sub-paragraph (1)(b) or (c), is the period—

(a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable; and

(b) ending with the date on which they in fact authorise payment of that amount.

(6) In determining the applicable period for the purposes of this paragraph there shall be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control.

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(7) The reference in sub-paragraph (6) to a period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control includes, in particular, any period which is referable to—

(a) any unreasonable delay in the making of any claim for the payment or repayment of the amount on which interest is claimed;

(b) any failure by any person to provide the Commissioners—

(i) at or before the time of the making of a claim, or

(ii) subsequently in response to a request for information by the Commissioners,

with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and

(c) the making, as part of or in association with any claim for the payment or repayment of the amount on which interest is claimed, of a claim to anything to which the claimant was not entitled.

(8) In determining for the purposes of sub-paragraph (7) whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be provided for by regulations, any period which—

(a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and

(b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—

(i) that they have received a complete answer to their request for information;

(ii) that they have received all that they need in answer to that request; or

(iii) that it is unnecessary for them to be provided with any information in answer to that request.

(9) The Commissioners shall not be liable to pay interest under this paragraph except on the making of a claim for that purpose.

(10) A claim under this paragraph must be in writing and must be made not more than three years after the end of the applicable period to which it relates.

(11) References in this paragraph—

(a) to receiving payment of any amount from the Commissioners, or

(b) to the authorisation by the Commissioners of the payment of any amount,

include references to the discharge by way of set-off (whether in accordance with regulations under paragraph 73 or 74 or otherwise) of the Commissioners' liability to pay that amount.

(12) Interest under this paragraph shall be payable at the rate applicable under section 197 of the [M23]Finance Act 1996.

Marginal Citations

M23 1966 c. 8.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Assessment for excessive repayment

67 (1) Where—

(a) any amount has been paid at any time to any person by way of a repayment of levy, and

(b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay to that person,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(2) Where—

(a) any amount has been paid to any person by way of repayment of levy,

(b) the repayment is in respect of a tax credit the entitlement to which arose in a case falling within paragraph 62(1)(f) (tax credit where all or part of a debt is bad),

(c) the whole or any part of the credit is withdrawn on account of any part of the debt taken as bad falling to be regarded as not having been bad, and

(d) the amount paid exceeded the amount which the Commissioners would have been liable to repay to that person had that withdrawal been taken into account,

the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.

(3) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of paragraph 65(4)(a), the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.

(4) Subject to sub-paragraph (5), where—

(a) an assessment is made on any person under this paragraph in respect of a repayment of levy made in relation to any accounting period, and

(b) the Commissioners have power under Part VII of this Schedule to make an assessment on that person to an amount of levy due from that person for that period,

the assessments may be combined and notified to him as one assessment.

(5) A notice of a combined assessment under sub-paragraph (4) must separately identify the amount being assessed in respect of repayments of levy.

Assessment for overpayments of interest

68 Where—

(a) any amount has been paid to any person by way of interest under paragraph 66, but

(b) that person was not entitled to that amount under that paragraph,

the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.

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Assessments under paragraphs 67 and 68

69 (1) An assessment under paragraph 67 or 68 shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.

(2) Where an amount has been assessed and notified to any person under paragraph 67 or 68, it shall be recoverable as if it were levy due from him.

(3) Sub-paragraph (2) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Interest on amounts assessed

70 (1) Where an assessment is made under paragraph 67 or 68, the whole of the amount assessed shall carry interest, for the period specified in sub-paragraph (2), as follows—

(a) so much of that amount as represents the amount of a tax credit claimed by a person who was not entitled to it (but not any amount assessed under paragraph 67(2)) shall carry penalty interest;

(b) so much of that amount as does not carry penalty interest under paragraph (a) shall carry interest at the rate applicable under section 197 of the [M24]Finance Act 1996.

(2) That period is the period which—

(a) begins with the day after that on which the person is notified of the assessment; and

(b) ends with the day before that on which payment is made of the amount assessed.

(3) Interest under this paragraph shall be paid without any deduction of income tax.

(4) Penalty interest under this paragraph shall be compound interest calculated—

(a) at the penalty rate, and

(b) with monthly rests.

(5) For this purpose the penalty rate is the rate found by—

(a) taking the rate applicable under section 197 of the Finance Act 1996 for the purposes of sub-paragraph (1)(b); and

(b) adding 10 percentage points to that rate.

(6) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(7) Subject to sub-paragraph (8), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (6).

(8) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (7), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest;

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(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

(9) In the case of interest reduced by the Commissioners under sub-paragraph (6) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Marginal Citations

M24 1996 c. 8.

Assessments to interest under paragraph 70

71 (1) Where any person is liable to interest under paragraph 70 the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) Without prejudice to the power to make assessments under this paragraph for later periods, the interest to which an assessment under this paragraph may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment under this paragraph is made.

(3) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were levy due from him.

(4) Sub-paragraph (3) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Where an assessment is made under this paragraph to an amount of interest under paragraph 70—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of the amounts so accruing.

(6) Where—

(a) an assessment to interest is made specifying a date for the purposes of sub-paragraph (5)(a), and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

Supplementary assessments

72 If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under paragraph 67, 68 or 71 exceeds the amount which was so assessed, then—

(a) under the same paragraph as that assessment was made, and

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(b) on or before the last day on which that assessment could have been made,

the Commissioners may make a supplementary assessment of the amount of the excess and notify the person concerned accordingly.

Set-off of or against amounts due under this Schedule

73 (1) The Commissioners may by regulations make provision in relation to any case where—

(a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of levy; and

(b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of levy or any of the other taxes under their care and management.

(2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b), the latter shall be set off against the former.

(3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a), the Commissioners may set off the latter in paying the former.

(4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) no payment need be made in respect of the former or the latter.

(5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of levy to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a).

(6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) as discharged accordingly.

(7) References in sub-paragraph (1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.

(8) In this paragraph "tax" includes duty.

Set-off of or against other taxes and duties

74 (1) The Commissioners may by regulations make provision in relation to any case where—

(a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management other than levy; and

(b) the Commissioners are under a duty, at the same time, to make any repayment of levy to that person or to make any other payment to him of any amount or amounts in respect of levy.

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(2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b), the latter shall be set off against the former.

(3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a), the Commissioners may set off the latter in paying the former.

(4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) no payment need be made in respect of the former or the latter.

(5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a).

(6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) as discharged accordingly.

(7) References in sub-paragraph (1) to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.

(8) In this paragraph "tax" includes duty.

Restriction on powers to provide for set-off

75 (1) Regulations made under paragraph 73 or 74 shall not require any such amount or amounts as are mentioned in sub-paragraph (1)(b) of that paragraph ("the credit") to be set against any such amount or amounts as are mentioned in sub-paragraph (1)(a) of that paragraph ("the debit") in any case where—

(a) an insolvency procedure has been applied to the person entitled to the credit;

(b) the credit became due after that procedure was so applied; and

(c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.

(2) For the purposes of this paragraph, an insolvency procedure is applied to a person if—

(a) a bankruptcy order, winding-up order or administration order is made **[**F99or an administrator is appointed**]** in relation to that person or an award of sequestration is made on that person's estate;

(b) that person is put into administrative receivership;

(c) that person passes a resolution for voluntary winding up;

(d) any voluntary arrangement approved in accordance with—

(i) Part I or VIII of the M25Insolvency Act 1986, or

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(ii) Part II or Chapter II of Part VIII of the [M26]Insolvency (Northern Ireland) Order 1989,

comes into force in relation to that person;

(e) a deed of arrangement registered in accordance with—

(i) the [M27]Deeds of Arrangement Act 1914, or

(ii) Chapter I of Part VIII of that Order,

takes effect in relation to that person;

(f) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989;

(g) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;

(h) an interim order is made under Part VIII of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or

(i) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the [M28]Bankruptcy (Scotland) Act 1985).

(3) In this paragraph references, in relation to any person, to the application of an insolvency procedure to that person shall not include—

(a) the making of a bankruptcy order, winding-up order[F100]... or award of sequestration **[**[F101]or the appointment of an administrator**]** at a time when any such arrangement or deed as is mentioned in paragraph (d), (e) or (i) of sub-paragraph (2) is in force in relation to that person;

(b) the making of a winding-up order at any of the following times, that is to say—

[[F102](i) immediately upon the appointment of an administrator in respect of the person ceasing to have effect;**]**

(ii) when that person is being wound up voluntarily;

(iii) when that person is in administrative receivership;

or

(c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.

(4) For the purposes of this paragraph a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person.

(5) In this paragraph—

"administration order" means an administration order under **[**[F103]Schedule B1 to**]** the [M29]Insolvency Act 1986 or Article 21 of the [M30] Insolvency (Northern Ireland) Order 1989;

"administrative receiver" means an administrative receiver within the meaning of section 251 of that Act or Article 5(1) of that Order.

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Textual Amendments

F99 Words in Sch. 6 para. 75(2)(a) inserted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 32(a)** (with art. 6)

F100 Words in Sch. 6 para. 75(3)(a) omitted (15.9.2003) by virtue of Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 32(b)(i)** (with art. 6)

F101 Words in Sch. 6 para. 75(3)(a) inserted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 32(b)(ii)** (with art. 6)

F102 Sch. 6 para. 75(3)(b)(i) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 32(c)** (with art. 6)

F103 Words in Sch. 6 para. 75(5) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 32(d)** (with art. 6)

Marginal Citations

M25 1986 c. 45.

M26 S.I 1989/2405 (N.I 19.).

M27 1914 c. 47.

M28 1985 c. 66.

M29 1986 c. 45.

M30 S.I. 1989/2405)N.I. 19.

Part VI: supplemental provisions

76 (1) Any notification of an assessment under any provision of this Part of this Schedule to a person's representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.

(2) In this paragraph "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(3) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

(a) an interim or permanent trustee (within the meaning of the Bankruptcy (Scotland) Act 1985); and

(b) a trustee acting under a trust deed (within the meaning of that Act).

(4) The powers conferred by paragraphs 73 and 74 are without prejudice to any power of the Commissioners to provide by tax credit regulations for any amount to be set against another.

PART VII

RECOVERY AND INTEREST

Recovery of levy as debt due

77 Levy shall be recoverable as a debt due to the Crown.

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Assessments of amounts of levy due

78 (1) Where it appears to the Commissioners—

(a) that any period is an accounting period by reference to which a person is liable to account for levy,

(b) that any levy for which that person is liable to account by reference to that period has become due, and

(c) that there has been a default by that person that falls within sub-paragraph (2),

they may assess the amount of levy due from that person for that period to the best of their judgement and notify that amount to that person.

[F104(1A) Where it appears to the Commissioners—

(a) that any levy for which a person is liable to account otherwise than by reference to an accounting period has become due, and

(b) that there has been a default by that person that falls within sub-paragraph (2),

they may assess the amount of that levy to the best of their judgement and notify it to him.**]**

(2) The defaults falling within this sub-paragraph are—

(a) any failure to make a return required to be made by any provision made by or under this Schedule;

(b) any failure to keep any documents necessary to verify returns required to be made under any such provision;

(c) any failure to afford the facilities necessary to verify returns required to be made under any such provision;

(d) the making, in purported compliance with any requirement of any such provision to make a return, of an incomplete or incorrect return;

(e) any failure to comply with a requirement imposed by or under Part V of this Schedule (registration).

(3) Where it appears to the Commissioners that a default falling within sub-paragraph (2) is a default by a person on whom the requirement to make a return is imposed in his capacity as the representative of another person, sub-paragraph (1) shall apply as if the reference to the amount of levy due included a reference to any levy due from that other person.

(4) In a case where—

(a) the Commissioners have made an assessment for any accounting period as a result of any person's failure to make a return for that period,

(b) the levy assessed has been paid but no proper return has been made for that period,

(c) as a result of a failure (whether by that person or a representative of his) to make a return for a later accounting period, the Commissioners find it necessary to make another assessment under this paragraph in relation to the later period, and

(d) the Commissioners think it appropriate to do so in the light of the absence of a proper return for the earlier period,

they may, in the assessment in relation to the later period, specify an amount of levy due that is greater than the amount that they would have considered to be appropriate had they had regard only to the later period.

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(5) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable on the basis that it is an amount of levy due from him.

(6) Sub-paragraph (5) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Textual Amendments

F104 Sch. 6 para. 78(1A) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(5)**

Supplementary assessments

79 (1) If, where an assessment has been notified to any person under paragraph 78 or this paragraph, it appears to the Commissioners that the amount which ought to have been assessed as due for any accounting period exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

(2) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable on the basis that it is an amount of levy due from him.

(3) Sub-paragraph (2) does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

Time limits for assessments

80 (1) An assessment under paragraph 78 or 79 of an amount of levy due for any accounting period—

(a) shall not be made more than two years after the end of the accounting period unless it is made within the period mentioned in sub-paragraph (2); and

(b) subject to sub-paragraph (3), shall not in any event be made more than three years after the end of that accounting period.

(2) The period referred to in sub-paragraph (1)(a) is the period of one year after evidence of facts sufficient in the Commissioners' opinion to justify the making of the assessment first came to their knowledge.

(3) Subject to sub-paragraph (4), where levy has been lost—

(a) as a result of any conduct for which a person has been convicted of an offence involving fraud,

(b) in circumstances giving rise to liability to a penalty under paragraph 55 (failure to notify of registrability etc.), or

(c) as a result of conduct falling within paragraph 98(1) (evasion),

that levy may be assessed under paragraph 78 or 79 as if, in sub-paragraph (1)(b) above, for "three years" there were substituted "twenty years".

(4) Where, after a person's death, the Commissioners propose to assess an amount of levy as due by reason of some conduct of the deceased—

(a) the assessment shall not be made more than three years after the death; and

(b) if the circumstances are as set out in sub-paragraph (3)—

(i) the modification of sub-paragraph (1) contained in that sub-paragraph shall not apply; but

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(ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.

(5) Nothing in this paragraph shall prejudice the powers of the Commissioners under paragraph 78(4).

Ordinary interest on overdue levy paid before assessment

81 (1) Where—

(a) the circumstances are such that an assessment could have been made under paragraph 78 or 79 of an amount of levy due from any person, but

(b) before such an assessment was made and notified to that person that amount was paid (so that no such assessment was necessary),

the whole of the amount paid shall carry interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period to which the amount paid relates; and

(b) ends with the day before that on which the amount is paid.

(3) Interest under this paragraph shall be payable at the rate applicable under section 197 of the [M31]Finance Act 1996.

Marginal Citations
M31 1966 c. 8.

Penalty interest on unpaid levy

82 (1) Where—

(a) a person makes a return for the purposes of any regulations made under paragraph 41 (whether or not at the time required by the regulations), and

(b) the return shows that an amount of levy is due from him for the accounting period for which the return is made,

that amount shall carry penalty interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and

(b) ends with the day before that on which the amount shown in the return is paid.

Penalty interest on levy where no return made

83 (1) Where—

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(a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him, and

(b) the assessment is made at a time after the time by which a return is required by regulations under paragraph 41 to be made by that person for that accounting period and before any such return has been made,

that amount shall carry penalty interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and

(b) ends with the day before that on which the assessed amount is paid.

(3) Where the person, after the assessment is made, makes for the purposes of any regulations under paragraph 41 a return for the accounting period in question, the assessed amount shall not carry penalty interest under this paragraph to the extent that that amount is shown in the return as an amount of levy due from him for that accounting period (and, accordingly, carries penalty interest under paragraph 82).

Ordinary and penalty interest on under-declared levy

84 (1) Subject to sub-paragraph (4), where—

(a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him,

(b) the assessment is made after a return for the purposes of any regulations under paragraph 41 has been made by that person for that accounting period, and

(c) the assessment is made on the basis that the amount ("the additional amount") is due from him in addition to any amount shown in the return, or in a previous assessment made in relation to the accounting period,

the additional amount shall carry interest for the period specified in sub-paragraph (2).

(2) That period is the period which—

(a) begins with the day after that on which the person is required in accordance with regulations under paragraph 41 to pay levy due from him for the accounting period in question; and

(b) ends with the day before the day on which the additional amount is paid.

(3) Interest under this paragraph—

(a) in respect of so much of the period specified in sub-paragraph (2) as falls before the day on which the assessment is notified to the person in question, shall be payable at the rate applicable under section 197 of the [M32]Finance Act 1996 for the purposes of paragraph 81(3); and

(b) in respect of the remainder (if any) of that period, shall be penalty interest.

(4) Where—

(a) the Commissioners make an assessment under paragraph 78 or 79 of an amount of levy due from any person for any accounting period and notify it to him,

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(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount assessed is paid on or before that date,

the only interest carried by that amount under this paragraph shall be interest, at the rate given by sub-paragraph (3)(a), for the period before the day on which the assessment is notified.

Marginal Citations

M32 1996 c. 8.

Penalty interest on unpaid ordinary interest

85 (1) Subject to sub-paragraph (2), where the Commissioners make an assessment under paragraph 88 of an amount of interest payable at the rate given by paragraph 81(3), that amount shall carry penalty interest for the period which—

(a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and

(b) ends with the day before the day on which the assessed interest is paid.

(2) Where—

(a) the Commissioners make an assessment under paragraph 88 of an amount of interest due from any person,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount of interest assessed is paid on or before that date,

the amount paid before that date shall not carry penalty interest under this paragraph.

Penalty interest

86 (1) Penalty interest under any of paragraphs 82 to 85 shall be compound interest calculated—

(a) at the penalty rate, and

(b) with monthly rests.

(2) For this purpose the penalty rate is the rate found by—

(a) taking the rate applicable under section 197 of the [M33]Finance Act 1996 for the purposes of paragraph 81(3); and

(b) adding 10 percentage points to that rate.

(3) Where a person is liable under any of paragraphs 82 to 85 to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(4) Subject to sub-paragraph (5), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (3).

(5) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (4), no account shall be taken of any of the following matters, that is to say—

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(a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the interest;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

(6) In the case of interest reduced by the Commissioners under sub-paragraph (3) an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Marginal Citations

M33 1996 c. 8.

Supplemental provisions about interest

87 (1) Interest under any of paragraphs 81 to 85 shall be paid without any deduction of income tax.

(2) Sub-paragraph (3) applies where—

(a) an amount carries interest under any of paragraphs 81 to 85 (or would do so apart from that sub-paragraph); and

(b) all or part of the amount turns out not to be due.

(3) In such a case—

(a) the amount or part that turns out not to be due shall not carry interest under the applicable paragraph and shall be treated as never having done so; and

(b) all such adjustments as are reasonable shall be made, including (subject to paragraphs 64 to 76) adjustments by way of repayment.

Assessments to interest

88 (1) Where a person is liable for interest under any of paragraphs 81 to 85, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify that person accordingly.

(3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.

(4) Sub-paragraph (3)—

(a) shall not apply so as to require any interest to be payable on interest except—

(i) in accordance with paragraph 85, or

(ii) in so far as it falls to be compounded in accordance with paragraph 86;

and

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(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Paragraph 80 shall apply in relation to assessments under this paragraph as if any assessment to interest were an assessment under paragraph 78 to levy due for the period which is the relevant accounting period in relation to that interest.

(6) Subject to sub-paragraph (7), where a person—

(a) is assessed under this paragraph to an amount due by way of any interest, and

(b) is also assessed under paragraph 78 or 79 for the accounting period which is the relevant accounting period in relation to that interest,

the assessments may be combined and notified to him as one assessment.

(7) A notice of a combined assessment under sub-paragraph (6) must separately identify the interest being assessed.

(8) The relevant accounting period for the purposes of this paragraph is—

(a) in the case of interest on levy due for any accounting period, that accounting period; and

(b) in the case of interest on interest (whether under paragraph 85 or by virtue of any compounding under paragraph 86), the period which is the relevant accounting period for the interest on which the interest is payable.

(9) In a case where—

(a) the amount of any interest falls to be calculated by reference to levy which was not paid at the time when it should have been, and

(b) that levy cannot be readily attributed to any one or more accounting periods,

that levy shall be treated for the purposes of interest on any of that levy as levy due for such period or periods as the Commissioners may determine to the best of their judgement and notify to the person liable.

Further assessments to penalty interest

89 (1) Where an assessment is made under paragraph 88 to an amount of penalty interest under any of paragraphs 82 to 85—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 88 in respect of the amounts so accruing.

(2) Where—

(a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a), and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

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Walking possession agreements

90 (1) This paragraph applies where—

(a) in accordance with regulations under section 51 of the [M34]Finance Act 1997 (enforcement by distress), a distress is authorised to be levied on the goods and chattels of a person ("the person in default") who has refused or neglected to pay an amount of levy due from him or an amount recoverable from him as if it were levy; and

(b) the person levying the distress and the person in default have entered into a walking possession agreement.

(2) For the purposes of this paragraph a walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—

(a) acknowledges that the property specified in the agreement is under distraint and held in walking possession; and

(b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.

(3) Subject to sub-paragraph (4), if the person in default is in breach of the undertaking contained in a walking possession agreement, he shall be liable to a penalty equal to one half of the levy or other amount referred to in sub-paragraph (1)(a).

(4) The person in default shall not be liable to a penalty under sub-paragraph (3) if he satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the breach in question.

(5) This paragraph does not extend to Scotland.

Marginal Citations

M34 1997 c. 16.

Interpretation etc. of Part VII

91 (1) In this Part of this Schedule "penalty interest" shall be construed in accordance with paragraph 86.

(2) Any notification of an assessment under any provision of this Part of this Schedule to a person's representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.

(3) In this Part of this Schedule "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(4) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

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(a) an interim or permanent trustee (within the meaning of the [M35]Bankruptcy (Scotland) Act 1985); and

(b) a trustee acting under a trust deed (within the meaning of that Act).

[[F105](5) In relation to cases where, by virtue of regulations under paragraph 41(1)(a)(ii) **[**[F106]or by virtue of paragraph 45B(8)**]**, a person is liable to account for levy otherwise than by reference to accounting periods, this Part of this Schedule shall have effect as if—

(a) references to levy due for "an" or "any" accounting period were references simply to levy due;

(b) references to levy due for a specified accounting period were references to the levy in question;

(c) references to an assessment for a specified accounting period were references to an assessment in respect of the levy in question;

(d) any time limit framed by reference to the end of the accounting period for which levy is due were framed by reference to the date on which payment of the levy is due;

(e) references to the making of a return for an accounting period were references to the payment of the levy in question;

(f) references to the amount shown in such a return were references to the amount of levy paid;

(g) paragraph 88(8) and (9) were omitted.**]**

Textual Amendments

F105 Sch. 6 para. 91(5) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(6)**

F106 Words in Sch. 6 para. 91(5) inserted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 8(2)**

Marginal Citations

M35 1985 c. 66.

PART VIII

EVASION, MISDECLARATION AND NEGLECT

Criminal offences: Evasion

92 (1) A person is guilty of an offence if he is knowingly concerned in, or in the taking of steps with a view to—

(a) the fraudulent evasion by that person of any levy with which he is charged; or

(b) the fraudulent evasion by any other person of any levy with which that other person is charged.

(2) The references in sub-paragraph (1) to the evasion of levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of levy.

(3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—

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(a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.

(4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).

(5) For the purposes of sub-paragraph (4) the amounts of levy that were or were intended to be evaded shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(6) In determining for the purposes of sub-paragraph (4) how much levy (in addition to any amount falling within sub-paragraph (5)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of levy to which he was, or would have been, entitled.

Criminal offences: Misstatements

93 (1) A person is guilty of an offence if, with the requisite intent and for purposes connected with the levy—

(a) he produces or provides, or causes to be produced or provided, any document which is false in a material particular, or

(b) he otherwise makes use of such a document;

and in this sub-paragraph "the requisite intent" means the intent to deceive any person or to secure that a machine will respond to the document as if it were a true document.

(2) A person is guilty of an offence if, in providing any information under any provision made by or under this Schedule—

(a) he makes a statement which he knows to be false in a material particular; or

(b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—

(a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.

(4) In the case of any offence under this paragraph, where—

(a) the document referred to in sub-paragraph (1) is a return **[**F107or other notification**]** required under any provision made by or under this Schedule, or

(b) the information referred to in sub-paragraph (2) is contained in or otherwise relevant to such a return **[**F108or notification**]** ,

the amount of the penalty on summary conviction shall be whichever is the greater of the statutory maximum and the amount equal to three times the sum of the amounts

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(if any) by which the return **[**F109or notification**]** understates any person's liability to levy.

(5) In sub-paragraph (4) the reference to the amount by which any person's liability to levy is understated shall be taken to be equal to the sum of—

(a) the amount (if any) by which his gross liability was understated; and

(b) the amount (if any) by which any entitlements of his to tax credits and repayments of levy were overstated.

(6) In sub-paragraph (5) "gross liability" means liability to levy before any deduction is made in respect of any entitlement to any tax credit or repayments of levy.

Textual Amendments

F107 Words in Sch. 6 para. 93(4)(a) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(7)(a)**

F108 Words in Sch. 6 para. 93(4)(b) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(7)(b)**

F109 Words in Sch. 6 para. 93(4) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(7)(b)**

Criminal offences: Conduct involving evasions or misstatements

94 (1) A person is guilty of an offence under this paragraph if his conduct during any particular period must have involved the commission by him of one or more offences under the preceding provisions of this Part of this Schedule.

(2) For the purposes of any proceedings for an offence under this paragraph it shall be immaterial whether the particulars of the offence or offences that must have been committed are known.

(3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4))—

(a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or to both.

(4) In the case of any offence under this paragraph, where the statutory maximum is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded by the conduct in question, the penalty on summary conviction shall be the amount equal to three times that sum (instead of the statutory maximum).

(5) For the purposes of sub-paragraph (4) the amounts of levy that were or were intended to be evaded by any conduct shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(6) In determining for the purposes of sub-paragraph (4) how much levy (in addition to any amount falling within sub-paragraph (5)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

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Criminal offences: Preparations for evasion

95 (1) Where a person—

(a) becomes a party to any agreement under or by means of which a supply of a taxable commodity is or is to be made, or

(b) makes arrangements for any other person to become a party to such an agreement,

he is guilty of an offence if he does so in the belief that levy chargeable on the supply will be evaded.

(2) Subject to sub-paragraph (3), a person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.

(3) In the case of any offence under this paragraph, where level 5 on the standard scale is less than three times the sum of the amounts of levy which are shown to be amounts that were or were intended to be evaded in respect of the supply in question, the penalty shall be the amount equal to three times that sum (instead of level 5 on the standard scale).

(4) For the purposes of sub-paragraph (3) the amounts of levy that were or were intended to be evaded shall be taken to include—

(a) the amount of any tax credit, and

(b) the amount of any repayment of levy,

which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

(5) In determining for the purposes of sub-paragraph (3) how much levy (in addition to any amount falling within sub-paragraph (4)) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of levy to which he was, or would have been, entitled.

Offences under paragraphs 92 to 95: procedural matters

96 Sections 145 to 155 of the Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences and penalties under paragraphs 92 to 95 as they apply in relation to offences and penalties under the customs and excise Acts.

Arrest for offences under paragraphs 92 to 94

F110 97 . . . . . .

Textual Amendments

F110 Sch. 6 para. 97 repealed (1.12.2007) by Finance Act 2007 (c. 11), s. 84(4)(5), Sch. 22 para. 11(a), **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 3(a)

Civil penalties: Evasion

F111 98 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F111 Sch. 6 paras. 98-100 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 122(2), **Sch. 40 para. 21(h)** (with savings in relation to paras. 98, 99 by The Finance Act 2008, Schedule 41 (Appointed Day and Transitional Provisions) Order 2009 (S.I. 2009/511, art. 4(d)); S.I. 2009/571, art. 2 (with art. 6)

Liability of directors etc. for penalties under paragraph 98

F111 99 . . . . . .

Textual Amendments

F111 Sch. 6 paras. 98-100 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 122(2), **Sch. 40 para. 21(h)** (with savings in relation to paras. 98, 99 by The Finance Act 2008, Schedule 41 (Appointed Day and Transitional Provisions) Order 2009 (S.I. 2009/511, art. 4(d)); S.I. 2009/571, art. 2 (with art. 6)

Civil penalties: Misdeclaration or neglect

F111 100 . . . . . .

Textual Amendments

F111 Sch. 6 paras. 98-100 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 122(2), **Sch. 40 para. 21(h)** (with savings in relation to paras. 98, 99 by The Finance Act 2008, Schedule 41 (Appointed Day and Transitional Provisions) Order 2009 (S.I. 2009/511, art. 4(d)); S.I. 2009/571, art. 2 (with art. 6)

Civil penalties: Incorrect notifications etc.

101 F112 (1) . . . . . .

(2) Where—

(a) a person gives, in relation to any supply (or supplies) of a taxable commodity (or taxable commodities) being made to him, to the supplier a certificate that the supply (or supplies) is (or are) to any extent—

(i) for domestic or charity use,

(ii) exempt under any of paragraphs **[**F113 11,**]** 12, 13, 14, **[**F114 15, 18 **[**F115, 18A**]** and 21,**][**F116 or**]**

F117 (iii) . . . . . .

[F118 (iv) a reduced-rate supply (or reduced-rate supplies),**]**

and

(b) the certificate is **[**F119 (or becomes)**]** incorrect,

the person shall be liable to a penalty.

(3) The amount of the penalty to which a person is liable under **[**F120 this paragraph**]** shall be equal to 105 per cent. of the difference between—

(a) the amount of levy (which may be nil) that would have been chargeable on the supply (or supplies) if the F121 ... certificate had been correct, and

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the amount of levy actually chargeable.

(4) The giving of a **[**[F122]certificate (or not revoking or varying it)**]** shall not give rise to a penalty under this paragraph if **[**[F123]the person concerned**]** satisfies the Commissioners or, on appeal, an appeal tribunal that **[**[F124]the person has a reasonable excuse**]**.

(5) Where by reason of giving a **[**[F125]certificate (or not revoking or varying it)**]** —

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under paragraph 98,

that person shall not by reason of **[**[F126]that**]** be liable also to a penalty under this paragraph.

Textual Amendments

F112 Sch. 6 para. 101(1) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 2 para. 12(2), **Sch. 27 Pt. 1(2)**

F113 Word in Sch. 6 para. 101(2) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(3)(a)**

F114 Words in Sch. 6 para. 101(2)(a)(ii) substituted (24.7.2002 with application as mentioned in s. 127(2) of the amending Act) by 2002 c. 23, **s. 127(1)(a)(2)**

F115 Word in Sch. 6 para. 101(2)(a)(ii) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 188(2)(b)**

F116 Word in Sch. 6 para. 101(2)(a)(ii) inserted (1.11.2007) by Finance Act 2006 (c. 25), **s. 172(14)(a)**(16); S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F117 Sch. 6 para. 101(2)(a)(iii) repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(14)(b)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F118 Sch. 6 para. 101(2)(a)(iv) and word preceding it inserted (24.7.2002 with application as mentioned in s. 127(2) of the amending Act) by 2002 c. 23, **s. 127(1)(b)(2)**

F119 Words in Sch. 6 para. 101(2) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(3)(b)**

F120 Words in Sch. 6 para. 101(3) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(4)(a)**

F121 Words in Sch. 6 para. 101(3) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 2 para. 12(4)(b), **Sch. 27 Pt. 1(2)**

F122 Words in Sch. 6 para. 101(4) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(5)(a)**

F123 Words in Sch. 6 para. 101(4) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(5)(b)**

F124 Words in Sch. 6 para. 101(4) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(5)(c)**

F125 Words in Sch. 6 para. 101(5) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(6)(a)**

F126 Word in Sch. 6 para. 101(5) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 2 para. 12(6)(b)**

Interpretation of Part VIII

102 (1) References in this Part of this Schedule to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of levy on the basis that that amount is an amount which may be so brought into account in accordance with tax credit regulations.

(2) References in this Part of this Schedule to obtaining a repayment of levy are references to obtaining either—

(a) the payment or repayment of any amount, or

(b) the acknowledgement of a right to receive any amount,

on the basis that that amount is the amount of a repayment of levy to which there is an entitlement.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART IX

CIVIL PENALTIES

Preliminary

103 (1) In this Part of this Schedule "civil penalty" means any penalty liability to which—

(a) is imposed by or under this Schedule, and

(b) arises otherwise than in consequence of a person's conviction for a criminal offence.

(2) In this Part of this Schedule—

(a) references to a person's being liable to a civil penalty include references to his being a person from whom the whole or any part of a civil penalty is recoverable by virtue of paragraph 99; and

(b) references, in relation to a person from whom the whole or any part of a civil penalty is so recoverable, to the penalty to which he is liable are references to so much of the penalty as is recoverable from him.

(3) Any notification of an assessment under any provision of this Part of this Schedule to a person's representative shall be treated for the purposes of this Schedule as notification to the person in relation to whom the representative acts.

(4) In this paragraph "representative", in relation to any person, means—

(a) any of that person's personal representatives;

(b) that person's trustee in bankruptcy or liquidator;

(c) any person holding office as a receiver in relation to that person or any of his property;

(d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.

(5) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—

(a) an interim or permanent trustee (within the meaning of the [M36]Bankruptcy (Scotland) Act 1985); and

(b) a trustee acting under a trust deed (within the meaning of that Act).

Marginal Citations

M36 1985 c. 66.

Reduction of penalties

104 (1) Where a person is liable to a civil penalty—

(a) the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; but

(b) on an appeal relating to any penalty reduced by the Commissioners, an appeal tribunal may cancel the whole or any part of the Commissioners' reduction.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In determining whether a civil penalty should be, or should have been, reduced under sub-paragraph (1), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy due or for paying the amount of the penalty;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;

(c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

Matters not amounting to reasonable excuse

105 For the purposes of any provision made by or under this Schedule under which liability to a civil penalty does not arise in respect of conduct for which there is shown to be a reasonable excuse—

(a) an insufficiency of funds available for paying any amount is not a reasonable excuse; and

(b) where reliance has been placed on any other person to perform any task, neither the fact of that reliance nor any conduct of the person relied upon is a reasonable excuse.

Assessments to penalties etc.

106 (1) Where a person is liable to a civil penalty, the Commissioners may assess the amount due by way of penalty and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify that person accordingly.

(3) The fact that any conduct giving rise to a civil penalty may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.

(4) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.

(5) Sub-paragraph (4)—

(a) shall not apply so as to require any interest to be payable on a penalty otherwise than in accordance with this Part of this Schedule; and

(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(6) Subject to sub-paragraph (7), where a person—

(a) is assessed under this paragraph to an amount due by way of a penalty, and

(b) is also assessed under any one or more provisions of Part VII of this Schedule for an accounting period to which the conduct attracting the penalty is referable,

the assessments may be combined and notified to him as one assessment.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) A notice of a combined assessment under sub-paragraph (6) must separately identify the penalty being assessed.

(8) The power to make an assessment under this paragraph is subject to paragraph 99(4).

Further assessments to daily penalties

107 (1) This paragraph applies where an assessment is made under paragraph 106 to an amount of a civil penalty to which any person is liable—

(a) under paragraph 124(3) (failure to provide information); or

(b) under paragraph 127(4) (failure to produce a document).

(2) The notice of assessment shall specify a time, not later than the end of the day of the giving of the notice of assessment, to which the amount of any daily penalty is calculated.

(3) For the purposes of sub-paragraph (2) "daily penalty" means—

(a) in a case within sub-paragraph (1)(a), a penalty imposed by virtue of paragraph 124(3)(b); and

(b) in a case within sub-paragraph (1)(b), a penalty imposed by virtue of paragraph 127(4)(b).

(4) If further penalties accrue in respect of a continuing failure after that date to provide the information or, as the case may be, produce the document, a further assessment or further assessments may be made under paragraph 106 in respect of the amounts so accruing.

(5) Where—

(a) an assessment to a civil penalty is made specifying a date for the purposes of sub-paragraph (2), and

(b) the failure in question is remedied within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the penalty,

the failure shall be deemed for the purposes of any further liability to civil penalties to have been remedied on the specified date.

Time limits on penalty assessments

108 (1) Subject to sub-paragraphs (2) and (3), an assessment under paragraph 106 to a penalty shall not be made more than three years after the conduct to which the penalty relates.

(2) Subject to sub-paragraph (3), if levy has been lost—

(a) as a result of any conduct for which a person has been convicted of an offence involving fraud,

(b) in circumstances giving rise to liability to a penalty under paragraph 55 (failure to notify of registrability etc.), or

(c) as a result of conduct falling within paragraph 98(1) (evasion),

an assessment may be made for any civil penalty relating to that conduct as if, in sub-paragraph (1), for "three years" there were substituted "twenty years".

(3) Where, after a person's death, the Commissioners propose to assess an amount of a civil penalty due by reason of some conduct of the deceased—

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(a) the assessment shall not be made more than three years after the death; and

(b) if the circumstances are as set out in sub-paragraph (2)—

(i) the modification of sub-paragraph (1) contained in that sub-paragraph shall not apply; but

(ii) any assessment which (applying that modification) could have been made immediately after the death may be made at any time within three years after it.

Penalty interest on unpaid penalties

109 (1) Subject to sub-paragraph (2), where the Commissioners make an assessment under paragraph 106 of any civil penalty to which a person is liable the amount of that penalty shall carry penalty interest for the period which—

(a) begins with the day on which the assessment is notified to the person on whom the assessment is made; and

(b) ends with the day before the day on which the assessed penalty is paid.

(2) Where—

(a) the Commissioners make an assessment under paragraph 106 of an amount of any civil penalty to which any person is liable,

(b) they also specify a date for the purposes of this sub-paragraph, and

(c) the amount of the penalty assessed is paid on or before that date,

the amount paid before that date shall not carry penalty interest under this paragraph.

(3) Penalty interest under this paragraph shall be compound interest calculated—

(a) at the penalty rate, and

(b) with monthly rests.

(4) For this purpose the penalty rate is the rate found by—

(a) taking the rate applicable under section 197 of the [M37]Finance Act 1996 for the purposes of paragraph 81(3); and

(b) adding 10 percentage points to that rate.

(5) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.

(6) Subject to sub-paragraph (7), where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (5).

(7) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (6), no account shall be taken of any of the following matters, that is to say—

(a) the insufficiency of the funds available to any person for paying any levy or penalty due or for paying the amount of the interest;

(b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of levy;

(c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(8) In the case of interest reduced by the Commissioners under sub-paragraph (5), an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

Marginal Citations
M37 1996 c. 8.

Supplemental provisions about interest

110 (1) Interest under paragraph 109 shall be paid without any deduction of income tax.

(2) Sub-paragraph (3) applies where—

(a) an amount carries interest under paragraph 109 (or would do so apart from that sub-paragraph); and

(b) all or part of the amount turns out not to be due.

(3) In such a case—

(a) the amount or part that turns out not to be due shall not carry interest under paragraph 109 and shall be treated as never having done so; and

(b) all such adjustments as are reasonable shall be made, including (subject to paragraphs 64 to 76) adjustments by way of repayment.

Assessments to penalty interest on unpaid penalties

111 (1) Where a person is liable for interest under paragraph 109, the Commissioners may assess the amount due by way of interest and notify it to him accordingly.

(2) If, where an assessment has been notified to any person under sub-paragraph (1) or this sub-paragraph, it appears to the Commissioners that the amount which ought to have been assessed exceeds the amount that has already been assessed, the Commissioners may make a supplementary assessment of the amount of the excess and notify that person accordingly.

(3) Where an amount has been assessed and notified to any person under this paragraph, it shall be recoverable as if it were levy due from him.

(4) Sub-paragraph (3)—

(a) shall not apply so as to require any interest to be payable on interest (except in so far as it falls to be compounded in accordance with paragraph 109(3)); and

(b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

(5) Paragraph 108 shall apply in relation to assessments under this paragraph as if any assessment to interest on a penalty were an assessment under paragraph 106 to the penalty in question.

(6) Subject to sub-paragraph (7), where a person—

(a) is assessed under this paragraph to an amount due by way of any interest on a penalty, and

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(b) is also assessed under any one or more provisions of Part VII of this Schedule for the accounting period to which the conduct attracting the penalty is referable,

the assessments may be combined and notified to him as one assessment.

(7) A notice of a combined assessment under sub-paragraph (6) must separately identify the interest being assessed.

Further assessments to interest on penalties

112 (1) Where an assessment is made under paragraph 111 to an amount of penalty interest under paragraph 109—

(a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and

(b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 111 in respect of the amounts so accruing.

(2) Where—

(a) an assessment to penalty interest is made specifying a date for the purposes of sub-paragraph (1)(a), and

(b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,

that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

Up-rating of amounts of penalties

113 (1) If it appears to the Treasury that there has been a change in the value of money since the time when the amount of a civil penalty provided for by this Schedule was fixed, they may by regulations substitute, for the amount for the time being specified as the amount of that penalty, such other sum as appears to them to be justified by the change.

(2) In sub-paragraph (1) the reference to the time when the amount of a civil penalty was fixed is a reference—

(a) in the case of a penalty which has not previously been modified under that sub-paragraph, to the time of the passing of this Act; and

(b) in any other case, to the time of the making of the regulations under that sub-paragraph that made the most recent modification of the amount of that penalty.

(3) Regulations under sub-paragraph (1) shall not apply to the penalty for any conduct before the coming into force of the regulations.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART X

NON-RESIDENTS, GROUPS AND OTHER SPECIAL CASES

Non-resident taxpayers: appointment of tax representatives

114 (1) The Commissioners may by regulations make provision for securing that every non-resident taxpayer has a person resident in the United Kingdom to act as his tax representative for the purposes of the levy.

(2) Regulations under this paragraph may, in particular, contain any or all of the following—

(a) provision requiring notification to be given to the Commissioners where a person becomes a non-resident taxpayer;

(b) provision requiring the appointment of tax representatives by non-resident taxpayers;

(c) provision for the appointment of a person as a tax representative to take effect only where the person appointed is approved by the Commissioners;

(d) provision authorising the Commissioners to give a direction requiring the replacement of a tax representative;

(e) provision authorising the Commissioners to give a direction requiring a person specified in the direction to be treated as the appointed tax representative of a non-resident taxpayer so specified;

(f) provision about the circumstances in which a person ceases to be a tax representative and about the withdrawal by the Commissioners of their approval of a tax representative;

(g) provision enabling a tax representative to act on behalf of the person for whom he is the tax representative through an agent of the representative;

(h) provision for the purposes of any provision made by virtue of paragraphs (a) to (g) regulating the procedure to be followed in any case and imposing requirements as to the information and other particulars to be provided to the Commissioners;

(i) provision as to the time at which things done under or for the purposes of the regulations are to take effect.

(3) Subject to sub-paragraph (4), a person who—

(a) becomes subject, in accordance with any regulations under this paragraph, to an obligation to request the Commissioners' approval for any person's appointment as his tax representative, but

(b) fails (with or without making the appointment) to make the request as required by the regulations,

shall be liable to a penalty of £10,000.

(4) A failure such as is mentioned in sub-paragraph (3) shall not give rise to liability to a penalty under this paragraph if the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

Effect of appointment of tax representatives

115 (1) The tax representative of a non-resident taxpayer shall be entitled to act on the non-resident taxpayer's behalf for the purposes of any provision made by or under this Schedule.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The tax representative of a non-resident taxpayer shall be under a duty, except to such extent as the Commissioners by regulations otherwise provide, to secure the non-resident taxpayer's compliance with, and discharge of, the obligations and liabilities to which the non-resident taxpayer is subject by virtue of any provision made by or under this Schedule (including obligations and liabilities arising or incurred before he became the non-resident taxpayer's tax representative).

(3) A person who is or has been the tax representative of a non-resident taxpayer shall be personally liable—

(a) in respect of any failure while he is or was the non-resident taxpayer's tax representative to secure compliance with, or the discharge of, any obligation or liability to which sub-paragraph (2) applies, and

(b) in respect of anything done in the course of, or for purposes connected with, acting on the non-resident taxpayer's behalf,

as if the obligations and liabilities to which sub-paragraph (2) applies were imposed jointly and severally on the tax representative and the non-resident taxpayer.

(4) A tax representative shall not be liable by virtue of this paragraph to be registered for the purposes of the levy; but the Commissioners may by regulations—

(a) require the names of tax representatives to be registered against the names of the non-resident taxpayers of whom they are the representatives;

(b) make provision for the deletion of the names so registered of persons who cease to be tax representatives.

(5) A tax representative shall not by virtue of this paragraph be guilty of any offence except in so far as—

(a) he has consented to, or connived in, the commission of the offence by the non-resident taxpayer;

(b) the commission of the offence by the non-resident taxpayer is attributable to any neglect on the part of the tax representative; or

(c) the offence consists in a contravention by the tax representative of an obligation which, by virtue of this paragraph, is imposed both on the tax representative and on the non-resident taxpayer.

Groups of companies etc.

116 (1) The Commissioners may make provision by regulations for two or more bodies corporate to be treated as members of a group for the purposes of the Schedule.

(2) Regulations under sub-paragraph (1) may, in particular, make provision for or about—

(a) eligibility for group treatment;

(b) representative members of groups;

(c) applications for, or the variation or ending of, group treatment;

(d) the decisions to be made on applications;

(e) the variation or ending of group treatment by notice given by the Commissioners otherwise than on an application;

(f) treating a member of a group as charged with levy that would otherwise be levy with which another member of the group would be charged;

(g) the members of a group liable for levy, or amounts recoverable as levy, due from a member of a group.

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(3) The provision mentioned in sub-paragraph (2)(c) includes provision—

(a) about the time within which applications are to be made,

(b) for authorising the Commissioners to extend such time, and

(c) for applications that seek group treatment, or its variation or ending, with effect from a time before they are made.

(4) The provision mentioned in sub-paragraph (2)(e) includes provision for a notice to have effect from a time before it is given.

(5) Regulations under sub-paragraph (1) may make provision for imposing requirements on a body corporate to notify the Commissioners of prescribed matters relating to group treatment.

(6) A body corporate which fails to comply with any such requirement imposed by such regulations shall be liable to a penalty of £250.

Partnerships and other unincorporated bodies

117 (1) The Commissioners may by regulations make provision for determining by what persons anything required to be done under this Schedule is to be done where, apart from those regulations, that requirement would fall on—

(a) persons carrying on business in partnership; or

(b) persons carrying on business together as an unincorporated body;

but any regulations under this sub-paragraph must be construed subject to the following provisions of this paragraph.

(2) In determining for the purposes of this Schedule who at any time is the person accountable for any levy in a case where, apart from this sub-paragraph, the persons accountable are persons carrying on any business—

(a) in partnership, or

(b) as an unincorporated body,

the firm or body shall be treated, for the purposes of that determination (and notwithstanding any changes from time to time in the members of the firm or body), as the same person and as separate from its members.

(3) Without prejudice to section 36 of the [M38]Partnership Act 1890 (rights of persons dealing with firm against apparent members of firm), where—

(a) persons have been carrying on in partnership any business in the course or furtherance of which there has been done any thing that resulted in the firm becoming liable to account for any levy, and

(b) a person ceases to be a member of the firm,

that person shall be regarded for the purposes of this Schedule (including sub-paragraph (7) below) as continuing to be a partner until the date on which the change in the partnership is notified to the Commissioners.

(4) Where a person ceases to be a member of a firm during an accounting period (or is treated as so ceasing by virtue of sub-paragraph (3)) any notice, whether of assessment or otherwise, which—

(a) is served on the firm under or for the purposes of any provision made by or under this Schedule, and

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the firm,

shall be treated as served also on him.

(5) Without prejudice to section 16 of the [M39]Partnership Act 1890 (notice to acting partner to be notice to the firm), any notice, whether of assessment or otherwise, which—

(a) is addressed to a firm by the name in which it is registered, and

(b) is served in accordance with this Schedule,

shall be treated for the purposes of this Schedule as served on the firm and, accordingly, where sub-paragraph (4) applies, as served also on the former partner.

(6) Subject to sub-paragraph (7), nothing in this paragraph shall affect the extent to which, under section 9 of the Partnership Act 1890 (liability of partners for debts of the firm), a partner is liable for levy owed by the firm.

(7) Where a person is a partner in a firm during part only of an accounting period, his personal liability for levy incurred by the firm in respect of taxable supplies made in that period shall include, but shall not exceed, such proportion of the firm's liability as may be just and reasonable in the circumstances.

Marginal Citations

M38 1890 c. 39.

M39 1890 c. 39.

Death and incapacity

118 (1) The Commissioners may, in accordance with sub-paragraph (2), by regulations make provision for the purposes of the levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated.

(2) The provisions that may be contained in regulations under this paragraph are—

(a) provision requiring the person who is carrying on the business to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;

(b) provision allowing that person to be treated for a limited time as if he and the person who has died or become incapacitated were the same person; and

(c) such other provision as the Commissioners think fit for securing continuity in the application of this Schedule where a person is so treated.

Transfer of a business as a going concern

119 (1) The Commissioners may by regulations make provision for securing continuity in the application of this Schedule in cases where any business carried on by a person is transferred to another person as a going concern.

(2) Regulations under this paragraph may, in particular, include any or all of the following—

(a) provision requiring the transferor to inform the Commissioners of the transfer;

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(b) provision for liabilities and duties under this Schedule of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;

(c) provision for any right of either of them to a tax credit or repayment of levy to be satisfied by allowing the credit or making the repayment to the other;

(d) provision as to the preservation of any records or accounts relating to the business which, by virtue of any regulations under paragraph 125, are required to be preserved for any period after the transfer.

(3) Regulations under this paragraph may provide that no such provision as is mentioned in paragraph (b) or (c) of sub-paragraph (2) shall have effect in relation to any transferor and transferee unless an application for the purpose has been made by them under the regulations.

Insolvency etc.

120 (1) The Commissioners may by regulations make provision in accordance with the following provisions of this paragraph for the application of this Schedule in cases in which an insolvency procedure is applied to a person or to a deceased individual's estate.

In this paragraph "the relevant person" means the person to whom, or the deceased individual to whose estate, the insolvency procedure is applied.

(2) The provision that may be contained in regulations under this paragraph may include any or all of the following—

(a) provision requiring any such person as may be prescribed to give notification to the Commissioners, in the prescribed manner, of the prescribed particulars of any relevant matter;

(b) provision requiring a person to be treated, to the prescribed extent, as if he were the same person as the relevant person for the purposes of this Schedule or such of its provisions as may be prescribed; and

(c) provision for securing continuity in the application of any of the provisions of this Schedule where, by virtue of any regulations under this paragraph, any person is treated as if he were the same person as the relevant person.

(3) In sub-paragraph (2) "relevant matter", in relation to a case in which an insolvency procedure is applied to any person or to any deceased individual's estate, means—

(a) the application of that procedure to that person or estate;

(b) the appointment of any person for the purposes of the application of that procedure;

(c) any other matter relating to—

(i) the application of that procedure to the person to whom, or the estate to which, it is applied;

(ii) the holding of an appointment made for the purposes of that procedure; or

(iii) the exercise or discharge of any powers or duties conferred or imposed on any person by virtue of such an appointment.

(4) Regulations made by virtue of sub-paragraph (2)(b) may include provision for a person to cease to be treated as if he were the same person as the relevant person on the occurrence of such an event as may be prescribed.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Regulations under this paragraph prescribing the manner in which any notification is to be given to the Commissioners may require it to be given in such manner and to contain such particulars as may be specified in a general notice published by the Commissioners in accordance with the regulations.

(6) Regulations under this paragraph may provide that the extent to which, and the purposes for which, a person is to be treated under the regulations as if he were the same person as the relevant person may be determined by reference to a notice given in accordance with the regulations to the person so treated.

(7) For the purposes of this paragraph, an insolvency procedure is applied to a person if—

(a) a bankruptcy order, winding-up order or administration order is made **[**F127or an administrator is appointed**]** in relation to that person or a partnership of which he is a member;

(b) an award of sequestration is made on that person's estate or on the estate of a partnership of which he is a member;

(c) that person is put into administrative receivership;

(d) that person passes a resolution for voluntary winding up;

(e) any voluntary arrangement approved in accordance with—

(i) Part I or VIII of the M40Insolvency Act 1986, or

(ii) Part II or Chapter II of Part VIII of the M41Insolvency (Northern Ireland) Order 1989,

comes into force in relation to that person or a partnership of which that person is a member;

(f) a deed of arrangement registered in accordance with—

(i) the M42Deeds of Arrangement Act 1914, or

(ii) Chapter I of Part VIII of that Order,

takes effect in relation to that person;

(g) a person is appointed as the receiver or manager of some or all of that person's property, or of income arising from some or all of his property;

(h) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989;

(i) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;

(j) an interim order is made under Part VIII of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or

(k) that person's estate, or the estate of a partnership of which that person is a member, becomes vested in any other person as that person's, or the partnership's, trustee under a trust deed (within the meaning of the M43Bankruptcy (Scotland) Act 1985).

(8) For the purposes of this paragraph, an insolvency procedure is applied to a deceased individual's estate if—

(a) a bankruptcy order, or an order by some other name but corresponding to a bankruptcy order, is made after the individual's death in relation to his estate under provisions of—

(i) the Insolvency Act 1986, or

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(ii) the Insolvency (Northern Ireland) Order 1989,

as applied to the administration of the insolvent estates of deceased individuals; or

(b) an award of sequestration is made on the individual's estate after the individual's death.

(9) In sub-paragraph (7)—

(a) "administration order" means an administration order under **[**F128Schedule B1 to**]**M44the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989;

(b) references to a member of a partnership include references to any person who is liable as a partner under section 14 of the M45Partnership Act 1890 (persons liable by "holding out").

Textual Amendments

F127 Words in Sch. 6 para. 120(7)(a) inserted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 33(a)** (with art. 6)

F128 Words in Sch. 6 para. 120(9) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 33(b)** (with art. 6)

Marginal Citations

M40 1986 c. 45.

M41 S.I. 1989/2405 (N.I. 19.

M42 1914 c. 47.

M43 1985 c. 66.

M44 S.I. 1989/2405 (N.I. 19.).

M45 1890 c. 39.

PART XI

REVIEW AND APPEAL

[F129 Appeals]

Textual Amendments

F129 Sch. 6 para. 121 cross-heading substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 288(2)** (with Sch. 3 paras. 2-4)

121 (1) **[**F130Subject to paragraph 122, an appeal shall lie to an appeal tribunal from any person who is or will be affected by any decision of HMRC with respect to any of the following matters—**]**

(a) whether or not a person is charged in any case with an amount of levy;

(b) the amount of levy charged in any case and the time when the charge is to be taken as having arisen;

(c) the registration of any person for the purposes of the levy or the cancellation of any registration;

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(d) the person liable to pay the levy charged in any case, the amount of a person's liability to levy and the time by which he is required to pay an amount of levy;

(e) whether to prepare a special utility scheme for a utility;

(f) the imposition of a requirement on any person to give security, or further security, under paragraph 139 and the amount and manner of providing any security required under that paragraph;

(g) whether or not liability to a penalty or to interest on any amount arises in any person's case under any provision made by or under this Schedule, and the amount of any such liability;

(h) any matter the decision as to which is **[**F131appealable**]** under this paragraph of this Part of this Schedule in accordance with paragraph 99(6) or (7);

(i) the extent of any person's entitlement to any tax credit or to a repayment in respect of a tax credit and the extent of any liability of the Commissioners under this Schedule to pay interest on any amount;

(j) whether or not any person is required to have a tax representative by virtue of any regulations under paragraph 114;

(k) the giving, withdrawal or variation, for the purposes of any such regulations, of any approval or direction with respect to the person who is to act as another's tax representative;

(l) the giving, withdrawal or variation of a utility direction under paragraph 151(1);

(m) whether a body corporate is to be treated, or is to cease to be treated, as a member of a group, the times at which a body corporate is to be so treated and the body corporate which is, in relation to any time, to be the representative member for a group;

(n) any matter not falling within the preceding paragraphs the decision with respect to which is contained in—

(i) an assessment under paragraph 78 or 79 in respect of an accounting period in relation to which any return required to be made by virtue of regulations under paragraph 41 has been made, or

(ii) an assessment under any provision of this Schedule other than paragraph 78 or 79.

F132(2) . . . . . .

F132(3) . . . . . .

F132(4) . . . . . .

F132(5) . . . . . .

F132(6) . . . . . .

F132(7) . . . . . .

F132(8) . . . . . .

F132(9) . . . . . .

(10) This paragraph has effect subject to paragraph 99(5).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F130 Words in Sch. 6 para. 121(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 288(3)** (with Sch. 3 paras. 2-4)

F131 Word in Sch. 6 para. 121(1)(h) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 288(4)** (with Sch. 3 paras. 2-4)

F132 Sch. 6 para. 121(2)-(9) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 288(5)** (with Sch. 3 paras. 2-4)

I[F133] Offer of review

Textual Amendments

F133 Sch. 6 paras. 121A-121G and cross-headings inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 289** (with Sch. 3 paras. 2-4)

121A (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under paragraph 121 in respect of the decision.

(2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.

(3) This paragraph does not apply to the notification of the conclusions of a review.

Right to require review

121B (1) Any person (other than P) who has the right of appeal under paragraph 121 against a decision may require HMRC to review that decision if that person has not appealed to the appeal tribunal under paragraph 121G.

(2) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

Review by HMRC

121C (1) HMRC must review a decision if—

(a) they have offered a review of the decision under paragraph 121A, and

(b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.

(2) But P may not notify acceptance of the offer if P has already appealed to the appeal tribunal under paragraph 121G.

(3) HMRC must review a decision if a person other than P notifies them under paragraph 121B.

(4) HMRC shall not review a decision if P, or another person, has appealed to the appeal tribunal under paragraph 121G in respect of the decision.

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Extensions of time

121D (1) If under paragraph 121A, HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.

(2) If under paragraph 121B another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.

(3) If notice is given the relevant period is extended to the end of 30 days from—

(a) the date of the notice, or

(b) any other date set out in the notice or a further notice.

(4) In this paragraph "relevant period" means—

(a) the period of 30 days referred to in—

(i) paragraph 121C(1)(b) (in a case falling within sub-paragraph (1)), or

(ii) paragraph 121B(2) (in a case falling within sub-paragraph (2)), or

(b) if notice has been given under sub-paragraph (1) or (2), that period as extended (or as most recently extended) in accordance with sub-paragraph (3).

Review out of time

121E (1) This paragraph applies if—

(a) HMRC have offered a review of a decision under paragraph 121A and P does not accept the offer within the time allowed under paragraph 121C(1)(b) or 121D(3); or

(b) a person who requires a review under paragraph 121B does not notify HMRC within the time allowed under that paragraph or paragraph 121D(3).

(2) HMRC must review the decision under paragraph 121C if—

(a) after the time allowed, P, or the other person, notifies HMRC in writing requesting a review out of time,

(b) HMRC are satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and

(c) HMRC are satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.

(3) HMRC shall not review a decision if P, or another person, has appealed to the appeal tribunal under paragraph 121G in respect of the decision.

Nature of review etc

121F (1) This paragraph applies if HMRC are required to undertake a review under paragraph 121C or 121E.

(2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.

(3) For the purpose of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—

(a) by HMRC in reaching the decision, and

(b) by any person in seeking to resolve disagreement about the decision.

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(4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.

(5) The review may conclude that the decision is to be—

(a) upheld,

(b) varied, or

(c) cancelled.

(6) HMRC must give P, or the other person, notice of the conclusions of the review and their reasoning within—

(a) a period of 45 days beginning with the relevant date, or

(b) such other period as HMRC and P, or the other person, may agree.

(7) In sub-paragraph (6) "relevant date" means—

(a) the date HMRC received P's notification accepting the offer of a review (in a case falling within paragraph 121A), or

(b) the date HMRC received notification from another person requiring review (in a case falling within paragraph 121B), or

(c) the date on which HMRC decided to undertake the review (in a case falling within paragraph 121E).

(8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in sub-paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If sub-paragraph (8) applies, HMRC must notify P, or the other person of the conclusion which the review is treated as having reached.

Bringing of appeals

121G (1) An appeal under paragraph 121 is to be made to the appeal tribunal before—

(a) the end of the period of 30 days beginning with—

(i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates, or

(ii) in a case where a person other than P is the appellant, the date that person becomes aware of the decision, or

(b) if later, the end of the relevant period (within the meaning of paragraph 121D).

(2) But that is subject to sub-paragraphs (3) to (5).

(3) In a case where HMRC are required to undertake a review under paragraph 121C—

(a) an appeal may not be made until the conclusion date, and

(b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(4) In a case where HMRC are requested to undertake a review by virtue of paragraph 121E—

(a) an appeal may not be made—

(i) unless HMRC have decided whether or not to undertake a review, and

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(ii) if HMRC decide to undertake a review, until the conclusion date; and

(b) any appeal is to be made within the period of 30 days beginning with—

(i) the conclusion date (if HMRC decide to undertake a review), or

(ii) the date on which HMRC decide not to undertake a review.

(5) In a case where paragraph 121F(8) applies, an appeal may be made at any time from the end of the period specified in paragraph 121F(6) to the date 30 days after the conclusion date.

(6) An appeal may be made after the end of the period specified in sub-paragraph (1), (3)(b), (4)(b) or (5) if the appeal tribunal gives permission to do so.

(7) In this paragraph "conclusion date" means the date of the document notifying the conclusions of the review.**]**

[F134 Appeals: further provisions]

Textual Amendments

F134 Sch. 6 para. 122 cross-heading substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 290(2)** (with Sch. 3 paras. 2-4)

122F135(1) . . . . . .

[F136(2) Subject to sub-paragraphs (2A) and (2B), where an appeal relates to a decision (whether or not contained in an assessment) that an amount of levy is due from any person, it shall not be entertained unless the amount which HMRC have determined to be due has been paid or deposited with them.**]**

[F137(2A) In a case where the amount determined to be payable as levy has not been paid or deposited an appeal shall be entertained if—

(a) HMRC are satisfied (on the application of the appellant), or

(b) the appeal tribunal decides (HMRC not being so satisfied and on the application of the appellant),

that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship.

(2B) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007, the decision of the appeal tribunal as to the issue of hardship is final.**]**

(3) On an appeal under this paragraph relating to a penalty under paragraph 98 (evasion), the burden of proof as to the matters specified in paragraphs (a) and (b) of sub-paragraph (1) of that paragraph shall lie upon the Commissioners.

Textual Amendments

F135 Sch. 6 para. 122(1) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 290(3)** (with Sch. 3 paras. 2-4)

F136 Sch. 6 para. 122(2) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 290(4)** (with Sch. 3 paras. 2-4)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F137 Sch. 6 para. 122(2A)(2B) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 290(5)** (with Sch. 3 paras. 2-4)

Determinations on appeal

123 (1) Where, on an appeal under paragraph **[**F138121**]**—

(a) it is found that an assessment of the appellant F139... is an assessment for an amount that is less than it ought to have been, and

(b) the appeal tribunal give a direction specifying the correct amount,

the assessment shall have effect as an assessment of the amount specified in the direction and (without prejudice to any power under this Schedule to reduce the amount of interest payable on the amount of an assessment) as if it were an assessment notified to the appellant in that amount at the same time as the original assessment.

(2) On an appeal under paragraph **[**F140121**]**, the powers of the appeal tribunal in relation to any decision of the Commissioners shall include a power, where the tribunal allow an appeal on the ground that the Commissioners could not reasonably have arrived at the decision, either—

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct; or

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, **[**F141a review or**]** a further review of the original decision **[**F142as appropriate**]**.

(3) Where, on an appeal under paragraph **[**F143121**]**, the appeal tribunal find that a liability to a penalty or to an amount of interest arises, the tribunal shall not give any direction for the modification of the amount payable in respect of that liability except—

(a) in exercise of a power conferred on the tribunal by paragraph 104(1) (penalties) or paragraph 70(6) or (9), 86(3) or (6) or 109(5) or (8) (penalty interest); or

(b) for the purpose of making the amount payable conform to the amount of the liability imposed by this Schedule.

(4) Where, on an appeal under paragraph **[**F144121**]**, it is found that the whole or part of any amount paid or deposited in pursuance of paragraph 122(2) is not due, so much of that amount as is found not to be due shall be repaid with interest **[**F145at the rate applicable under section 197 of the Finance Act 1996**]**.

(5) Where, on an appeal under paragraph **[**F146121**]**, it is found that the whole or part of any amount due to the appellant by way of any repayment in respect of a tax credit has not been paid, so much of that amount as is found not to have been paid shall be paid with interest **[**F147at the rate applicable under section 197 of the Finance Act 1996**]**.

(6) Where—

(a) an appeal under paragraph **[**F148121**]** has been entertained notwithstanding that an amount determined by the Commissioners to be payable as levy has not been paid or deposited, and

(b) it is found on the appeal that that amount is due,

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F149]it shall be paid with interest at the rate applicable under section 197 of the Finance Act 1996**]**

[[F150](6A) Interest under sub-paragraph (6) shall be paid without any deduction of income tax.**]**

[[F151](7) Sections 85 and 85B of the Value Added Tax Act 1994 (settling of appeals by agreement and payment of tax where there is a further appeal) shall have effect as if—

(a) the references to section 83 of that Act included references to paragraph 121 above, and

(b) the references to value added tax included references to climate change levy.**]**

Textual Amendments

F138 Word in Sch. 6 para. 123(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(2)(a)** (with Sch. 3 paras. 2-4)

F139 Words in Sch. 6 para. 123(1)(a) omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(2)(b)** (with Sch. 3 paras. 2-4)

F140 Word in Sch. 6 para. 123(2) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(3)(a)** (with Sch. 3 paras. 2-4)

F141 Words in Sch. 6 para. 123(2)(b) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(3)(b)(i)** (with Sch. 3 paras. 2-4)

F142 Words in Sch. 6 para. 123(2)(b) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(3)(b)(ii)** (with Sch. 3 paras. 2-4)

F143 Word in Sch. 6 para. 123(3) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(4)** (with Sch. 3 paras. 2-4)

F144 Word in Sch. 6 para. 123(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(5)(a)** (with Sch. 3 paras. 2-4, 9(2)(e))

F145 Words in Sch. 6 para. 123(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(5)(b)** (with Sch. 3 paras. 2-4, 9(2)(e))

F146 Word in Sch. 6 para. 123(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(6)(a)** (with Sch. 3 paras. 2-4, 9(2)(e))

F147 Words in Sch. 6 para. 123(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(6)(b)** (with Sch. 3 paras. 2-4, 9(2)(e))

F148 Word in Sch. 6 para. 123(6)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(7)(a)** (with Sch. 3 paras. 2-4, 9(2)(e))

F149 Words in Sch. 6 para. 123(6) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(7)(b)** (with Sch. 3 paras. 2-4, 9(2)(e))

F150 Sch. 6 para. 123(6A) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(8)** (with Sch. 3 paras. 2-4)

F151 Sch. 6 para. 123(7) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 291(9)** (with Sch. 3 paras. 2-4)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART XII

INFORMATION AND EVIDENCE

Provision of information

124 (1) Every person involved (in whatever capacity) in making or receiving supplies of taxable commodities, or in any connected activities, shall provide the Commissioners with such information relating to the matters in which he is or has been involved as the Commissioners may reasonably require.

(2) Information required under sub-paragraph (1) shall be provided to the Commissioners within such period after being required, and in such form, as the Commissioners may reasonably require.

(3) Subject to sub-paragraphs (4) and (5) and to paragraph 107(5) (which relates to supplementary assessments of daily penalties), if a person fails to provide information which he is required to provide under this paragraph, he shall be liable—

(a) to a penalty of £250; and

(b) to a further penalty of £20 for every day after the last relevant date and before the day after that on which the required information is provided.

(4) Liability to a penalty specified in sub-paragraph (3) shall not arise if the person required to provide the information satisfies the Commissioners or, on appeal, an appeal tribunal—

(a) in the case of the penalty under paragraph (a) of that sub-paragraph that there is a reasonable excuse—

(i) for the initial failure to provide the required information on or before the last relevant date; and

(ii) for every subsequent failure to provide it;

and

(b) in the case of any penalty under paragraph (b) of that sub-paragraph for any day, that there is a reasonable excuse for the failure to provide the information on or before that day.

(5) Where, by reason of any failure by any person to provide information required under this paragraph—

(a) that person is convicted of an offence (whether under this Act or otherwise), or

(b) that person is assessed to a penalty under paragraph 98 (penalty for evasion) **[**[F152]or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)**]**,

that person shall not by reason of that failure be liable also to a penalty under this paragraph.

(6) In this paragraph "the last relevant date" means the last day of the period within which the person in question was required to provide the information.

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Textual Amendments

F152 Words in Sch. 6 para. 124(5)(b) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 20(4)**

Records

125 (1) The Commissioners may by regulations impose obligations to keep records on **[**[F153]persons who—

(a) are registered,

(b) are required to be registered, or

(c) are exempted from the requirement to be registered by regulations under paragraph 53(4).**]**

(2) Regulations under this paragraph may be framed by reference to such records as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.

(3) Regulations under this paragraph may—

(a) require any records kept in pursuance of the regulations to be preserved for such period, not exceeding six years, as may be specified in the regulations;

(b) authorise the Commissioners to direct that any such records need only be preserved for a shorter period than that specified in the regulations;

(c) authorise a direction to be made so as to apply generally or in such cases as the Commissioners may stipulate.

(4) Any duty under regulations under this paragraph to preserve records may be discharged by the preservation of the information contained in them by such means as the Commissioners may approve.

(5) The Commissioners may, as a condition of approving under sub-paragraph (4) any means of preserving information contained in any records, impose such reasonable requirements as appear to them necessary for securing that the information will be as readily available to them as if the records themselves had been preserved.

(6) Subject to sub-paragraphs (7) and (8), a person who fails to preserve any record in compliance with—

(a) any regulations under this paragraph, or

(b) any notice, direction or requirement given or imposed under such regulations,

shall be liable to a penalty of £250.

(7) A failure such as is mentioned in sub-paragraph (6) shall not give rise to any penalty under that sub-paragraph if the person required to preserve the record satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the failure.

(8) Where, by reason of any such failure by any person as is mentioned in sub-paragraph (6)—

(a) that person is convicted of an offence (whether under this Act or otherwise), or

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(b) that person is assessed to a penalty under paragraph 98 (penalty for evasion) **[**[F154]or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)**]**,

that person shall not by reason of that failure be liable also to a penalty under this paragraph.

(9) The Commissioners may if they think fit at any time modify or withdraw any approval or requirement given or imposed for the purposes of this paragraph.

Textual Amendments

F153 Words in Sch. 6 para. 125(1) substituted (10.7.2003) by Finance Act 2003 (c. 14), **s. 192(9)**

F154 Words in Sch. 6 para. 125(8)(b) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 20(5)**

Evidence of records that are required to be preserved

126 (1) Subject to the following provisions of this paragraph, where any obligation to preserve records is discharged in accordance with paragraph 125(4), a copy of any document forming part of the records shall be admissible in evidence in any proceedings, whether civil or criminal, to the same extent as the records themselves.

(2) A statement contained in a document produced by a computer shall not by virtue of this paragraph be admissible in evidence—

[F155](a) . . . . . .

(b) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the [M46]Civil Evidence (Scotland) Act 1988;

(c) in criminal proceedings in Scotland, except in accordance with Schedule 8 to the Criminal Procedure (Scotland) Act 1995;

[F156](d) . . . . . .

Textual Amendments

F155 Sch. 6 para. 126(2)(a) repealed (4.4.2005) by Criminal Justice Act 2003 (c. 44), s. 336(3)(4), **Sch. 37 Pt. 6**; S.I. 2005/950, art. 2(1), Sch. 1 para. 44(3) (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))

F156 Sch. 6 para. 126(2)(d) repealed (N.I.) (3.4.2006) by The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501), art. 1(3), **Sch. 2** (with art. 43); S.R. 2006/63, art. 2

Marginal Citations

M46 1988 c. 32.

Production of documents

127 (1) Every person involved (in whatever capacity) in making or receiving supplies of taxable commodities, or in any connected activities, shall upon demand made by an

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authorised person produce or cause to be produced for inspection by that person any documents relating to the matters in which he is or has been involved.

(2) Where, by virtue of sub-paragraph (1), an authorised person has power to require the production of any documents from any person—

(a) he shall have the like power to require production of the documents concerned from any other person who appears to the authorised person to be in possession of them; and

(b) the production of any document by that other person in pursuance of a requirement under this sub-paragraph shall be without prejudice to any lien claimed by that other person on that document.

(3) The documents mentioned in sub-paragraphs (1) and (2) shall be produced at such time and place as the authorised person may reasonably require.

(4) Subject to sub-paragraphs (5) and (6) and to paragraph 107(5) (which relates to supplementary assessments of daily penalties), if a person fails to produce any document which he is required to produce under this paragraph, he shall be liable—

(a) to a penalty of £250; and

(b) to a further penalty of £20 for every day after the last relevant date and before the day after that on which the document is produced.

(5) Liability to a penalty specified in sub-paragraph (4) shall not arise if the person required to produce the document in question satisfies the Commissioners or, on appeal, an appeal tribunal—

(a) in the case of the penalty under paragraph (a) of that sub-paragraph, that there is a reasonable excuse—

(i) for the initial failure to produce the document at the required time; and

(ii) for every subsequent failure to produce it;

and

(b) in the case of any penalty under paragraph (b) of that sub-paragraph for any day, that there is a reasonable excuse for the failure to produce the document on or before that day.

(6) Where, by reason of any failure by any person to provide information required under this paragraph—

(a) that person is convicted of an offence (whether under this Act or otherwise), or

(b) that person is assessed to a penalty under paragraph 98 (penalty for evasion) **[**[F157]or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)**]**,

that person shall not by reason of that failure be liable also to a penalty under this paragraph.

(7) In this paragraph "the last relevant date" means the last day of the period within which the person in question was required to produce the document.

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Textual Amendments

F157 Words in Sch. 6 para. 127(6)(b) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 20(6)**

Powers in relation to documents produced

128 (1) An authorised person may take copies of, or make extracts from, any document produced under paragraph 127.

(2) If it appears to him to be necessary to do so, an authorised person may, at a reasonable time and for a reasonable period, remove any document produced under paragraph 127.

(3) An authorised person who removes any document under sub-paragraph (2) shall, if requested to do so, provide a receipt for the document so removed.

(4) Where a lien is claimed on a document produced under paragraph 127(2), the removal of the document under sub-paragraph (2) shall not be regarded as breaking the lien.

(5) Where a document removed by an authorised person under sub-paragraph (2) is reasonably required for any purpose he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.

(6) Where any documents removed under the powers conferred by this paragraph are lost or damaged, the Commissioners shall be liable to compensate their owner for any expenses reasonably incurred by him in replacing or repairing the documents.

Entry and inspection

129 For the purpose of exercising any powers under this Schedule, an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business.

Entry and search

F158 130 . . . . . .

Textual Amendments

F158 Sch. 6 para. 130 repealed (1.12.2007) by Finance Act 2007 (c. 11), s. 84(4)(5), Sch. 22 para. 11(b), **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 3(a)

Order for access to recorded information etc.

131 (1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 307 of the M47Criminal Procedure (Scotland) Act 1995) is satisfied that there are reasonable grounds for believing—

(a) that an offence in connection with levy is being, has been or is about to be committed, and

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(b) that any recorded information (including any document of any nature at all) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person,

he may make an order under this paragraph.

(2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—

(a) give an authorised person access to it, and

(b) permit an authorised person to remove and take away any of it which he reasonably considers necessary,

not later than the end of the period of seven days beginning with the date of the order or the end of such longer period as the order may specify.

(3) The reference in sub-paragraph (2)(a) to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it.

(4) Where the recorded information consists of information **[**F159stored in any electronic form**]**, an order under this paragraph shall have effect as an order to produce the information—

(a) in a form in which it is visible and legible **[**F160or from which it can readily be produced in a visible and legible form**]**; and

(b) if the authorised person wishes to remove it, in a form in which it can be removed.

(5) This paragraph is without prejudice to the preceding paragraphs of this Part of this Schedule.

Textual Amendments

F159 Words substituted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. II para. 13(1)(a)(2)(i); S.I. 2003/708, **art. 2(k)**

F160 Words inserted (1.4.2003) by 2001 c. 16, ss. 70, 138(2), Sch. 2 Pt. II para. 13(1)(b)(2)(i); S.I. 2003/708, **art. 2(k)**

Marginal Citations

M47 1995 c. 46.

Removal of documents etc.

132 (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 130 or 131 shall, if so requested by a person showing himself—

(a) to be the occupier of premises from which it was removed, or

(b) to have had custody or control of it immediately before the removal,

provide that person with a record of what he removed.

(2) The authorised person shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to sub-paragraph (7), if a request for permission to be allowed access to anything which—

(a) has been removed by an authorised person, and

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(b) is retained by the Commissioners for the purposes of investigating an offence,

is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an authorised person.

(4) Subject to sub-paragraph (7), if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—

(a) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it; or

(b) photograph or copy it, or cause it to be photographed or copied.

(5) Subject to sub-paragraph (7), where anything is photographed or copied under sub-paragraph (4)(b), the officer shall supply the photograph or copy, or cause it to be supplied, to the person who made the request.

(6) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(7) There is no duty under this paragraph to allow access to anything, or to supply a photograph or copy of anything, if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—

(a) that investigation;

(b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or

(c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b).

(8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.

Enforcement of paragraph 132

133 (1) Where, on an application made as mentioned in sub-paragraph (2), the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 132, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.

(2) An application under sub-paragraph (1) shall not be made except—

(a) in the case of a failure to comply with any of the requirements imposed by paragraph 132(1) and (2)—

(i) by the occupier of the premises from which the thing in question was removed, or

(ii) by the person who had custody or control of it immediately before it was so removed;

(b) in any other case, by the person who had such custody or control.

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(3) In this paragraph "the appropriate judicial authority" means—

(a) in England and Wales, a magistrates' court;

(b) in Scotland, the sheriff;

(c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the [M48]Magistrates' Courts (Northern Ireland) Order 1981.

(4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the [M49]Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

Marginal Citations

M48 S.I. 1981/1675 (N.I. 26.)

M49 1954 c. 33 (N.I.).

Power to take samples and examine meters

134 (1) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is—

(a) a taxable commodity which is intended to be, is being or has been the subject of a taxable supply, or

(b) a product of the burning of a taxable commodity (other than electricity) which is being or has been the subject of a taxable supply,

such samples as he may require with a view to determining how the material ought to be treated, or to have been treated, for the purposes of the levy.

(2) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time examine any meter which he has reasonable cause to believe is intended to be, is being or has been used for ascertaining the quantity of any taxable commodity supplied by a taxable supply.

(3) Any sample taken under sub-paragraph (1) shall be disposed of in such manner as the Commissioners may direct.

Evidence by certificate

135 (1) In any proceedings a certificate of the Commissioners—

(a) that a person was or was not at any time registered for the purposes of the levy, **[**[F161]or**]**

(b) that any return required by regulations made under paragraph 41 has not been made or had not been made at any time,

[F162](c) . . . . . .

[F163](d) . . . . . .

shall be evidence or, in Scotland, sufficient evidence of that fact.

(2) A photograph of any document provided to the Commissioners for the purposes of this Schedule and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.

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(3) In any proceedings any document purporting to be a certificate under sub-paragraph (1) or (2) shall be taken to be such a certificate unless the contrary is shown.

Textual Amendments

F161 Word in Sch. 6 para. 135(1)(a) inserted (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 44 para. 8(a)**

F162 Sch. 6 para. 135(1)(c) omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), **Sch. 44 para. 8(b)**

F163 Sch. 6 para. 135(1)(d) omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), **Sch. 44 para. 8(b)**

Inducements to provide information

136 (1) This paragraph applies—

(a) to any criminal proceedings against a person in respect of an offence in connection with or in relation to levy; and

(b) to any proceedings against a person for the recovery of any sum due from him in connection with or in relation to levy.

(2) Statements made or documents produced or provided by or on behalf of a person shall not be inadmissible in any proceedings to which this paragraph applies by reason only that—

(a) a matter falling within sub-paragraph (3) or (4) has been drawn to that person's attention; and

(b) he was or may have been induced, as a result, to make the statements or to produce or provide the documents.

(3) The matters falling within this sub-paragraph are—

(a) that, in relation to levy, the Commissioners may assess an amount due by way of a civil penalty instead of instituting criminal proceedings;

(b) that it is the practice of the Commissioners (without giving any undertaking as to whether they will make such an assessment in any case) to be influenced by whether a person—

(i) has made a full confession of any dishonest conduct to which he has been a party; and

(ii) has otherwise co-operated to the full with any investigation.

(4) The matter falling within this sub-paragraph is the fact that the Commissioners or, on appeal, an appeal tribunal have power under any provision of this Schedule to reduce a penalty.

Disclosure of information

137 (1) Notwithstanding any obligation not to disclose information that would otherwise apply, but subject to sub-paragraph (2), the Commissioners may disclose any information obtained or held by them in or in connection with the carrying out of their functions in relation to the levy to any of the following—

(a) any Minister of the Crown;

(b) the Scottish Ministers;

(c) any Minister, within the meaning of the [M50]Northern Ireland Act 1998, or any Northern Ireland department;

(d) the National Assembly for Wales;

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(e) the Environment Agency;
(f) the Scottish Environment Protection Agency;
(g) the Gas and Electricity Markets Authority;
(h) the Director General of Electricity Supply for Northern Ireland;
(i) the Director General of Gas for Northern Ireland;
(j) an authorised officer of any person mentioned in paragraphs (a) to (i).

(2) Information shall not be disclosed under sub-paragraph (1) except for the purpose of assisting a person falling within paragraphs (a) to (j) of that sub-paragraph in the performance of his duties.

(3) Notwithstanding any such obligation as is mentioned in sub-paragraph (1), any person mentioned in sub-paragraph (1)(a) to (j) may disclose information—
(a) to the Commissioners, or
(b) to an authorised officer of the Commissioners,
for the purpose of assisting the Commissioners in the performance of duties in relation to the levy.

(4) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—
(a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made; or
(b) for the purpose of any proceedings connected with the operation of any provision made by or under any enactment relating to the environment or to levy.

(5) References in the preceding provisions of this paragraph to an authorised officer of any person (“the principal”) are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of this paragraph.

(6) Where the principal is a person falling within any of paragraphs (a) to (c) of sub-paragraph (1), the principal shall notify the Commissioners in writing of the name of any person designated by the principal for the purposes of this paragraph.

(7) No charge may be made for any disclosure made by virtue of this paragraph.

(8) In this paragraph “enactment” includes an enactment contained in an Act of the Scottish Parliament or in any Northern Ireland legislation.

Marginal Citations
M50 1998 c. 47.

Meaning of “authorised perso"n

138 In this Part of this Schedule “authorised person” means any person acting under the authority of the Commissioners.

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PART XIII

MISCELLANEOUS AND SUPPLEMENTARY

Security for levy

139 (1) Where it appears to the Commissioners necessary to do so for the protection of the revenue they may require any person who is or is required to be registered for the purposes of the levy to give security, or further security, for the payment of any levy which is or may become due from him.

(2) The power of the Commissioners to require any security, or further security, under this paragraph shall be a power to require security, or further security, of such amount and in such manner as they may determine.

(3) A person who is liable to account for the levy on a taxable supply that he makes is guilty of an offence if, at the time the supply is made—

(a) he has been required to give security under this paragraph, and

(b) he has not complied with that requirement.

(4) A person who is liable to account for the levy on a taxable supply that another person makes to him is guilty of an offence if he makes any arrangements for the making of the supply at a time when—

(a) he has been required to give security under this paragraph, and

(b) he has not complied with that requirement.

(5) A person guilty of an offence under this paragraph shall be liable, on summary conviction, to a penalty of level 5 on the standard scale.

(6) Sections 145 to 155 of the [M51]Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to an offence under this paragraph as they apply in relation to offences and penalties under the customs and excise Acts.

Marginal Citations

M51 1979 c. 2.

Destination of receipts

[F164]140 . . . . . .

Textual Amendments

F164 Sch. 6 para. 140 repealed (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), Sch. 4 para. 81, **Sch. 5**; S.I. 2005/1126, art. 2(2)(h)(i)

Provisional collection of levy

[F165]141 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F165 Sch. 6 para. 141 repealed (11.5.2001) by 2001 c. 9, s. 110, **Sch. 33 Pt. 3(3)**

F166[Invoices incorrectly showing levy due

Textual Amendments

F166 Sch. 6 para. 141A inserted (24.7.2002 with application as mentioned in s. 128(2) of the amending Act) by 2002 c. 23, **s. 128**

141A (1) This paragraph applies where—

(a) a person issues an invoice showing an amount as levy chargeable on a supply, and

(b) no levy is chargeable on the supply, or the amount chargeable is less than the amount shown.

(2) The person shall be liable to a penalty unless he satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inclusion in the invoice of the false information.

(3) The amount of the penalty is £50 or, if more, the following amount—

(a) where no levy is chargeable, the amount shown as chargeable;

(b) where an amount of levy is chargeable, the difference between that amount and the amount shown as chargeable.

(4) It is irrelevant for the purposes of sub-paragraph (1) whether or not the supply shown on the invoice actually takes place or has taken place.

(5) A reference in this paragraph to an invoice is a reference to any kind of invoice (and not just a climate change levy accounting document).**]**

Adjustment of contracts

142 (1) Sub-paragraph (2) applies in the case of a contract for the supply of a taxable commodity if—

(a) the contract is entered into before 1st April 2001 (whether before or after the passing of this Act) or at a time when supplies such as are provided for by the contract are not taxable supplies, but

(b) supplies falling to be made under the contract will be, or become or will become, taxable supplies.

(2) The supplier of the commodity may unilaterally vary the contract by adjusting the price chargeable for any supply made under the contract if he does so for the purpose of passing on, to the person liable to pay for the supply, the burden (or any part of the burden) of the levy for which the supplier is liable to account on the supply.

(3) Sub-paragraph (4) applies in the case of a contract for the supply of a taxable commodity if it provides (whether as a result of a variation under sub-paragraph (2) or otherwise) for the passing on, to the person liable to pay for the supply, of the burden (or any part of the burden) of any levy for which the supplier is liable to account on the supply.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) The supplier of the commodity may unilaterally vary the contract by adjusting the price chargeable for any supply made under the contract if he does so for the purpose of giving effect (to any extent) to—

(a) any change in the rate at which levy is charged on the supply;

(b) levy ceasing to be chargeable on the supply.

(5) The powers conferred by this paragraph are in addition to any contractual powers.

Climate change levy accounting documents

143 (1) Provision may be made by regulations requiring registered persons who make taxable supplies—

(a) in prescribed cases, or

(b) to persons of prescribed descriptions,

to provide the persons supplied with climate change levy accounting documents.

(2) For the purposes of this Schedule a "climate change levy accounting document" for a taxable supply is an invoice—

F167(a) . . . . . .

(b) stating the date on which it is issued, and

(c) containing the required statements.

(3) For the purposes of sub-paragraph (2)(c) "the required statements" means—

(a) in the case of a climate change levy accounting document issued under paragraph 27, the statements required by paragraph 27(5);

(b) in the case of a climate change levy accounting document whose provision is required by regulations, statements of prescribed particulars of or relating to—

(i) the supply,

(ii) the persons by and to whom the supply is made, and

(iii) the levy chargeable.

(4) Where regulations make provision requiring a climate change levy accounting document to be provided in connection with any description of supply, regulations may make provision for—

(a) requiring the accounting document to be provided within a prescribed time after, or at a prescribed time before, the supply is treated as taking place;

(b) allowing an accounting document to be provided later than required by the regulations where it is provided in accordance with general or special directions given by the Commissioners.

(5) Regulations may make provision conferring power on the Commissioners to allow the requirements of any regulations as to the statements to be contained in a climate change levy accounting document to be relaxed or dispensed with.

(6) Regulations may make provision for allowing a climate change levy accounting document required to be issued under paragraph 27 to be issued later than the time applicable under paragraph 27(2) where it is issued in accordance with general or special directions given by the Commissioners.

(7) In this paragraph "regulations" means regulations made by the Commissioners.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F167 Sch. 6 para. 143(2)(a) omitted (21.7.2008) by virtue of Finance Act 2008 (c. 9), **s. 150**

Service of notices etc.

144 (1) Any notice, notification or requirement that is to be or may be served on, given to or imposed on any person for the purposes of any provision made by or under this Schedule may be served, given or imposed by sending it to that person or his tax representative by post in a letter addressed to that person or his representative at the latest or usual residence or place of business of that person or representative.

(2) Any direction required or authorised by or under this Schedule to be given by the Commissioners may be given by sending it by post in a letter addressed to each person affected by it at his latest or usual residence or place of business.

Variation and withdrawal of directions etc.

145 Any direction, notice or notification required or authorised by or under this Schedule to be given by the Commissioners may be withdrawn or varied by them by a direction, notice or notification given in the same manner as the one withdrawn or varied.

Regulations and orders

146 (1) Any power under this Schedule to make regulations shall be exercisable by statutory instrument.

(2) A statutory instrument that—

(a) contains regulations made under this Schedule, and

(b) is not subject to a requirement that a draft of the instrument be laid before Parliament and approved by a resolution of the House of Commons,

shall be subject to annulment in pursuance of a resolution of the House of Commons.

(3) A statutory instrument that contains (whether alone or with other provisions) regulations under paragraph 3(3), 14(3), 15(4)(a), 16, 18(2), **[**F168 18A, **]** 52, 113(1), 148(4), 149 or 151(2) (regulations made by the Treasury) shall not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of the House of Commons.

(4) Where regulations under this Schedule made by the Commissioners impose a relevant requirement on any person, they may provide that if the person fails to comply with the requirement he shall be liable, subject to sub-paragraph (5), to a penalty of £250.

(5) Where by reason of any conduct—

(a) a person is convicted of an offence (whether under this Act or otherwise), or

(b) a person is assessed to a penalty under paragraph 98 **[**F169 or to a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)**]**,

that person shall not by reason of that conduct be liable also to a penalty under any regulations under this Schedule.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) In sub-paragraph (4) "relevant requirement" means any requirement other than one the penalty for a contravention of which is specified in paragraph 41(3), 114(3) or 125(6).

(7) A power under this Schedule to make any provision by regulations—

(a) may be exercised so as to apply the provision only in such cases as may be described in the regulations;

(b) may be exercised so as to make different provision for different cases or descriptions of case; and

(c) shall include power by the regulations to make such supplementary, incidental, consequential or transitional provision as the authority making the regulations may think fit.

Textual Amendments

F168 Word in Sch. 6 para. 146(3) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 188(2)(c)**

F169 Words in Sch. 6 para. 146(5)(b) inserted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), Sch. 1 para. 20(7)

PART XIV

INTERPRETATION

General

147 In this Schedule—

"accounting period" means a period which, in pursuance of any regulations under paragraph 41, is an accounting period for the purposes of the levy;

"agreement" includes any arrangement or understanding (whether or not legally enforceable), and cognate expressions shall be construed accordingly;

"appeal tribunal" means **[**F170the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;**]**;

"auto-generator" has the meaning given by paragraph 152;

"climate change agreement" has the meaning given by paragraph 46;

"climate change levy accounting document" has the meaning given by paragraph 143(2);

"combined heat and power station" has the meaning given by paragraph 148(1);

"the Commissioners" means the Commissioners of Customs and Excise;

"conduct" includes acts and omissions;

"electricity utility" has the meaning given by paragraph 150(2) (but see paragraph 150(4));

"fully exempt combined heat and power station" has the meaning given by paragraph 148(2);

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"gas utility" has the meaning given by paragraph 150(3) (but see paragraph 150(4));

[F171"HMRC" means Her Majesty's Revenue and Customs;**]**

F172 . . . . . .

"member", in relation to a group, shall be construed in accordance with regulations under paragraph 116;

"non-resident taxpayer" means a person who—

(a) is or is required to be registered for the purposes of the levy, and

(b) is not resident in the United Kingdom;

"partly exempt combined heat and power station" has the meaning given by paragraph 148(3);

"prescribed" (except in paragraphs 14(3), 16(3)**[**F173, 18A**]** and 148(4)) means prescribed by regulations made by the Commissioners under this Schedule;

"produced"—

(a) in relation to electricity, means generated, and

(b) in relation to any other commodity, includes extracted;

"reduced-rate supply" has the meaning given by paragraph **[**F174**]**44(1) (which, by virtue of paragraph **[**F175**]**44(2)**]**, has effect subject to **[**F176paragraph 44(2A) to (2D) and**][**F177paragraphs 45 and 45B**]**);

"registered" means registered in the register maintained under paragraph 53(2);

"representative member", in relation to a group, shall be construed in accordance with regulations under paragraph 116;

"resident in the United Kingdom" has the meaning given by paragraph 156;

"ship" includes hovercraft;

"special utility scheme" has the meaning given by paragraph 29(1);

"subordinate legislation" has the same meaning as in the M52Interpretation Act 1978;

"supply for charity use" shall be construed in accordance with paragraph 8;

"supply for domestic use" shall be construed in accordance with paragraphs 8 and 9;

"tax credit" means a tax credit for which provision is made by tax credit regulations;

"tax credit regulations" means regulations under paragraph 62;

"tax representative", in relation to any person, means the person who, in accordance with any regulations under paragraph 114, is for the time being that person's tax representative for the purposes of the levy;

"taxable commodity" shall be construed in accordance with paragraph 3;

"taxable supply" shall be construed in accordance with paragraphs 2(2) and 4;

"the United Kingdom" includes the territorial waters adjacent to any part of the United Kingdom;

"utility" has the meaning given by paragraph 150(1).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F170 Words in Sch. 6 para. 147 substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 292(2)**

F171 Words in Sch. 6 para. 147 inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 292(3)**

F172 Words in Sch. 6 para. 147 repealed (1.11.2007) by Finance Act 2006 (c. 25), s. 172(15)(16), **Sch. 26 Pt. 8(1)**; S.I. 2007/2901, art. 2(1) (with art. 2(2)-(4))

F173 Word in Sch. 6 para. 147 inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 188(2)(d)**

F174 Word in Sch. 6 para. 147 substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 10(a)**, 13(1); S.I. 2007/2902, art. 2(1) (with art. 2(2)(4))

F175 Word in Sch. 6 para. 147 substituted (1.11.2007) by Finance Act 2007 (c. 11), **Sch. 2 paras. 10(b)**, 13(1); S.I. 2007/2902, art. 2(1) (with art. 2(2)(4))

F176 Words in Sch. 6 para. 147 inserted (21.7.2009) by Finance Act 2009 (c. 10), **s. 117(3)(b)**

F177 Words in Sch. 6 para. 147 substituted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 59 para. 9**

Marginal Citations

M52 1978 c. 30.

Meaning of "combined heat and power statio"n etc.

148 (1) In this Schedule "combined heat and power station" means a station producing electricity or motive power that is (or may be) operated for purposes including the supply to any premises of—

(a) heat produced in association with electricity or motive power, or

(b) steam produced from, or air or water heated by, such heat.

(2) In this Schedule "fully exempt combined heat and power station" means a combined heat and power station in respect of which there is in force a certificate (a "full-exemption certificate")—

(a) given by the Secretary of State,

(b) stating that the station is a fully exempt combined heat and power station for the purposes of the levy, and

(c) **[**F178complying (so far as applicable) with**]** any provision made by regulations under sub-paragraph (10).

(3) In this Schedule "partly exempt combined heat and power station" means a combined heat and power station in respect of which there is in force a certificate (a "part-exemption certificate")—

(a) given by the Secretary of State,

(b) stating that the station is a partly exempt combined heat and power station for the purposes of the levy, and

(c) **[**F179complying (so far as applicable) with**]** any provision made by regulations under sub-paragraph (10).

(4) The Secretary of State shall give a full-exemption certificate in respect of a combined heat and power station where—

(a) an application is made for a certificate under this paragraph in respect of the station, and

Status: *Point in time view as at 21/07/2009.*
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(b) it appears to him that such conditions as may be prescribed are satisfied in relation to the station.

For this purpose "prescribed" means prescribed by regulations made by the Treasury.

(5) The Secretary of State shall give a part-exemption certificate in respect of a combined heat and power station where—

(a) an application is made for a certificate under this paragraph in respect of the station, and

(b) his decision on the application is to refuse to give a full-exemption certificate.

F180(6) . . . . . .

(7) In prescribing conditions under sub-paragraph (4), the Treasury must have regard to the object of securing that a combined heat and power station will only be a fully exempt combined heat and power station for the purposes of this Schedule if it is one in which electricity or motive power is produced concurrently with heat in a manner that makes efficient use of the commodities used in their production.

(8) A condition prescribed under sub-paragraph (4) may, in particular, relate to any of the following—

(a) a station's outputs;

(b) the commodities used in the production of such outputs;

(c) the methods of producing such outputs;

(d) the efficiency with which such outputs are produced.

(9) For the purposes of sub-paragraph (8), a station's "outputs" are any electricity or motive power produced in the station and any of the following supplied from the station, namely—

(a) heat or steam, or

(b) air, or water, that has been heated or cooled.

(10) The Secretary of State may by regulations make provision for or about—

(a) certificates under this paragraph;

(b) applications for such certificates;

(c) the information that is to accompany such applications.

(11) The provision that may be made by virtue of sub-paragraph (10)(a) includes in particular—

(a) provision in respect of the periods for which certificates under this paragraph are to be in force;

(b) provision for the (non-retrospective) variation or revocation of such certificates.

Textual Amendments

F178 Words in Sch. 6 para. 148(2)(c) substituted (22.7.2005, with effect in accordance with s. 189(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 189(3)(a)**; S.I. 2005/1713, art. 2

F179 Words in Sch. 6 para. 148(3)(c) substituted (22.7.2005, with effect in accordance with s. 189(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 189(3)(a)**; S.I. 2005/1713, art. 2

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F180 Sch. 6 para. 148(6) repealed (22.7.2005, with effect in accordance with s. 189(5) of the amending Act) by Finance Act 2003 (c. 14), s. 189(3)(b), **Sch. 43 Pt. 4(2)**; S.I. 2005/1713, art. 2

Determination of efficiency percentages for combined heat and power stations

149 (1) The Treasury may by regulations make provision for determining [F181]... the efficiency percentage for a combined heat and power station.

(2) Regulations under this paragraph may, in particular, include—

(a) provision in respect of methods of calculating efficiency percentages;

(b) provision in respect of the measurements and data to be used in calculating such percentages;

(c) provision in respect of the procedures for determining such percentages;

(d) provision in respect of verifying—

(i) calculations by which such percentages are produced, and

(ii) measurements and data used in such calculations;

(e) provision that, so far as framed by reference to any document, is framed by reference to that document as from time to time in force.

(3) In making provision under this paragraph, the Treasury must have regard to the object of securing that the efficiency percentage for a combined heat and power station is (save for any appropriate adjustments) a percentage that reflects a fair assessment of the efficiency with which commodities are transformed in the station into electricity or motive power.

Textual Amendments

F181 Words in Sch. 6 para. 149(1) repealed (22.7.2005, with effect in accordance with s. 189(5) of the amending Act) by Finance Act 2003 (c. 14), s. 189(4), **Sch. 43 Pt. 4(2)**; S.I. 2005/1713, art. 2

[F182 Certification of electricity from fully or partly exempt combined heat and power station

Textual Amendments

F182 Sch. 6 para. 149A inserted (24.7.2002) by 2002 c. 23, **s. 124**

149A (1) The Commissioners may by regulations make provision for the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, to certify as respects any quantity of electricity that—

(a) the electricity has been produced in a fully exempt combined heat and power station;

(b) the electricity has been produced in a partly exempt combined heat and power station and supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded.

(2) Regulations under this paragraph may provide that for any purposes of this Schedule (or any regulations made under it)—

(a) electricity is not to be regarded as having been produced as specified in sub-paragraph (1)(a) unless it has been certified under that provision;

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) electricity is not to be regarded as having been produced and supplied as specified in sub-paragraph (1)(b) unless it has been certified under that provision.

(3) Regulations under this paragraph may in particular provide that the supply of any electricity does not qualify for the exemption under paragraph 16(2) unless the electricity is certified as specified in sub-paragraph (1)(b).

(4) Regulations under this paragraph may also make provision for determining whether electricity is produced and supplied as specified in sub-paragraph (1)(b).**]**

Meaning of "utility"

150 (1) In this Schedule "utility" means an electricity utility or a gas utility.

(2) In this Schedule "electricity utility" means the holder of—

(a) a licence under section 6(1)(d) of the [M53]Electricity Act 1989 (supply licences), or

(b) a licence under Article 10(1)(c) or (2) of the [M54]Electricity Supply (Northern Ireland) Order 1992,

except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

Until the coming into force of the substitution for section 6 of the [M55]Electricity Act 1989 provided for by the Utilities Act 2000, paragraph (a) above shall have effect as if the reference to section 6(1)(d) were to section 6(1)(c) or (2).

(3) In this Schedule "gas utility" means the holder of—

(a) a licence under section 7A(1) of the [M56]Gas Act 1986 (supply licences), or

(b) a licence under Article 8(1)(c) of the [M57]Gas (Northern Ireland) Order 1996,

except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

(4) Sub-paragraphs (1) to (3) have effect subject to—

(a) any direction under paragraph 151(1), and

(b) any regulations under paragraph 151(2).

Marginal Citations

M53 1989 c. 29.
M54 S.I. 1992/231 (N.I. 1).
M55 2000 c. 27.
M56 1986 c. 44.
M57 S.I. 1996/275 (N.I. 2.)

Person treated as, or as not being, a utility

151 (1) The Commissioners may by direction (a "utility direction") make, in respect of a person (or persons) specified in the direction, provision authorised by sub-paragraph (3).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The Treasury may by regulations ("utility regulations") make, in respect of any person of a description specified in the regulations, provision authorised by sub-paragraph (3).

(3) The provision authorised by this sub-paragraph is provision for—

(a) a person who is an unregulated electricity supplier to be treated for levy purposes as being an electricity utility;

(b) a person who is an unregulated gas supplier to be treated for levy purposes as being a gas utility;

(c) a person who is an electricity utility to be treated for levy purposes as not being an electricity utility;

(d) a person who is a gas utility to be treated for levy purposes as not being a gas utility.

(4) References in sub-paragraph (3) to provision for a person to be treated in a particular way for "levy purposes" are to provision for him to be treated in that way for—

(a) the purposes of this Schedule, or

(b) such of those purposes as are specified in the direction or regulations by which the provision is made.

(5) The power to make any provision by a utility direction or utility regulations may be exercised so that the provision applies in relation to a person only to an extent specified in, or determined under, the direction or regulations.

(6) A utility direction cannot take effect until it has been—

(a) given by the Commissioners to each person in respect of whom it makes provision, and

(b) published by the Commissioners.

(7) Paragraph 146(7)(b) and (c) applies to the power to make provision by a utility direction as to a power to make provision by regulations.

(8) In this paragraph—

"unregulated electricity supplier" means a person who—

(a) makes supplies of electricity, and

(b) is not an electricity utility;

"unregulated gas supplier" means a person who—

(a) makes supplies of gas that is in a gaseous state and is of a kind supplied by a gas utility, and

(b) is not a gas utility.

Meaning of "auto-generato"r

152 (1) In this Schedule "auto-generator" means a person who produces electricity if the electricity that he produces is primarily for his own consumption.

(2) The Commissioners may by regulations specify requirements to be fulfilled before the electricity that a person produces is, for the purposes of sub-paragraph (1), to be taken as produced primarily for his own consumption.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) For the purposes of this paragraph, electricity is for a person's own consumption if it is for consumption by him or a person connected with him within the meaning of section 839 of the Taxes Act 1988.

Meaning of "levy due for an accounting perio"d

153 References in this Schedule, in relation to any accounting period, to levy due from any person for that period are references (subject to any regulations made by virtue of paragraph 41(2)(a)) to the levy for which that person is required, in accordance with regulations under paragraph 41, to account by reference to that period.

Meaning of "repayment of lev"y

154 References in this Schedule to a repayment of levy or of an amount of levy are references to any repayment of an amount to any person by virtue of—

(a) any tax credit regulations; or

(b) paragraph 63, 87(3) or 110(3).

Interpretation of "in the course or furtherance of a busines"s

155 (1) Anything done in connection with the termination or intended termination of a business shall, for the purposes of this Schedule, be treated as being done in the course or furtherance of the business.

(2) Where in a disposition of a business as a going concern, or of its assets (whether or not in connection with its reorganisation or winding up), there is a supply of a taxable commodity, that supply shall for the purposes of this Schedule be taken to be made in the course or furtherance of the business.

Meaning of "resident in the United Kingdo"m

156 For the purposes of this Schedule a person is resident in the United Kingdom at any time if, at that time—

(a) that person has an established place of business in the United Kingdom;

(b) that person has a usual place of residence in the United Kingdom; or

(c) that person is a firm or unincorporated body which (without having a relevant connection with the United Kingdom by virtue of paragraph (a)) has amongst its partners or members at least one individual with a usual place of residence in the United Kingdom.

References to the Gas and Electricity Markets Authority: transitional provision

157 (1) Until such time as a transfer of functions from the Director General of Electricity Supply to the Gas and Electricity Markets Authority ("the Authority") has taken effect, references in paragraph 19 to the Authority shall be taken to be references to the Director General.

(2) Until such time as all the functions of the Director General of Electricity Supply have been transferred in accordance with the [M58]Utilities Act 2000 (transfer to the Authority) or abolished, references to the Authority in paragraph 137 shall be taken to include the Director General.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Until such time as all the functions of the Director General of Gas Supply have been transferred in accordance with the Utilities Act 2000 (transfer to the Authority) or abolished, references to the Authority in paragraph 137 shall be taken to include the Director General.

(4) The power conferred by paragraph 146(7) includes, in particular, power for regulations under paragraph 19 to make transitional provision in connection with the transfer of functions from the Director General of Electricity Supply to the Authority.

Marginal Citations
M58 2000 c. 27.

SCHEDULE 7

Section 30.

CLIMATE CHANGE LEVY: CONSEQUENTIAL AMENDMENTS

Provisional Collection of Taxes Act 1968 (c.2)

1 In section 1(1) of the Provisional Collection of Taxes Act 1968 (taxes in relation to which resolutions may have temporary statutory effect), after "value added tax" there shall be inserted " , climate change levy, ".

Bankruptcy (Scotland) Act 1985 (c.66)

F183 2 . . . . . .

Textual Amendments
F183 Sch. 7 paras. 2, 3 repealed (15.9.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/2093, art. 2(1), **Sch. 1** (with art. 4)

Insolvency Act 1986 (c.45)

F183 3 . . . . . .

Textual Amendments
F183 Sch. 7 paras. 2, 3 repealed (15.9.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/2093, art. 2(1), **Sch. 1** (with art. 4)

Income and Corporation Taxes Act 1988 (c.1)

4 In section 827 of the Taxes Act 1988 (no deduction for penalties etc.), the following subsection shall be inserted after subsection (1C)—

"(1D) Where a person is liable to make a payment by way of—

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(a) any penalty under any provision of Schedule 6 to the Finance Act 2000 (climate change levy),

(b) interest under paragraph 70 of that Schedule (interest on recoverable overpayments etc.),

(c) interest under any of paragraphs 81 to 85 of that Schedule (interest on climate change levy due and on interest), or

(d) interest under paragraph 109 of that Schedule (interest on penalties),

the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes."

Insolvency (Northern Ireland) Order 1989 (N.I. 19)

F184 5 . . . . . .

Textual Amendments

F184 Sch. 7 para. 5 repealed (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455), art. 1(3), **Sch. 9**; S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

Finance Act 1996 (c.8)

6 In section 197(2) of the Finance Act 1996 (enactments for which interest rates are set under section 197), after paragraph (f) there shall be inserted—

"(g) the following provisions of Schedule 6 to the Finance Act 2000 (interest payable to or by the Commissioners in connection with climate change levy), that is to say, paragraphs 41(2)(f), 62(3)(f), 66, 70(1)(b) and 81(3)."

Finance Act 1997 (c.16)

7 (1) The Finance Act 1997 is amended as follows.

(2) In section 51(5) (indirect taxes in respect of which the Commissioners may make regulations about enforcement by distress), after paragraph (e) insert—

"(f) climate change levy."

(3) In section 52(5) (enforcement in Scotland of indirect taxes by diligence), after paragraph (e) insert—

"(f) climate change levy."

(4) Sub-paragraph (3) extends only to Scotland.

F185F185SCHEDULE 8

. . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F185 Sch. 8 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

SCHEDULE 9

Section 48.

NEW SCHEDULE 7C TO THE [M72]TAXATION OF CHARGEABLE GAINS ACT 1992

Marginal Citations

M72 1992 c. 12.

The Schedule inserted after Schedule 7B to the Taxation of Chargeable Gains Act 1992 is as follows—

"SCHEDULE 7C

RELIEF FOR TRANSFERS TO APPROVED SHARE PLANS

Introductory

1 (1) A person ("the claimant") who makes a disposal of shares ("the disposal") to the trustees of the plan trust of an employee share ownership plan ("the plan") is entitled to claim relief under paragraph 5 if—

(a) the conditions in paragraph 2 are fulfilled, and

(b) paragraph 3(1) or (2) applies.

(2) Sub-paragraph (1) does not apply to a company that makes a disposal of shares.

(3) In this paragraph the references to a disposal of shares include a disposal of an interest in shares.

Conditions relating to the disposal

2 (1) The first condition is that, at the time of the disposal, the plan is approved under Schedule 8 to the Finance Act 2000.

(2) The second condition is that the relevant shares meet the requirements in Part VIII of that Schedule (types of shares that may be used in plan) in relation to the plan.

For this purpose that Part applies as if paragraph 61(a) and (c) (listed shares and shares in a company under the control of a company whose shares are listed) were omitted.

(3) The third condition is that, at any time in the entitlement period, the trustees hold, for the beneficiaries of the plan trust, shares in the relevant company that—

(a) constitute not less than 10% of the ordinary share capital of the company, and

(b) carry rights to not less than 10% of—

(i) any profits available for distribution to shareholders of the company, and

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(ii) any assets of that company available for distribution to its shareholders in the event of a winding up.

(4) For the purposes of sub-paragraph (3), shares that have been appropriated to, or acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of Schedule 8 to the Finance Act 2000).

(5) The fourth condition is that, at all times in the proscribed period, there are no unauthorised arrangements under which the claimant or a person connected with him may be entitled to acquire (directly or indirectly) from the trustees of the plan trust any shares, or an interest in or right deriving from any shares.

(6) For the purposes of this paragraph—

"ordinary share capital" has the meaning given in section 832(1) of the Taxes Act;

"the relevant company" means the company of whose share capital the relevant shares form part; and

"the relevant shares" means the shares that are, or an interest in which is, the subject of the disposal.

Reinvestment of disposal proceeds

3 (1) This sub-paragraph applies if the claimant obtains consideration for the disposal and, at any time in the acquisition period, all of the amount or value of the consideration is applied by him in making an acquisition of assets or an interest in assets ("replacement assets") which—

(a) are, immediately after the time of the acquisition, chargeable assets in relation to the claimant, and

(b) are not shares in, or debentures issued by, the relevant company or a company which is (at the time of the acquisition) in the same group as the relevant company;

but the preceding provisions of this sub-paragraph shall have effect without the words ", at any time in the acquisition period," if the acquisition is made pursuant to an unconditional contract entered into in the acquisition period.

(2) This sub-paragraph applies if—

(a) sub-paragraph (1) would have applied but for the fact that part only of the amount or value mentioned in that sub-paragraph is applied as there mentioned, and

(b) all the amount or value so mentioned except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal is so applied.

(3) In sub-paragraph (1)(b)—

"the relevant company" has the meaning given in paragraph 2(6); and

"group" shall be construed in accordance with section 170.

Provision supplementary to paragraphs 2 and 3

4 (1) This paragraph applies for the purposes of paragraphs 2 and 3.

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(2) The entitlement period is the period beginning with the disposal and ending on the expiry of 12 months beginning with the date of the disposal.

(3) The acquisition period is the period beginning with the disposal and ending on the expiry of six months beginning with—

(a) the date of the disposal, or

(b) if later, the date on which the third condition (set out in paragraph 2(3)) is first fulfilled.

(4) The proscribed period is the period beginning with the disposal and ending on—

(a) the date of the acquisition, or

(b) if later, the date on which the third condition (set out in paragraph 2(3)) is first fulfilled.

(5) All arrangements are unauthorised unless they only allow shares to be appropriated to or acquired on behalf of an individual under the plan.

The relief

5 (1) Where the claimant is entitled to claim relief under this paragraph and paragraph 3(1) applies, he shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

(a) as if the consideration for the disposal were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

(b) as if the amount or value of the consideration for the acquisition were reduced by the excess of the amount or value of the actual consideration for the disposal over the amount of the consideration which the claimant is treated as receiving under paragraph (a).

(2) Where the claimant is entitled to claim relief under this paragraph and paragraph 3(2) applies, he shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

(a) as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in paragraph 3(2)(b), and

(b) as if the amount or value of the consideration for the acquisition were reduced by the amount by which the gain is reduced under paragraph (a) above.

(3) Nothing in sub-paragraph (1) or (2) shall affect the treatment for the purposes of this Act of the other party to the disposal or of the other party to the acquisition.

(4) The provisions of this Act fixing the amount of the consideration deemed to be given for a disposal or acquisition shall be applied before the preceding provisions of this paragraph are applied.

Dwelling-houses: special provision

6 (1) Sub-paragraph (2) applies where—

(a) a claim is made under paragraph 5,

(b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,

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(c) the asset is a dwelling-house or part of a dwelling-house or land, and

(d) there was a time in the period beginning with the acquisition and ending with the time when paragraph 5(1) or (2) falls to be applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.

(3) Sub-paragraph (4) applies where—

(a) the provisions of paragraph 5(1) or (2) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consists of a dwelling-house or part of a dwelling-house or land, and

(c) there is a time after paragraph 5(1) or (2) has been applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(4) In such a case—

(a) the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but

(b) any gain treated as accruing in consequence of the application of paragraph (a) shall be treated as accruing at the time mentioned in sub-paragraph (3)(c) or, if there is more than one such time, at the earliest of them.

(5) Sub-paragraph (6) applies where—

(a) a claim is made under paragraph 5,

(b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset was an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,

(d) the option has been exercised, and

(e) there was a time in the period beginning with the exercise of the option and ending with the time when paragraph 5(1) or (2) falls to be applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(6) In such a case the option shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.

(7) Sub-paragraph (8) applies where—

(a) the provisions of paragraph 5(1) or (2) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset

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in relation to the claimant consisted of an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,

(c) the option has been exercised, and

(d) there is a time after paragraph 5(1) or (2) has been applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(8) In such a case—

(a) the option shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but

(b) any gain treated as accruing in consequence of the application of paragraph (a) shall be treated as accruing at the time mentioned in sub-paragraph (7)(d) or, if there is more than one such time, at the earliest of them.

(9) References in this paragraph to an individual include a person entitled to occupy under the terms of a settlement.

Shares: special provision

7 (1) Sub-paragraph (2) applies where—

(a) a claim is made under paragraph 5,

(b) immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset consists of shares, and

(d) relief is claimed under Chapter III of Part VII of the Taxes Act (enterprise investment scheme) at any time in the period beginning with the acquisition and ending when paragraph 5(1) or (2) falls to be applied.

(2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant.

(3) Sub-paragraph (4) applies where—

(a) the provisions of paragraph 5(1) or (2) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in paragraph 3 and apart from this paragraph, was a chargeable asset in relation to the claimant consists of shares, and

(c) at any time after paragraph 5(1) or (2) has been applied relief is claimed in respect of the asset under Chapter III of Part VII of the Taxes Act (enterprise investment scheme).

(4) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in paragraph 3, it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly.

Meaning of "chargeable asse"t

8 For the purposes of this Schedule an asset is a chargeable asset in relation to the claimant at a particular time if, were the asset to be disposed of at that time, any gain accruing to him on the disposal would be a chargeable gain, and either—

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(a) at that time he is resident or ordinarily resident in the United Kingdom, or

(b) he would be chargeable to capital gains tax under section 10(1) (non-resident with United Kingdom branch or agency) in respect of the gain,

unless (were he to dispose of the asset at that time) the claimant would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gains accruing to him on the disposal.".

F202F202SCHEDULE 10

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Textual Amendments

F202 Sch. 10 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

F203F203SCHEDULE 11

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Textual Amendments

F203 Sch.11 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

SCHEDULE 12

Section 60.

PROVISION OF SERVICES THROUGH AN INTERMEDIARY

PART I

APPLICATION OF THIS SCHEDULE

Engagements to which this Schedule applies

1 F204 . . . . . .

Textual Amendments

F204 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Status: *Point in time view as at 21/07/2009.*
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Worker treated as receiving Schedule E income

2 **F205** . . . . . .

Textual Amendments

F205 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Conditions of liability where intermediary is a company

3 **F206** . . . . . .

Textual Amendments

F206 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Conditions of liability where intermediary is a partnership

4 **F207** . . . . . .

Textual Amendments

F207 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Conditions of liability where intermediary is an individual

5 **F208** . . . . . .

Textual Amendments

F208 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Exception of certain payments subject to deduction of tax

6 **F209** . . . . . .

Textual Amendments

F209 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART II

THE DEEMED SCHEDULE E PAYMENT

Calculation of deemed Schedule E payment

7 F210 . . . . . .

Textual Amendments

F210 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Reimbursed expenses

7A F211 . . . . . .

Textual Amendments

F211 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Treatment of mileage allowances

7B F212 . . . . . .

Textual Amendments

F212 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Treatment of payments made under construction industry scheme

8 F213 . . . . . .

Textual Amendments

F213 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Apportionments

9 F214 . . . . . .

Textual Amendments

F214 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Status: *Point in time view as at 21/07/2009.*
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Application of Schedule E rules

10 F215 . . . . . .

Textual Amendments

F215 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Application of Income Tax Acts in relation to deemed Schedule E payment

11 F216 . . . . . .

Textual Amendments

F216 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

PART III

SUPPLEMENTARY PROVISIONS

Earlier date of deemed Schedule E payment in certain cases

12 F217 . . . . . .

Textual Amendments

F217 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Relief in case of distributions by intermediary

13 F218 . . . . . .

Textual Amendments

F218 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Provisions applicable to multiple intermediaries

14 F219 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F219 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Multiple intermediaries: avoidance of double-counting

15 F220 . . . . . .

Textual Amendments

F220 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Multiple intermediaries: joint and several liability for PAYE deductions

16 F221 . . . . . .

Textual Amendments

F221 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Calculation of profits of intermediary: deduction for deemed Schedule E payment

F222 17 . . . . . .

Textual Amendments

F222 Sch. 12 para. 17 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 467, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Calculation of profits of intermediary: special rules for partnerships

F223 18 . . . . . .

Textual Amendments

F223 Sch. 12 para. 18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 467, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Meaning of "associat"e

19 F224 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F224 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Meaning of "the Inland Revenu"e

20 F225 . . . . . .

Textual Amendments

F225 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Interpretation

21 F226 . . . . . .

Textual Amendments

F226 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Transitional provisions: general

22 F227 . . . . . .

Textual Amendments

F227 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Transitional provisions: deemed discontinuance of business

23 F228 . . . . . .

Textual Amendments

F228 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

Saving for provisions relating to agency workers

24 F229 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F229 Sch. 12 paras. 1-16, 19-24 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

F230SCHEDULE 13

Section 61.

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Textual Amendments

F230 Sch. 13 repealed (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**

F231F231SCHEDULE 14

. . . . . .

Textual Amendments

F231 Sch. 14 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

SCHEDULE 15

Section 63(1).

THE CORPORATE VENTURING SCHEME

PART I

INVESTMENT RELIEF: INTRODUCTION

Meaning of "investment relief"

1 This Schedule makes provision for—

(a) relief against corporation tax ("investment relief") on amounts subscribed by companies for shares (see this Part and Parts II to VI of this Schedule);

(b) relief against income of companies for losses on disposals of shares to which investment relief is attributable (see Part VII of this Schedule); and

(c) the postponement of certain chargeable gains of companies where the gains are reinvested in shares to which investment relief is attributable (see Part VIII of this Schedule).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Eligibility for investment relief

2 A company ("the investing company") is eligible for investment relief in respect of an amount subscribed by it for an issue of shares in another company ("the issuing company") if—

(a) the shares ("the relevant shares") are issued to the investing company;

(b) the investing company is a qualifying investing company in relation to the relevant shares (see Part II of this Schedule);

(c) the issuing company is a qualifying issuing company in relation to the relevant shares (see Part III of this Schedule); and

(d) the general requirements of Part IV of this Schedule are met in respect of the relevant shares.

Meaning of "the qualification perio"d

3 (1) In this Schedule "the qualification period", in relation to the relevant shares, means the period beginning with the issue of the shares and ending—

(a) immediately before the third anniversary of the issue date; or

(b) where the money raised by the issuance of the shares is employed wholly or mainly for the purposes of one or more qualifying trades that, on the issue date, were not being carried on—

(i) by the issuing company, or

(ii) if it is a parent company, by that company or any of its **[**F248qualifying 90% subsidiaries**]** ,

immediately before the third anniversary of the trading date.

(2) For this purpose "the trading date" means—

(a) the date on which the issuing company or one of its **[**F249qualifying 90% subsidiaries**]** begins to carry on the qualifying trade to which sub-paragraph (1)(b) refers, or

(b) if there is more than one such trade, the latest date on which the issuing company or one of its **[**F250qualifying 90% subsidiaries**]** begins to carry on such a trade.

Textual Amendments

F248 Words in Sch. 15 para. 3(1)(b)(ii) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 2(a)**

F249 Words in Sch. 15 para. 3(2)(a) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 2(b)**

F250 Words in Sch. 15 para. 3(2)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 2(b)**

Status: *Point in time view as at 21/07/2009.*
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PART II

THE INVESTING COMPANY

Introduction

4 The investing company is a qualifying investing company in relation to the relevant shares if the requirements of this Part are met as to—

(a) no material interest (see paragraph 5);
(b) no reciprocal arrangements (see paragraph 6);
(c) no control (see paragraph 8);
(d) non-financial activities (see paragraph 10);
(e) the shares being a chargeable asset (see paragraph 13); and
(f) no tax avoidance (see paragraph 14).

The "no material interes"t requirement

5 The investing company must not, at any time during the qualification period relating to the shares, have a material interest in the issuing company.

The "no reciprocal arrangement"s requirement

6 (1) The investing company must not subscribe for the relevant shares as part of any arrangements which provide for any other person to subscribe for shares in a related company.

(2) For this purpose—

(a) arrangements shall be disregarded to the extent that they provide for the issuing company to subscribe for shares in any of its qualifying subsidiaries, and
(b) "a related company" means a company in which the investing company, or any other person who is a party to the arrangements, has a material interest.

(3) In sub-paragraph (2)(a) the reference to qualifying subsidiaries of the issuing company is not restricted to companies that were such subsidiaries at the time the arrangements were made.

Meaning of "material interes"t

7 (1) For the purposes of paragraphs 5 and 6 a person has a material interest in a company if he (whether alone or together with any person connected with him) directly or indirectly possesses or is entitled to acquire more than 30% of—

(a) the ordinary share capital of the company or any subsidiary, or
(b) the voting power in the company or any subsidiary.

(2) For the purposes of sub-paragraph (1) "ordinary share capital", in relation to a company, means—

(a) all of the issued share capital (by whatever name called) of the company, other than capital comprising relevant preference shares, and
(b) all of the loan capital of the company that comprises debt which carries (directly or indirectly) any right to conversion into, or to the acquisition of, shares within paragraph (a) (or that would be within that paragraph if issued).

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(3) For the purposes of sub-paragraph (2)(b) the loan capital of a company shall be treated as including any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company,

(b) for any right to receive income created in favour of the company, or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).

This is subject to sub-paragraph (4).

(4) For the purposes of sub-paragraph (3) a debt which—

(a) is incurred by a company or any subsidiary by overdrawing an account with a person carrying on the business of banking, and

(b) arises in the ordinary course of that business,

shall not be treated as loan capital of the company.

(5) For the purposes of sub-paragraph (1)—

(a) a person is treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and

(b) there are attributed to a person any rights or powers of any other person who is an associate of his.

(6) For the purposes of this paragraph a company is a subsidiary of another company if it is a 51% subsidiary of that company.

The "no contro"l requirement

8 (1) The investing company must not, at any time during the qualification period relating to those shares, control the issuing company.

(2) For this purpose the question whether the investing company controls the issuing company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988 with the following modifications.

(3) The first modification is that, in determining whether the investing company controls the issuing company, there shall be disregarded—

(a) its or any other person's possession of, or entitlement to acquire, relevant preference shares of the issuing company; and

(b) its or any other person's possession of, or entitlement to acquire, rights as a loan creditor of the issuing company.

(4) For the purposes of sub-paragraph (3) a person is a "loan creditor" of a company if the person is a creditor in respect of the loan capital of that company (within the meaning of paragraph 7(3)).

(5) The second modification is that in determining whether the conditions of section 416(2) of that Act are satisfied there shall be attributed to the investing company (to the extent that it would not otherwise be the case) any rights or powers in the issuing company, or any of its subsidiaries, that are held by—

(a) any person connected with the investing company; or

(b) any person who is—

(i) a director of the investing company, or of any company connected with that company, or

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(ii) a relative of such a director.

For this purpose "relative" means **[**[F251]spouse or civil partner**]**, parent or remoter forebear or child or remoter issue.

Textual Amendments

F251 Words in Sch. 15 para. 8(5)(b)(ii) substituted (5.12.2005) by Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **132**

Relevant preference shares

9 (1) In paragraphs 7 (meaning of "material interest") and 8 (the "no control" requirement) "relevant preference shares" means shares which—

(a) do not for the time being carry voting rights;

(b) are issued wholly for new consideration;

(c) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and

(d) do not carry any right to dividends other than dividends which—

(i) fall within sub-paragraph (2) or (3);

(ii) are not to any extent dependent on the results of the company's business or any part of it or on the value of any of the company's assets; and

(iii) together with any sum paid on a redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued.

In paragraph (b) "new consideration" has the meaning given by section 254 of the Taxes Act 1988.

(2) Dividends fall within this sub-paragraph if they are of a fixed amount or at a fixed rate per cent of the nominal value of the shares.

This includes dividends where the amount or rate may be changed to another fixed amount or fixed rate in a manner determined under the terms of issue of the shares.

(3) Dividends fall within this sub-paragraph if they are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—

(a) a standard published rate of interest,

(b) a rate of tax,

(c) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated, or

(d) a published index of prices of shares quoted in the official list of a recognised stock exchange.

(4) For the purposes of sub-paragraph (1)(d)(ii) dividends shall not be treated as being to any extent dependent on the results of the company's business (or any part of it) or on the value of any of the company's assets by reason only of the fact that the amount or rate of the dividends—

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(a) reduces in the event of the results of the business (or part) improving or the value of any of the company's assets increasing, or

(b) increases in the event of the results of the business (or part) deteriorating or the value of any of the company's assets diminishing.

(5) Dividends are not prevented from falling within sub-paragraph (2) or (3) by the fact that the shares carry no rights at all to dividends for a period or periods determined under the terms of issue of the shares.

The non-financial activities requirement

10 (1) Throughout the qualification period relating to the relevant shares the investing company must fall within sub-paragraph (2) or (3).

(2) The company falls within this sub-paragraph at any time when it—

(a) is a single company, and

(b) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more non-financial trades.

(3) The company falls within this sub-paragraph at any time when—

(a) it is a group company,

(b) the group is a non-financial trading group, and

(c) sub-paragraph (4) applies.

(4) This sub-paragraph applies where the company—

(a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more—

(i) non-financial trades, or

(ii) businesses other than trades; or

(b) is the parent company of the group.

(5) For the purposes of determining whether the company falls within sub-paragraph (2)(b) or (4)(a), the purposes for which the company exists shall be disregarded to the extent that they consist in the carrying on of the following activities—

(a) in the case of a single company, the holding and managing of property used by the company for one or more non-financial trades carried on by it,

(b) in the case of a group company, any activities within paragraph 12(3)(a) or (b), and

(c) in any case, the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.

(6) In this paragraph "incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the company's activities.

Meaning of "non-financial trad"e

11 (1) A trade is a "non-financial trade" if—

(a) it is conducted on a commercial basis and with a view to the realisation of profits, and

(b) it does not consist wholly or as to a substantial part in the carrying on of financial activities.

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(2) For this purpose "financial activities" includes—

(a) banking, or money-lending, carried on by a bank, building society or other person;

(b) debt-factoring, finance-leasing or hire-purchase financing;

(c) insurance;

(d) dealing in shares, securities, currency, debts or other assets of a financial nature; and

(e) dealing in commodity or financial futures or options.

Meaning of "non-financial trading grou"p

12 (1) A group is a "non-financial trading group" unless the business of the group consists wholly or as to a substantial part in the carrying on of one or more of the following—

(a) trades other than non-financial trades;

(b) businesses which are not trades.

(2) The business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(3) For this purpose activities of a group company shall be disregarded to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, another group company;

(b) the holding and managing of property used by a group company for the purposes of one or more non-financial trades carried on by a group company; or

(c) the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.

Requirement as to shares being a chargeable asset

13 (1) The investing company is not a qualifying investing company in relation to the relevant shares unless the shares are a chargeable asset of the company immediately after they are issued to it.

(2) For this purpose an asset is a chargeable asset of that company at any time if, on a disposal at that time, a gain accruing to the company would be a chargeable gain.

(3) In this paragraph "asset" has the same meaning as in the 1992 Act.

Requirement as to no tax avoidance

14 The relevant shares must be subscribed for by the investing company for commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Status: *Point in time view as at 21/07/2009.*
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PART III

THE ISSUING COMPANY

Introduction

15 The issuing company is a qualifying issuing company in relation to the relevant shares if the requirements of this Part are met as to—

(a) unquoted status (see paragraph 16);
(b) independence (see paragraph 17);
(c) individual-owners (see paragraph 18);
(d) partnerships and joint ventures (see paragraph 19);
(e) qualifying subsidiaries (see paragraph 20);
[F252(ea) property managing subsidiaries (see paragraph 21A);**]**
(f) gross assets (see paragraph 22); F253...
[F254(fa) number of employees (see paragraph 22A); and**]**
(g) trading activities (see paragraph 23).

Textual Amendments

F252 Sch. 15 para. 15(ea) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 3**

F253 Word in Sch. 15 para. 15(f) repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(16)**

F254 Sch. 15 para. 15(fa) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 16 para. 1(2)** (with Sch. 16 para. 1(4))

The "unquoted statu"s requirement

16 (1) The unquoted status requirement is that, at the time the relevant shares are issued, none of the issuing company's shares, debentures or other securities is (and there are no arrangements in existence for any of them to be)—

(a) listed on a recognised stock exchange,
(b) listed on a designated exchange in a country outside the United Kingdom, or
(c) dealt in outside the United Kingdom by such means as may be designated.

This is subject to sub-paragraph (3).

(2) The unquoted status requirement applies whether or not the company is resident in the United Kingdom.

(3) The unquoted status requirement is treated as not met if at the time the relevant shares are issued—

(a) arrangements are in existence for the issuing company to become a subsidiary of another company ("the new company") by virtue of an exchange of shares, or shares and securities, in relation to which paragraph 83 (certain exchanges resulting in acquisition of share capital by new company) applies, and
(b) arrangements have been made with a view to any of the new company's shares, debentures or other securities being listed or dealt in as mentioned in paragraph (a), (b) or (c) of sub-paragraph (1).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) For the purposes of sub-paragraph (1) "designated" means designated by an order ("a designation order") made for the purposes of subsection (1B) of section 312 of the Taxes Act 1988 **[**[F255]or section 184(3) of ITA 2007**]** (definition of "unquoted company" for the purposes of EIS).

(5) Where the issuing company meets the unquoted status requirement when the relevant shares are issued, it shall not cease to meet it by virtue of—

(a) any designation order, or

(b) any order under section 841 of the Taxes Act 1988 (designation of exchange as "recognised stock exchange"),

made after that time.

Textual Amendments

F255 Words in Sch. 15 para. 16(4) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(2)** (with Sch. 2)

The independence requirement

17 (1) The independence requirement is that—

(a) the issuing company is not, at any time during the qualification period relating to the relevant shares—

(i) a 51% subsidiary of another company, or

(ii) under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and

(b) no arrangements are in existence at any time during that period by virtue of which the company could become such a subsidiary or fall under such control (whether during that period or otherwise).

(2) For the purposes of sub-paragraph (1)(b) arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 83(1) (certain exchanges resulting in acquisition of share capital by new company) shall be disregarded.

(3) In this paragraph "control" has the meaning given by section 840 of the Taxes Act 1988.

The "individual-owner"s requirement

18 (1) The "individual-owners" requirement is that, throughout the qualification period relating to the relevant shares, at least 20% of the ordinary share capital of the issuing company is beneficially owned by one or more independent individuals.

(2) For the purposes of sub-paragraph (1) "independent individual" means an individual who is not, at any time during that period when he holds ordinary shares in the issuing company—

(a) a director or employee of—

(i) the investing company, or

(ii) any company connected with that company, or

(b) a relative of such a director or employee.

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For this purpose "relative" means **[**F256spouse or civil partner**]**, parent or remoter forebear or child or remoter issue.

(3) Where part of the ordinary share capital of the issuing company forms part of the estate of a deceased person who immediately before his death—

(a) was the beneficial owner of the shares in question, and

(b) was an independent individual for the purposes of sub-paragraph (1),

the shares in question shall, by virtue of this sub-paragraph, continue to be treated as beneficially owned by an independent individual for the purposes of sub-paragraph (1) until such time as they cease to form part of the deceased's estate.

Textual Amendments

F256 Words in Sch. 15 para. 18(2)(b) substituted (5.12.2005) by Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **132**

The partnerships and joint ventures requirement

19 (1) The requirement as to partnerships and joint ventures is that neither the issuing company nor any of its qualifying subsidiaries is at any time during the qualification period relating to the relevant shares—

(a) a member of a partnership falling within sub-paragraph (2), or

(b) a party to a joint venture falling within sub-paragraph (3).

(2) A partnership of which the issuing company, or any of its qualifying subsidiaries, is a member falls within this paragraph at any time when—

(a) the relevant trade is being carried on, or to be carried on, by the partners in partnership,

(b) the other partners include at least one other company, and

(c) the same person (or persons) are the beneficial owner (or owners) of more than 75% of the issued share capital or the ordinary share capital of both—

(i) the issuing company, and

(ii) at least one of the other partners.

(3) A joint venture to which the issuing company, or any of its qualifying subsidiaries, is a party falls within this paragraph at any time when—

(a) the relevant trade is being carried on, or to be carried on, by that party in its capacity as a party to the joint venture,

(b) the other parties include at least one other company, and

(c) the same person (or persons) are the beneficial owner (or owners) of more than 75% of the issued share capital or the ordinary share capital of both—

(i) the issuing company, and

(ii) at least one of the other parties.

(4) For the purposes of sub-paragraphs (2) and (3)—

(a) "the relevant trade" means any trade by reference to which the trading activities requirement is met in respect of the issuing company in relation to the relevant shares; and

(b) there shall be attributed to any person any issued share capital or ordinary share capital held by any other person who is an associate of his.

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The qualifying subsidiaries requirement

20 (1) The issuing company is not a qualifying issuing company in relation to the relevant shares if, at any time during the qualification period relating to those shares, it has a subsidiary which is not a qualifying subsidiary.

[F257(2) In this paragraph "subsidiary" means any company which the company controls, either on its own or together with any person connected with it.

(3) For the purpose of sub-paragraph (2), the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.**]**

Textual Amendments

F257 Sch. 15 para. 20(2)(3) substituted (22.7.2004) for Sch. 15 para. 20(2) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 4(2)**

Meaning of "qualifying subsidiar"y

21 (1) A company ("the subsidiary") is a qualifying subsidiary of another company ("the relevant company") if the following conditions are met.

(2) The conditions are that—

F258(a) . . . . . .

F258(b) . . . . . .

F258(c) . . . . . .

[F259(ca) the subsidiary is a 51% subsidiary of the relevant company;**]**

(d) no person other than the relevant company or another of its subsidiaries has control of the subsidiary within the meaning of section 840 of the Taxes Act 1988; and

(e) no arrangements are in existence by virtue of which **[**F260either of the conditions in paragraphs (ca) and**]** (d) would cease to be met.

(3) The subsidiary shall not be regarded as ceasing to be a company in relation to which the conditions in sub-paragraph (2) are met by reason only of—

(a) anything done as a consequence of the subsidiary, or any other company, being in administration or receivership, or

(b) the subsidiary, or any other company, being wound up or dissolved without winding up,

if sub-paragraph (4) applies.

(4) This paragraph applies where—

(a) in a case within sub-paragraph (3)(a)—

[F261(i) the entry into administration or receivership, and**]**

(ii) everything done as a consequence of the company **[**F262concerned**]** being in administration or receivership, or

(b) in a case within sub-paragraph (3)(b), the winding up or dissolution,

is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

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(5) The subsidiary shall not be regarded, at any time when arrangements are in existence for the disposal by the relevant company or (as the case may be) by another subsidiary of that company of all its interest in the subsidiary in question, as having ceased on that account to be a qualifying subsidiary **[**F263of the relevant company**]** if the disposal is to be for commercial reasons **[**F264and is not to be part**]** of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

Textual Amendments

F258 Sch. 15 para. 21(2)(a)-(c) repealed (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), Sch. 20 para. 5(2)(a), **Sch. 42 Pt. 2(13)**

F259 Sch. 15 para. 21(2)(ca) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 5(2)(b)**

F260 Words in Sch. 15 para. 21(2)(e) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 5(2)(c)**

F261 Sch. 15 para. 21(4)(a)(i) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 34(a)** (with art. 6)

F262 Word in Sch. 15 para. 21(4)(a)(ii) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 5(3)**

F263 Words in Sch. 15 para. 21(5) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 5(4)(a)**

F264 Words in Sch. 15 para. 21(5) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 5(4)(b)**

*I*F265*The property managing subsidiaries requirement*

Textual Amendments

F265 Sch. 15 para. 21A and cross-heading inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 6**

21A (1) The issuing company is not a qualifying issuing company in relation to the relevant shares if, at any time during the qualification period relating to those shares, it has a property managing subsidiary which is not a qualifying 90% subsidiary of the issuing company (see paragraph 23(10) and (11)).

(2) "Property managing subsidiary" means a qualifying subsidiary of the issuing company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.

(3) In sub-paragraph (2), "land" and "property deriving its value from land" have the same meaning as in section 776 of the Taxes Act 1988.**]**

The gross assets requirement

22 (1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—

(a) does not exceed **[**F266£7 million**]** immediately before the issue of the relevant shares, and

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(b) does not exceed **[**F267£8 million**]** immediately afterwards.

(2) The gross assets requirement in the case of a parent company is that the consolidated value of the group assets—

(a) does not exceed **[**F268£7 million**]** immediately before the issue of the relevant shares, and

(b) does not exceed **[**F269£8 million**]** immediately afterwards.

(3) The consolidated value of the group assets means the aggregate value of the gross assets of the group, disregarding any that consist in rights against, or shares in or securities of, another group company.

Textual Amendments

F266 Words in Sch. 15 para. 22(1)(a) substituted (with effect in accordance with Sch. 14 para. 3(2)(3) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 14 para. 3(1)(a)**

F267 Words in Sch. 15 para. 22(1)(b) substituted (with effect in accordance with Sch. 14 para. 3(2)(3) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 14 para. 3(1)(b)**

F268 Words in Sch. 15 para. 22(2)(a) substituted (with effect in accordance with Sch. 14 para. 3(2)(3) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 14 para. 3(1)(a)**

F269 Words in Sch. 15 para. 22(2)(b) substituted (with effect in accordance with Sch. 14 para. 3(2)(3) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 14 para. 3(1)(b)**

[F270The number of employees requirement

Textual Amendments

F270 Sch. 15 para. 22A and cross-heading inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 16 para. 1(3)** (with Sch. 16 para. 1(4))

22A (1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant shares are issued.

(2) If the issuing company is a parent company, the sum of—

(a) the full-time equivalent employee number for it, and

(b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,

must be less than 50 when the relevant shares are issued.

(3) The full-time equivalent employee number for a company is calculated as follows—

Step 1

Find the number of full-time employees of the company.

Step 2

Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.

(4) In this paragraph references to an employee—

(a) include a director, but

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(b) do not include—

(i) an employee on maternity or paternity leave, or

(ii) a student on vocational training.**]**

The trading activities requirement

23 (1) The issuing company is not a qualifying issuing company in relation to the relevant shares unless it meets the trading activities requirement throughout the qualification period relating to those shares.

(2) The trading activities requirement in the case of a single company is that the company—

(a) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and

(b) is carrying on a qualifying trade or preparing to do so.

(3) The trading activities requirement in the case of a parent company is that—

(a) the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities, and

(b) **[**F271the issuing company or a qualifying 90% subsidiary of the issuing company**]** —

(i) disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and

(ii) is carrying on a qualifying trade or preparing to do so.

(4) For this purpose the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(5) The requirement of sub-paragraph (2) or (3) is not met at any time by reason of the issuing company or **[**F272a qualifying 90% subsidiary of the issuing company**]** preparing to carry on a qualifying trade if the company **[**F273or a qualifying 90% subsidiary of the issuing company**]** does not begin to carry on the trade within two years after the issue of the relevant shares.

(6) For the purposes of determining whether **[**F274a company**]** falls within sub-paragraph (2)(a) or (3)(b)(i), the purposes for which it exists shall be disregarded to the extent that they consist in the carrying on of the following activities—

(a) in the case of a single company, the holding and managing of property used by the company for one or more qualifying trades carried on by it,

(b) in the case of a group company, any activities within sub-paragraph (7)(a), (b) or (d), and

(c) in any case, the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business.

(7) For the purposes of determining the business of a group, activities of a group company shall be disregarded to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, another group company;

(b) the holding and managing of property used by a group company for the purposes of one or more qualifying trades carried on by a group company;

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(c) the holding of shares to which investment relief is attributable, unless the holding of such shares amounts to a substantial part of the company's business, or

(d) incidental activities of a company which meets the trading activities requirement for a single company.

(8) In sub-paragraph (3)(a) "non-qualifying activities" means—

(a) excluded activities other than—

(i) the letting of ships to which paragraph 28 applies (ships other than **[**F275offshore installations**]** or pleasure craft) in circumstances where the requirement of sub-paragraph (2) of that paragraph is met; or

(ii) the receiving of royalties or licence fees within paragraph 29 in circumstances where the requirements mentioned in sub-paragraph (2) of that paragraph are met; and

(b) activities carried on otherwise than in the course of a trade.

(9) In this paragraph—

(a) "incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question;

(b) "incidental activities" means activities carried on in pursuance of incidental purposes.

F276(10) . . . . . .

F277(11) . . . . . .

Textual Amendments

F271 Words in Sch. 15 para. 23(3)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 7(a)**

F272 Words in Sch. 15 para. 23(5) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 7(b)(i)**

F273 Words in Sch. 15 para. 23(5) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 7(b)(ii)**

F274 Words in Sch. 15 para. 23(6) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 7(c)**

F275 Words in Sch. 15 para. 23(8)(a)(i) substituted (22.7.2004) (with effect in accordance with Sch. 27 para. 6(5)(6) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 6(2)**

F276 Sch. 15 para. 23(10) repealed (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), Sch. 16 paras. 15(2), 18, **Sch. 27 Pt. 2(16)**

F277 Sch. 15 para. 23(11) repealed (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), Sch. 16 paras. 15(2), 18, **Sch. 27 Pt. 2(16)**

[F278Meaning of "qualifying 90% subsidiary"

Textual Amendments

F278 Sch. 15 para. 23A and cross-heading inserted (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), **Sch. 16 paras. 15(3)**, 18

Status: *Point in time view as at 21/07/2009.*
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23A (1) For the purposes of this Schedule, a company ("the subsidiary") is a qualifying 90% subsidiary of the issuing company if the following conditions are met—

(a) the issuing company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;

(b) the issuing company would—

(i) in the event of a winding up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to receive not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;

(c) the issuing company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;

(d) no person other than the issuing company has control of the subsidiary within the meaning of section 840 of the Taxes Act 1988;

(e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

(2) Paragraph 21(3) and (4) (effect of receivership etc) apply in relation to the conditions in sub-paragraph (1) as they apply in relation to the conditions in paragraph 21(2).

(3) If—

(a) arrangements are in existence for the disposal by the issuing company of all its interest in the subsidiary, and

(b) the disposal is to be for commercial reasons and is not to be part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax,

the subsidiary is not to be regarded as having ceased on that account to be a qualifying 90% subsidiary of the issuing company.

(4) For the purposes of this Schedule, a company ("company A") which is a subsidiary of a company that is not the issuing company ("company B") is a qualifying 90% subsidiary of the issuing company if—

(a) company A would be a qualifying 90% subsidiary of company B (if company B were the issuing company), and company B is a qualifying 100% subsidiary of the issuing company; or

(b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of the issuing company.

(5) For the purposes of sub-paragraph (4), no account is to be taken of any control the issuing company may have of company A.

(6) For those purposes, a company ("company X") is a qualifying 100% subsidiary of another company ("company Y") at any time when the conditions in sub-paragraph (1) would be met if—

(a) company X were the subsidiary;

(b) company Y were the issuing company; and

(c) in sub-paragraph (1) for "not less than 90%" in each place there were substituted "100%".**]**

Status: *Point in time view as at 21/07/2009.*
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Ceasing to meet trading activities requirement by reason of administration, receivership, etc.

24 (1) A company [F279]... shall not be regarded as ceasing to meet the trading activities requirement by reason **[**[F280]only**]** of anything done as a consequence of the company, or any of its qualifying subsidiaries, being in administration or receivership.

This sub-paragraph has effect subject to sub-paragraphs (2) and (3).

(2) Sub-paragraph (1) applies only if—

[[F281](a) the entry into administration or receivership, and**]**

(b) everything done as a consequence of the company **[**[F282]concerned**]** being in administration or receivership,

is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the trading activities requirement if—

(a) a resolution is passed, or an order is made, for the winding up of the company or any of its qualifying subsidiaries (or, in the case of a winding up otherwise than under the [M88]Insolvency Act 1986 or the [M89]Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or

(b) the company, or any of its qualifying subsidiaries, is dissolved without winding up.

This is subject to sub-paragraph (4).

(4) A company shall not be regarded as ceasing to meet the trading activities requirement if—

(a) it does so by reason **[**[F283]only of the company or any of its qualifying subsidiaries**]** being wound up or dissolved without winding up, and

(b) the winding up or dissolution is for commercial reasons **[**[F284]and is not**]** part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Textual Amendments

F279 Words in Sch. 15 para. 24(1) repealed (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), Sch. 20 para. 8(a)(i), **Sch. 42 Pt. 2(13)**

F280 Word in Sch. 15 para. 24(1) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 8(a)(ii)**

F281 Sch. 15 para. 24(2)(a) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 34(b)** (with art. 6)

F282 Word in Sch. 15 para. 24(2)(b) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 8(b)**

F283 Words in Sch. 15 para. 24(4)(a) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 8(c)(i)**

F284 Words in Sch. 15 para. 24(4)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 8(c)(ii)**

Marginal Citations

M88 1986 c. 45.

M89 S.I. 1989/2405 (N.I.19).

Status: *Point in time view as at 21/07/2009.*
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Meaning of "qualifying trad"e

25 (1) A trade is a qualifying trade if—

(a) it is carried on wholly or mainly in the United Kingdom,

(b) it is conducted on a commercial basis and with a view to the realisation of profits, and

(c) it does not consist wholly or as to a substantial part in the carrying on of excluded activities.

(2) The carrying on of activities of research and development from which it is intended that a connected qualifying trade will be derived or benefit is treated as the carrying on of a qualifying trade.

But preparing to carry on such activities does not count as preparing to carry on a qualifying trade.

(3) For the purposes of sub-paragraph (2) a "connected qualifying trade" means a qualifying trade carried on—

(a) by the company carrying on the activities of research and development, or

(b) if that company is a member of a group, by **[**F285the issuing company or any of its qualifying 90% subsidiaries**]**.

Textual Amendments

F285 Words in Sch. 15 para. 25(3)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 9**

Excluded activities

26 (1) The following are excluded activities—

(a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;

(b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;

(c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;

(d) leasing (including letting ships on charter or other assets on hire) or receiving royalties or other licence fees;

(e) providing legal or accountancy services;

(f) property development;

(g) farming or market gardening;

(h) holding, managing or occupying woodlands, any other forestry activities or timber production;

[F286(ha) shipbuilding;

(hb) producing coal;

(hc) producing steel;**]**

(i) operating or managing hotels or comparable establishments or managing property used as a hotel or comparable establishment; and

(j) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home.

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(2) Sub-paragraph (1) is supplemented by the following provisions—

paragraph 27 (wholesale and retail distribution);

paragraph 28 (leasing of ships);

paragraph 29 (receipt of royalties and licence fees);

paragraph 30 (property development);

[[F287]paragraph 30A (shipbuilding);

paragraph 30B (producing coal);

paragraph 30C (producing steel);**]**

paragraph 31 (hotels and comparable establishments);

paragraph 32 (nursing homes and residential care homes); and

paragraph 33 (provision of facilities for another business).

Textual Amendments

F286 Sch. 15 para. 26(1)(ha)-(hc) inserted (retrospective to 6.4.2008) by Finance Act 2008 (c. 9), **Sch. 11 paras. 2(a)**, 10 (with Sch. 11 para. 11)

F287 Words in Sch. 15 para. 26(2) inserted (retrospective to 6.4.2008) by Finance Act 2008 (c. 9), **Sch. 11 paras. 2(b)**, 10 (with Sch. 11 para. 11)

Excluded activities: wholesale and retail distribution

27 (1) This paragraph supplements paragraph 26(1)(b).

(2) A trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption.

(3) A trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption.

(4) A trade is not an ordinary trade of wholesale or retail distribution if—

(a) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or in that activity and any other excluded activity taken together, and

(b) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.

(5) In determining whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features—

(a) the goods are bought by that person in quantities larger than those in which he sells them;

(b) the goods are bought and sold by that person in different markets;

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(c) that person employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;

(d) there are purchases or sales from or to persons who are connected with that person;

(e) purchases are matched with forward sales or vice versa;

(f) the goods are held by that person for longer than is normal for goods of the kind in question;

(g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;

(h) that person does not take physical possession of the goods.

(6) The features specified in sub-paragraph (5)(a) to (c) are indications that the trade is such an ordinary trade.

Those in sub-paragraph (5)(d) to (h) are indications of the contrary.

Excluded activities: leasing of ships

28 (1) This paragraph supplements paragraph 26(1)(d) so far as it relates to the leasing of ships other than **[**[F288]offshore installations**]** or pleasure craft.

(2) A trade shall not be treated as not being a qualifying trade by reason only of its consisting in letting such ships on charter if the following requirements are met—

(a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom;

(c) the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in sub-paragraph (3) are satisfied in relation to every letting of a ship on charter by the company.

(3) The conditions are that—

(a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;

(b) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;

(c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;

(d) under the terms of the charter the company is responsible as principal—

(i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and

(ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those

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directly incidental to a particular voyage or to the employment of the ship during that period;

and

(e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) on behalf of the company.

(4) In relation to any letting between one company and another where—

(a) one of those companies is the company carrying on the trade and the other is a qualifying subsidiary of that company, or

(b) both companies are qualifying subsidiaries of the company carrying on the trade,

sub-paragraph (3) has effect with the omission of paragraph (c).

(5) Where any of the requirements in sub-paragraph (2) are not met in relation to any lettings, the trade shall not thereby be treated as not a qualifying trade if those lettings and any other excluded activities do not, taken together, amount to a substantial part of the trade.

(6) In this paragraph—

F289 . . . . . .

"pleasure craft" means any ship of a kind primarily used for sport or recreation.

Textual Amendments

F288 Words in Sch. 15 para. 28(1) substituted (22.7.2004) (with effect in accordance with Sch. 27 para. 6(5)(6) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 6(3)**

F289 Words in Sch. 15 para. 28(6) repealed (22.7.2004) (with effect in accordance with Sch. 27 para. 6(5)(6) of the amending Act) by Finance Act 2004 (c. 12), Sch. 27 para. 6(4), **Sch. 42 Pt. 2(19)**

Excluded activities: receipt of royalties and licence fees

29 (1) This paragraph supplements paragraph 26(1)(d) so far as it relates to the receipt of royalties and licence fees.

(2) A trade shall not be regarded as not being a qualifying trade by reason only that at some time in the qualification period relating to the relevant shares it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(3) For this purpose an intangible asset is a "relevant intangible asset" if the whole or greater part (in terms of value) of it has been created—

[F290(a) by the issuing company, or

(b) by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.**]**

(4) In this paragraph "intangible asset" means any asset which falls to be treated as an intangible asset in accordance with **[**F291generally accepted accounting practice**]**.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F292 . . . .

(5) In the case of a relevant asset that is intellectual property, references in this paragraph to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6) In sub-paragraph (5) "intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a).

[F293(7) If—

(a) the issuing company acquired all the shares ("old shares") in another company ("the old company") at a time when the only shares issued in the issuing company were subscriber shares, and

(b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,

references in sub-paragraph (3) to the issuing company include the old company.**]**

Textual Amendments

F290 Sch. 15 para. 29(3)(a)(b) substituted (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), **Sch. 16 paras. 9(2)**, 13

F291 Words in Sch. 15 para. 29(4) substituted (24.7.2002) by 2002 c. 23, **s. 103(4)(f)**

F292 The second sentence in Sch. 15 para. 29(4) repealed (24.7.2002) by 2002 c. 23, s. 141, **Sch. 40**, Pt. 3(16)

F293 Sch. 15 para. 29(7) inserted (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), **Sch. 16 paras. 9(3)**, 13

Excluded activities: property development

30 (1) This paragraph supplements paragraph 26(1)(f).

(2) "Property development" means the development of land—

(a) by a company which has, or at any time has had, an interest in the land, and

(b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed.

(3) For this purpose "interest in land" means, subject to sub-paragraph (4)—

(a) any estate, interest or right in or over land, including any right affecting the use or disposition of land, or

(b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant it.

(4) References in this paragraph to an interest in land do not include—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land, or

(b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

I[F294] Excluded activities: shipbuilding

Textual Amendments

F294 Sch. 15 paras. 30A-30C and cross-heading inserted (retrospective to 6.4.2008) by Finance Act 2008 (c. 9), **Sch. 11 paras. 3**, 10 (with Sch. 11 para. 11)

30A In paragraph 26(1)(ha) "shipbuilding" has the same meaning as in the Framework on state aid to shipbuilding (2003/C 317/06), published in the Official Journal on 30 December 2003.

Excluded activities: producing coal

30B (1) This paragraph supplements paragraph 26(1)(hb).

(2) "Coal" has the meaning given by Article 2 of Council Regulation (EC) No. 1407/2002 (state aid to coal industry).

(3) The production of coal includes the extraction of it.

Excluded activities: producing steel

30C In paragraph 26(1)(hc) "steel" means any of the steel products listed in Annex 1 to the Guidelines on national regional aid (2006/C 54/08), published in the Official Journal on 4 March 2006.**]**

Excluded activities: hotels and comparable establishments

31 (1) This paragraph supplements paragraph 26(1)(i).

(2) The reference to a comparable establishment is to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (with or without catering services).

(3) The activities of a person shall not be taken to fall within paragraph 26(1)(i) unless that person has an estate or interest in, or is in occupation of, the hotel or comparable establishment in question.

Excluded activities: nursing homes and residential care homes

32 (1) This paragraph supplements paragraph 26(1)(j).

(2) "Nursing home" means an establishment that exists wholly or mainly for the provision of nursing care—

(a) for persons suffering from sickness, injury or infirmity, or

(b) for women who are pregnant or have given birth to children.

(3) "Residential care home" means an establishment that exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of—

(a) old age,

(b) mental or physical disability,

(c) past or present dependence on alcohol or drugs,

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(d) any past illness, or

(e) past or present mental disorder.

(4) The activities of a person shall not be taken to fall within paragraph 26(1)(j) unless that person has an estate or interest in, or is in occupation of, the nursing home or residential care home in question.

Excluded activities: provision of facilities for another business

33 (1) Providing services or facilities for a business carried on by another person is an excluded activity if—

(a) the business consists to a substantial extent of excluded activities within sub-paragraph 26(1), and

(b) a controlling interest in the business is held by a person who also has a controlling interest in the business carried on by the company providing the services or facilities.

(2) Sub-paragraphs (3) to (5) define what is meant by a controlling interest in a business for the purposes of sub-paragraph (1)(b).

(3) In the case of a business carried on by a company, a person has a controlling interest if—

(a) he controls the company,

(b) the company is a close company and he or an associate of his, being a director of the company, either—

(i) is the beneficial owner of more than 30% of the ordinary share capital of the company, or

(ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30% of that share capital,

or

(c) not less than half of the business could, in accordance with section 344(2) of the Taxes Act 1988, be regarded as belonging to him for the purposes of section 343 of that Act.

(4) In any other case, a person has a controlling interest in a business if he is entitled to not less than half of the assets used for, or of the income arising from, the business.

(5) For the purposes of sub-paragraph (3)(a) the question whether a person controls a company shall be determined in accordance with section 416(2) to (6) of the Taxes Act 1988.

(6) For the purposes of this paragraph—

(a) there shall be attributed to any person any rights or powers of any other person who is an associate of his, and

(b) "business" includes any trade, profession or vocation.

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PART IV

GENERAL REQUIREMENTS

Introduction

34 The investing company is not eligible for investment relief in respect of the amount subscribed by it for the relevant shares unless the requirements of this Part are met as to—

(a) the shares (see paragraph 35);

[[F295](aa) the maximum amount raised annually through risk capital schemes (see paragraph 35A);**]**

(b) the money raised (see paragraph 36);

(c) no pre-arranged exits (see paragraph 37); and

(d) no tax avoidance (see paragraph 38).

Textual Amendments

F295 Sch. 15 para. 34(aa) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 16 para. 4(2)**

Requirement as to the shares

35 (1) The relevant shares must satisfy sub-paragraphs (2) and (3).

(2) Shares satisfy this sub-paragraph if they are—

(a) ordinary shares,

(b) subscribed for wholly in cash, and

(c) fully paid up at the time they are issued.

Shares are not fully paid up for the purposes of paragraph (c) if there is any undertaking to pay cash to **[**[F296]any person at a future date in respect of the acquisition of the shares**]**.

(3) Shares satisfy this sub-paragraph if they do not, at any time during the qualification period relating to the relevant shares, carry—

(a) any present or future preferential right to dividends or to a company's assets on its winding up, or

(b) any present or future right to be redeemed.

Textual Amendments

F296 Words in Sch. 15 para. 35(2)(c) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 10**

Status: *Point in time view as at 21/07/2009.*
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[F297 Requirement as to maximum amount raised annually through risk capital schemes

Textual Amendments

F297 Sch. 15 para. 35A and cross-heading inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 16 para. 4(3)** (with Sch. 16 para. 8)

35A (1) The total amount of relevant investments made in the issuing company in the year ending with the date the relevant shares are issued must not exceed £2 million.

(2) In sub-paragraph (1), the reference to relevant investments made in the issuing company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the issuing company (whether or not it was such a subsidiary when the investment was made).

(3) A "relevant investment" is made in a company if—

(a) an investment (of any kind) in the company is made by a VCT, or

(b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—

(i) a compliance statement under paragraph 42, or

(ii) a compliance statement under section 205 of ITA 2007 (enterprise investment scheme),

in respect of the shares.

(4) An investment within sub-paragraph (3)(b) is regarded as made when the shares are issued.**]**

Requirement as to the money raised

36**[**F298(1) **[**F299All**]** of the money raised by the issuance of the relevant issue of shares must have been employed wholly for the purposes of a relevant trade not later than the time determined in accordance with sub-paragraph (1B).

F300(1A) . . . . . .

(1B) The time referred to in sub-paragraph (1) is—

(a) the end of the period of **[**F301two years**]** beginning with the issue of the shares, or

(b) where the **[**F302issuing company or a qualifying 90% subsidiary of that company had not begun to carry on the relevant trade**]** at the time the shares were issued, the end of the period of **[**F301two years**]** beginning when the issuing company or a **[**F303qualifying 90% subsidiary of that company**]** begins to carry on the relevant trade.

(1C) **[**F304Sub-paragraph (1) is**]** subject to sub-paragraph (5).**]**

(2) For the purposes of this paragraph—

"the relevant issue of shares" means the issue of shares in the issuing company which includes the relevant shares;

"relevant trade" means a trade by reference to which the issuing company meets the trading activities requirement.

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(3) In this paragraph references to employing money for the purposes of a trade (except where the carrying on of the trade is within paragraph 25(2)) include references to employing it for the purpose of preparing to carry on the trade.

(4) In sub-paragraph (2) the reference to a trade by reference to which the trading activities requirement is met includes, where the carrying on of that trade is within paragraph 25(2), a reference to any qualifying trade—

(a) which is derived or benefits from that trade, and

(b) which is carried on—

(i) by the issuing company, or

(ii) if that company is a parent company, by that company or a **[**F305qualifying 90% subsidiary**]** of that company.

(5) Where—

(a) **[**F306any of the money raised by the issuance of the relevant issue of shares**]** is employed for the purposes of a trade that is a relevant trade by virtue of sub-paragraph (4), and

(b) that trade was not being carried on by the issuing company, or a **[**F307qualifying 90% subsidiary**]** of that company, at the time the shares were issued,

the requirement of sub-paragraph (1) F308... is not met unless that money is so employed before the third anniversary of the issue date.

(6) For the purposes of this paragraph money is not treated as employed otherwise than wholly for the purposes of a trade if the only amount employed for other purposes is an amount which is not a significant amount.

Textual Amendments

F298 Sch. 15 para. 36(1)-(1C) substituted (11.5.2001 with effect as mentioned in Sch. 16 para. 5(3) of the amending Act) for Sch. 15 para. 36(1) by 2001 c. 9, s. 64, **Sch. 16 para. 5(1)(3)**.

F299 Word in Sch. 15 para. 36(1) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 8 para. 8(2)**

F300 Sch. 15 para. 36(1A) omitted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 8 para. 8(3)**

F301 Words in Sch. 15 para. 36(1B) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 8 para. 8(4)**

F302 Words in Sch. 15 para. 36(1B)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 11(a)(i)**

F303 Words in Sch. 15 para. 36(1B)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 11(a)(ii)**

F304 Words in Sch. 15 para. 36(1C) substituted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 8 para. 8(5)**

F305 Words in Sch. 15 para. 36(4)(b)(ii) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 11(b)**

F306 Words in Sch. 15 para 36(5)(a) substituted (11.5.2001 with effect as mentioned in Sch. 16 para. 5(3) of the amending Act) by 2001 c. 9, s. 64, **Sch. 16 paras. 5(2)(a)(3)**

F307 Words in Sch. 15 para. 36(5)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 11(b)**

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F308 Words in Sch. 15 para. 36(5) omitted (with effect in accordance with Sch. 8 para. 11 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 8 para. 8(6)**

Requirement as to no pre-arranged exits

37 (1) The issuing arrangements for the relevant shares must not include—

(a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the issuing company;

(b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the issuing company or a person connected with that company;

(c) arrangements for the disposal of, or of a substantial amount (in terms of value) of, the assets of the issuing company or of a person connected with that company; or

(d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in the issuing company against what would otherwise be the risks attached to making the investment.

(2) For the purposes of this paragraph "the issuing arrangements" means—

(a) the arrangements under which the relevant shares are issued to the investing company,

(b) any arrangements made, before the issue of the relevant shares to that company, in relation to or in connection with that issue, and

(c) if before the relevant shares were issued information on pre-arranged exits was made available to any prospective subscribers for shares in the relevant issue, any arrangements made—

(i) on or after the issue of the shares, but

(ii) before the end of the qualification period relating to them.

(3) For the purposes of sub-paragraph (2)—

(a) "information on pre-arranged exits" means any information indicating the possibility of making, on or after the issue of the relevant shares but before the end of the qualification period relating to them, arrangements of the kind described in paragraph (a), (b), (c) or (d) of sub-paragraph (1), and

(b) "the relevant issue" means the issue of shares in the issuing company which includes the relevant shares.

(4) The arrangements referred to in sub-paragraph (1)(a) do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 83(1) (certain exchanges resulting in acquisition of share capital by new company).

(5) The arrangements referred to in sub-paragraph (1)(b) and (c) do not include any arrangements applicable only on the winding up of the issuing company except in a case where—

(a) the issuing arrangements include arrangements for the issuing company to be wound up, or

(b) the issuing company is wound up otherwise than for commercial reasons.

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(6) The arrangements referred to in sub-paragraph (1)(d) do not include any arrangements which are confined to the provision—

(a) for the issuing company itself, or

(b) where the issuing company is the parent company of a group, for any group company,

of any such protection against the risks arising in the course of carrying on its business as might reasonably be expected to be provided for normal commercial reasons.

Requirement as to no tax avoidance

38 The relevant shares must be issued for commercial reasons, and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

PART V

INVESTMENT RELIEF

Form of investment relief

39 (1) Where—

(a) the investing company is eligible for investment relief in respect of an amount subscribed by it for an issue of shares, and

(b) it makes a claim under this Part,

the company's liability for corporation tax for the accounting period in which the shares were issued shall be reduced by the appropriate amount.

(2) In sub-paragraph (1) "the appropriate amount" means whichever is the smaller of—

(a) 20% of the amount or aggregate amount—

(i) which was subscribed by the company for shares issued in that period, and

(ii) in respect of which the company is eligible for and claims investment relief, and

(b) the amount which reduces the liability to nil.

Entitlement to claim

40 (1) The investing company is entitled to make a claim to investment relief in respect of the amount subscribed by it for the relevant shares if it appears to it that the requirements for the relief are for the time being met.

This is subject to sub-paragraph (2).

(2) The investing company is not entitled to make a claim to investment relief in relation to the amount subscribed by it for the relevant shares unless—

[F309(a) the funded trade has been carried on for four months by no person other than the issuing company or a qualifying 90% subsidiary of that company, disregarding—

(i) any time spent preparing to carry on that trade, and

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(ii) any person required to be disregarded in accordance with sub-paragraph (2A) or (2B), and**]**

(b) the investing company has received from the issuing company a compliance certificate in respect of those shares.

[F310(2A) At any time when the funded trade is carried on by the partners in a partnership of which the issuing company, or a qualifying 90% subsidiary of that company, is a member, there shall be disregarded for the purposes of sub-paragraph (2)(a) any other members of the partnership at that time.

(2B) At any time when the funded trade is carried on by the parties to a joint venture to which the issuing company, or a qualifying 90% subsidiary of that company, is a party, there shall be disregarded for the purposes of sub-paragraph (2)(a) any other parties to the joint venture at that time.**]**

(3) For the purposes of this paragraph, "the funded trade" means the trade or trades by reference to which the requirement of paragraph 36 (use of money raised) is met in respect of the relevant issue of shares (as defined by sub-paragraph (2) of that paragraph).

This is subject to sub-paragraph (4).

(4) To the extent that the funded trade would, by virtue of sub-paragraph (3), be a trade derived or benefiting from a trade within paragraph 25(2), the funded trade shall be deemed, for the purposes of this paragraph, to be the trade within that paragraph.

(5) Where—

[F311(a) by reason only of the issuing company or any other company being wound up or dissolved without winding up, the funded trade is carried on as mentioned in sub-paragraph (2)(a) for a period shorter than four months, and**]**

(b) the winding up or dissolution **[**F312is**]** for commercial reasons and **[**F312is**]** not part of a scheme or arrangement the main purpose or one of the main purposes of which **[**F312is**]** the avoidance of tax,

sub-paragraph (2)(a) shall have effect as if it referred to that shorter period.

(6) Where—

[F313(a) by reason only of anything done as a consequence of the issuing company or any other company being in administration or receivership, the funded trade is carried on as mentioned in sub-paragraph (2)(a) for a period shorter than four months, and**]**

(b) **[**F314the entry into administration or receivership**]**, and everything done as a consequence of the company **[**F315concerned**]** being in administration or receivership, is for commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax,

sub-paragraph (2)(a) shall have effect as if it referred to that shorter period.

(7) No application shall be made under section 55(3) or (4) of the Taxes Management Act 1970 (application for postponement of payment of tax pending appeal) on the ground that the investing company is eligible for investment relief unless a claim for the relief has been duly made by that company.

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Textual Amendments

F309 Sch. 15 para. 40(2)(a) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 12(a)**

F310 Sch. 15 para. 40(2A), (2B) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 12(b)**

F311 Sch. 15 para. 40(5)(a) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 12(c)**

F312 Word in Sch. 15 para. 40(5)(b) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 12(d)**

F313 Sch. 15 para. 40(6)(a) substituted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 12(e)**

F314 Words in Sch. 15 para. 40(6)(b) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 34(c)** (with art. 6)

F315 Word in Sch. 15 para. 40(6)(b) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 12(f)**

Compliance certificates

41 (1) A "compliance certificate" is a certificate which—

(a) is issued by the issuing company in respect of the relevant shares,

(b) states that, except so far as they fall to be met by or in relation to the investing company, the requirements for investment relief are for the time being met in relation to those shares, and

(c) is in such form as the Inland Revenue may direct.

(2) Before issuing a compliance certificate in respect of the relevant shares, the issuing company must provide the Inland Revenue with a compliance statement in respect of the issue of shares which includes the relevant shares.

(3) The issuing company must not issue a compliance certificate without the authority of the Inland Revenue.

(4) Where the company or a person connected with the company has given notice to the Inland Revenue under paragraph 65 (information to be provided by issuing company etc.) the authority of the Inland Revenue must be given or renewed after the receipt of the notice.

Compliance statements

42 (1) A "compliance statement" is a statement, in respect of an issue of shares, to the effect that, except so far as they fall to be satisfied by or in relation to companies to which the shares included in that issue have been issued, the requirements for investment relief—

(a) are for the time being met in relation to the shares to which the statement relates, and

(b) have been so met at all times since the shares were issued.

In determining for the purposes of this sub-paragraph whether those requirements are met at any time in relation to the issue of shares, references in this Schedule to "the relevant shares" shall be read as references to the shares included in the issue.

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(2) A compliance statement must be in such form as the Inland Revenue direct and must contain—

(a) such additional information as the Inland Revenue reasonably require,

(b) a declaration that the statement is correct to the best of the issuing company's knowledge and belief, and

(c) such other declarations as the Inland Revenue reasonably require.

(3) Without prejudice to the generality of sub-paragraph (2)(a) the information required by the Inland Revenue may include—

(a) information relating to the companies to which compliance certificates may be issued under paragraph 41 in respect of any shares included in the issue of shares to which the statement relates, and

(b) information to enable the Inland Revenue to determine whether the requirements of paragraph 35(2)(b) and (c) (shares to be subscribed for wholly in cash and fully paid up) are met in relation to shares included in that issue subscribed for by such companies.

(4) The issuing company may not provide the Inland Revenue with a compliance statement in respect of any shares issued by it in any accounting period—

(a) before the condition in paragraph 40(2)(a) (no claim until trade carried on for four months) is satisfied; or

(b) later than two years after the end of that accounting period or, if that condition is first satisfied after the end of that accounting period, later than two years after the condition is first satisfied.

Appeal against refusal to authorise compliance certificate

43 For the purposes of the provisions of the [M90]Taxes Management Act 1970 relating to appeals, the refusal of the Inland Revenue to authorise the issue of a compliance certificate shall be taken to be a decision disallowing a claim by the issuing company which is not a claim for discharge or repayment of tax.

Marginal Citations
M90 1970 c. 9.

Penalties for fraudulent certificate or statement etc.

44 The issuing company is liable to a penalty not exceeding £3,000 if—

(a) it issues a compliance certificate, or provides a compliance statement, which is made fraudulently or negligently, or

(b) it issues a compliance certificate in contravention of paragraph 41(3) or (4) (no certificate to be issued without Inland Revenue approval).

Attribution of relief to shares

45 (1) References in this Schedule, in relation to a company, to the investment relief attributable to any shares or issue of shares shall be read as references to any reduction made in the company's liability to corporation tax that is attributed to those shares or that issue in accordance with this paragraph.

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This is subject to the provisions of Part VI of this Schedule providing for the reduction or withdrawal of investment relief.

(2) Where a company's liability to corporation tax is reduced for an accounting period under paragraph 39 (form of investment relief), then—

(a) where the reduction is obtained by reason of one issue of shares, the amount of the reduction shall be attributed to that issue, and

(b) where the reduction is obtained by reason of two or more issues of shares, the reduction—

(i) shall be apportioned between those issues in the same proportions as the amounts subscribed by the company for each issue, and

(ii) shall be attributed to those issues accordingly.

(3) Where under this paragraph an amount of any reduction of corporation tax is attributed to an issue of shares ("the original issue") to a company a proportionate part of that amount shall be attributed to each share comprised in the original issue.

(4) If corresponding bonus shares are issued to the company in respect of any shares ("the original shares") comprised in the original issue that have been continuously held by the company from the time they were issued until the issue of the bonus shares—

(a) a proportionate part of the total amount attributed to the original shares immediately before the bonus shares are issued shall be attributed to each of the shares in the holding comprising the original shares and the bonus shares, and

(b) after the issue of the bonus shares, this Schedule shall apply as if—

(i) the original issue had included the bonus shares, and

(ii) the bonus shares had been held by the company continuously from the time the original shares were issued until the bonus shares were issued.

(5) In sub-paragraph (4) "corresponding bonus shares" means bonus shares which are in the same company, of the same class, and carry the same rights as the original shares.

(6) If investment relief attributable to any shares falls to be withdrawn under Part VI of this Schedule the relief attributable to each of the shares shall be reduced to nil.

(7) If investment relief attributable to any shares falls to be reduced under Part VI of this Schedule by any amount the relief attributable to each of the shares shall be reduced by a proportionate part of that amount.

PART VI

WITHDRAWAL OF INVESTMENT RELIEF

Disposal of shares

46 (1) This paragraph applies where—

(a) the investing company disposes of any of the relevant shares which have been held by it continuously from the time they were issued until the disposal,

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(b) the disposal takes place during the qualification period relating to the relevant shares, and

(c) investment relief is attributable to the shares.

(2) If the disposal is not—

(a) by way of a bargain made at arm's length for full consideration,

(b) by way of a distribution in the course of dissolving or winding up the issuing company,

(c) a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset), or

(d) a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible),

the investment relief attributable to those shares must be withdrawn.

(3) If the disposal is within paragraph (a), (b), (c) or (d) of sub-paragraph (2) the investment relief attributable to those shares must—

(a) if it is greater than an amount equal to 20% of the amount or value of the consideration (if any) which the company receives for the shares, be reduced by that amount, and

(b) in any other case, be withdrawn.

(4) Where—

(a) the amount of the reduction ("A") in the investing company's liability to corporation tax obtained under paragraph 39 (form of investment relief) in respect of the relevant shares, is less than

(b) the amount ("B") which is equal to 20% of the amount subscribed by the investing company for those shares,

sub-paragraph (3)(a) shall have effect in relation to a disposal of any of those shares as if the amount or value referred to in that sub-paragraph were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

(5) Where the amount of investment relief attributable to any of the relevant shares has been reduced before the investment relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (4) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of relief been made before the relief was obtained.

(6) Sub-paragraph (5) does not apply to a reduction by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Value received by investing company

47 (1) Sub-paragraph (2) applies where the investing company receives any value (other than insignificant value) from the issuing company during the period of restriction relating to the relevant shares.

(2) Any investment relief attributable to the shares shall—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) if it exceeds the amount mentioned in sub-paragraph (3), be reduced by that amount, and

(b) in any other case, be withdrawn.

(3) The amount referred to in sub-paragraph (2)(a) is an amount equal to 20% of the amount of the value received.

(4) This paragraph is subject to the following paragraphs—

paragraph 51 (value received where there is more than one issue of shares);

paragraph 52 (cases where maximum investment relief not obtained); and

paragraph 54 (receipt of replacement value).

(5) Where—

(a) value is received ("the relevant receipt") by the investing company from the issuing company at any time during the period of restriction relating to the relevant shares,

(b) the investing company has received from the issuing company one or more receipts of insignificant value at a time or times—

(i) during that period, but

(ii) not later than the time of the relevant receipt, and

(c) the aggregate amount of the value of the receipts within paragraph (a) and (b) is not an amount of insignificant value,

the investing company shall be treated for the purposes of this Part as if the relevant receipt had been a receipt of an amount of value equal to that aggregate amount.

For this purpose a receipt does not fall within paragraph (b) if it has been previously aggregated under this sub-paragraph.

(6) If, at any time in the period—

(a) beginning one year before the relevant shares are issued, and

(b) expiring at the end of the issue date,

arrangements are in existence which provide for the investing company to receive, or to be entitled to receive, any value from the issuing company at any time in the period of restriction relating to those shares, no amount of value received by the investing company shall be treated as a receipt of insignificant value for the purposes of this paragraph.

(7) For the purposes of this paragraph—

(a) references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value;

(b) "an amount of insignificant value" means an amount of value which—

(i) does not exceed £1,000, or

(ii) if it exceeds that amount, is insignificant in relation to the amount subscribed by the investing company for the shares.

This is subject to sub-paragraph (6).

(8) Where by reason of the investing company's disposal of any shares any investment relief attributable to those shares is withdrawn or reduced, the investing company shall not be treated for the purposes of this paragraph as receiving value from the issuing company in respect of the disposal.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which investment relief attributable to any shares has already been reduced or withdrawn on its account.

Meaning of "the period of restrictio"n

48 For the purposes of this Schedule "the period of restriction" relating to the relevant shares means the period—

(a) beginning one year before the shares are issued, and

(b) ending at the end of the qualification period relating to the shares.

When value is received

49 (1) For the purposes of paragraphs 47 (value received by investing company) and 51 (value received where there is more than one issue of shares) the investing company receives value from the issuing company at any time when the issuing company—

(a) repays, redeems or repurchases any of its share capital or securities which belong to the investing company or makes any payment to that company for giving up its right to any of the issuing company's share capital or any security on its cancellation or extinguishment;

(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the relevant shares, any debt owed to the investing company other than a debt which was incurred by the issuing company—

(i) on or after the date of issue of those shares; and

(ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;

(c) makes to the investing company any payment for giving up the company's right to any debt on its extinguishment;

(d) releases or waives any liability of the investing company to the issuing company or discharges, or undertakes to discharge, any liability of the investing company to a third person;

(e) makes a loan or advance to the investing company which has not been repaid in full before the issue of the relevant shares;

(f) provides a benefit or facility for the directors or employees of the investing company or any of their associates;

(g) disposes of an asset to the investing company for no consideration or for a consideration which is or the value of which is less than the market value of the asset;

(h) acquires an asset from the investing company for a consideration which is or the value of which is more than the market value of the asset; or

(i) makes a payment to the investing company other than a qualifying payment.

(2) For the purposes of sub-paragraph (1)(e) there shall be treated as if it were a loan made by the issuing company to the investing company—

(a) the amount of any debt (other than an ordinary trade debt) incurred by the investing company to the issuing company, and

(b) the amount of any debt due from the investing company to a third person which has been assigned to the issuing company.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) For the purposes of sub-paragraph (1)(d) the issuing company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(4) For the purposes of this paragraph—

(a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment;

(b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment; and

(c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to his order or for his benefit.

In paragraphs (a) to (c) references to "a person" include references to any person who, at any time in the period of restriction in question, is connected with that person, whether or not he is so connected at the material time.

(5) In this paragraph—

"ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—

(a) does not exceed six months, and

(b) is not longer than that normally given to customers of the person carrying on the trade or business; and

"qualifying payment" means—

(a) any payment by any person for any goods, services or facilities provided by the investing company (in the course of its trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities;

(b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person;

(c) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;

(d) any payment for the acquisition of an asset which does not exceed its market value;

(e) the payment by any person, as rent for any property occupied by the person, of an amount not exceeding a reasonable and commercial rent for the property; and

(f) a payment in discharge of an ordinary trade debt.

The amount of value received

50 For the purposes of paragraph 47 the amount of the value received is—

(a) in a case within paragraph 49(1)(a), (b) or (c)—

(i) the amount received by the investing company, or

(ii) the market value of the shares, securities or debt in question,

whichever is greater;

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(b) in a case within paragraph 49(1)(d), the amount of the liability;

(c) in a case within paragraph 49(1)(e)—

(i) the amount of the loan or advance, less

(ii) the amount of any repayment made before the issue of the relevant shares;

(d) in a case within paragraph 49(1)(f)—

(i) the cost to the issuing company of providing the benefit or facility, less

(ii) any consideration given for it by the recipient or any associate of his;

(e) in a case within paragraph 49(1)(g) or (h), the difference between the market value of the asset and the consideration (if any) received for it; and

(f) in a case within paragraph 49(1)(i), the amount of the payment.

Value received where there is more than one issue of shares

51 (1) This paragraph applies where—

(a) two or more issues of shares in the issuing company have been made to the investing company (being issues in relation to which the investing company is eligible for and claims investment relief), and

(b) the value received falls within the periods of restriction relating to two or more of those issues.

(2) Where this paragraph applies paragraph 47 has effect in relation to the shares comprised in each of the issues referred to in sub-paragraph (1)(b) as if the amount of the value received were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

Where—

A is the amount subscribed by the investing company for the shares comprised in the issue in question to which investment relief is (or, but for paragraph 47 would be) attributable; and

B is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.

Cases where maximum investment relief not obtained

52 (1) Where—

(a) the amount of the reduction ("C") in the investing company's liability to corporation tax obtained in respect of the relevant shares, is less than

(b) the amount ("D") which is equal to 20% of the amount subscribed by the investing company for those shares,

paragraph 47 has effect as if the amount of the value received were reduced by multiplying it by the fraction—

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$$\frac{C}{D}$$

(2) Where the amount of investment relief attributable to any of the relevant shares has been reduced before the investment relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (1) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of relief been made before the relief was obtained.

(3) Sub-paragraph (2) does not apply to a reduction of investment relief by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Receipts of value by and from connected persons

53 In paragraphs 47, 49 and 50 references to the investing company or the issuing company include references to any person who at any time in the period of restriction relating to the relevant shares is connected with the company concerned, whether or not he is connected at the material time.

Receipt of replacement value

54 (1) Where—

(a) any investment relief attributable to the relevant shares would, in the absence of this paragraph, be reduced or withdrawn under paragraph 47 by reason of a receipt of value within paragraph 49(1) ("the original value"),

(b) the original supplier receives value ("the replacement value") from the original recipient by reason of a qualifying receipt, and

(c) **[**F316the amount of**]** the replacement value is not less than the amount of the original value,

paragraph 47 shall not, by reason of the receipt of the original value, have effect to reduce or withdraw the investment relief.

(2) For the purposes of this paragraph and paragraph 55—

"the original recipient" means the person who receives the original value; and

"the original supplier" means the person from whom that value was received.

[F317(2A) Where the amount of the original value is, by virtue of paragraph 51, treated as reduced for the purposes of paragraph 47, the reference in sub-paragraph (1)(c) to the amount of the original value shall be read as a reference to the amount of that value disregarding the reduction.**]**

(3) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) if it arises—

[F318(a) by reason of the original recipient doing one or more of the following—

(i) making a payment to the original supplier other than an excepted payment;

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(ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset;

(iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset; or

(b) where the receipt of the original value was within paragraph 49(1)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value.**]**

[F319(3A) For the purposes of sub-paragraph (3)(a)(i), the following are excepted payments—

(a) any payment for any goods, services or facilities, provided (whether in the course of a trade or otherwise) by—

(i) the original supplier, or

(ii) any other person who, at any time in the period of restriction relating to the relevant shares, is an associate of, or connected with, that supplier (whether or not he is such an associate, or so connected, at the material time),

which is reasonable in relation to the market value of those goods, services or facilities;

(b) any payment of any interest which represents no more than a reasonable commercial return on money lent to—

(i) the original recipient, or

(ii) any other person who, at any time in the period of restriction relating to the relevant shares, is an associate of, or connected with, that recipient (whether or not he is such an associate, or so connected, at the material time);

(c) any payment, as rent for any property occupied by—

(i) that recipient, or

(ii) any person who, at any time in the period of restriction relating to the relevant shares, is an associate of, or connected with, that recipient (whether or not he is such an associate, or so connected, at the material time),

of an amount not exceeding a reasonable and commercial rent for the property;

(d) any payment within paragraph (c), (d) or (f) of the definition of "qualifying payment" in paragraph 49(5); and

(e) any payment for shares in or securities of any company in circumstances that do not fall within sub-paragraph (3)(a)(ii).**]**

[F320(4) For the purposes of this paragraph, the amount of the replacement value is—

(a) in a case within paragraph (a) of sub-paragraph (3), the aggregate of—

(i) the amount of any payment within sub-paragraph (i) of that paragraph, and

(ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it, and

(b) in a case within sub-paragraph (3)(b), the amount of the original value,

and paragraph 50 shall apply for the purposes of determining the amount of the original value.**]**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F316 Words in Sch. 15 para. 54(1)(a) inserted (*retrospectively*) by 2001 c. 9, s.64, **Sch. 16 para. 6(1)(6)**

F317 Sch. 15 para. 54(2A) inserted (11.5.2001 with effect as mentioned in Sch. 16 para. 6(7) of the amending Act) by 2001 c. 9, s. 64, **Sch. 16 para. 6(2)(7)**

F318 Sch. 15 para. 54(3)(a)(b) substituted (11.5.2001 with effect as mentioned in Sch. 16 para. 6(7) of the amending Act) for Sch. 15 para. 54(3)(a)-(c) by 2001 c. 9, s. 64, **Sch. 16 paras. 6(3)(7)**

F319 Sch. 15 para. 54(3A) inserted (11.5.2001 with effect as mentioned in Sch. 16 para. 6(7) of the amending Act) by 2001 c. 9, s. 64, **Sch. 16 para. 6(4)(7)**

F320 Sch. 15 para. 54(4) substituted (11.5.2001 with effect as mentioned in Sch. 16 para. 6(7) of the amending Act) by 2001 c. 9, s. 64, **Sch. 16 para. 6(5)(7)**

Provision supplementary to paragraph 54

55 (1) The receipt of the replacement value shall be disregarded for the purposes of sub-paragraph (1) of paragraph 54 to the extent to which it has previously been set (under that paragraph) against a receipt of value to prevent any reduction or withdrawal of investment relief under paragraph 47.

(2) The receipt of the replacement value by the original supplier ("the event") shall be disregarded for the purposes of paragraph 54(1) if—

(a) the event occurs before the start of the period of restriction relating to the relevant shares,

(b) there was an unreasonable delay in the event occurring, or

(c) where an appeal has been brought by the investing company against an assessment to withdraw or reduce any investment relief attributable to the relevant shares by reason of the receipt of the original value, the event occurs more than 60 days after the amount of relief which falls to be withdrawn has been finally determined.

But nothing in paragraph 54 or this paragraph requires the replacement value to be received after the original value.

(3) Sub-paragraph (4) applies where—

(a) the receipt of the replacement value is a qualifying receipt for the purposes of paragraph 54(1) (receipt of replacement value which prevents loss of investment relief), and

(b) the event which gives rise to the receipt is (or includes) a subscription for shares by—

(i) the investing company, or

(ii) any person who at any time in the period of restriction relating to the relevant shares is connected with the investing company, whether or not he is connected at the material time.

(4) Where this sub-paragraph applies the person who subscribes for the shares shall not—

(a) be eligible for—

(i) any investment relief, or

(ii) any relief under Chapter III of Part VII of the Taxes Act 1988 **[**[F321]or Part 5 of ITA 2007**]** (EIS income tax relief),

in relation to those shares or any other shares in the same issue; or

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(b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of Schedule 5B to the 1992 Act (EIS: deferral relief).

[F322(5) In this paragraph "the original value" and "the replacement value" shall be construed in accordance with paragraph 54.**]**

Textual Amendments

F321 Words in Sch. 15 para. 55(4) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(3)** (with Sch. 2)

F322 Sch. 15 para. 55(5) inserted (*retrospectively*) by 2001 c. 9, s. 64, **Sch. 16 para. 7**

Value received by other persons

56 (1) Where any investment relief is attributable to such of the relevant shares as are held by the investing company, sub-paragraph (2) shall apply if at any time in the period of restriction relating to the relevant shares the issuing company or any subsidiary—

(a) repays, redeems or repurchases any of its share capital which belongs to any member other than—

(i) the investing company, or

(ii) a person who falls within sub-paragraph (3), or

(b) makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(2) The investment relief—

(a) if it is greater than the amount mentioned in sub-paragraph (4), shall be reduced by that amount, and

(b) in any other case, must be withdrawn.

(3) A person falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—

(a) causes any investment relief attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—

(i) paragraph 46 (disposal of shares), or

(ii) paragraph 49(1)(a) (receipt of value by virtue of repayment of share capital etc.);

(b) causes any relief under Chapter III of Part VII of the Taxes Act 1988 **[**F323or Part 5 of ITA 2007**]** (EIS income tax relief) attributable to that person's shares in the issuing company to be withdrawn or reduced by virtue of—

(i) **[**F324section 299 of the Taxes Act 1988 or section 209 of ITA 2007**]** (disposal of shares), or

(ii) **[**F325section 300(2)(a) of the Taxes Act 1988 or section 216(2)(a) of ITA 2007**]** (receipt of value by virtue of repayment of share capital etc.);

or

(c) gives rise to a qualifying chargeable event (within the meaning of paragraph 14(4) of Schedule 5B to the 1992 Act (EIS: deferral relief)) in respect of that person.**[**F326 or it would have the effect mentioned in paragraph (a), (b) or

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(c) were it not a receipt of insignificant value for the purposes of paragraph 47 (value received by the investing company), section 300 of the Taxes Act 1988**[**F327, section 214 of ITA 2007**]** or paragraph 13 of Schedule 5B to the 1992 Act, as the case may be**]**.

(4) The amount referred to in sub-paragraph (2) is an amount equal to 20%—

(a) where sub-paragraph (1) does not apply in the case of any other company holding shares in the issuing company, of the amount received by the member, and

(b) where sub-paragraph (1) also applies in the case of one or more such other companies, of the appropriate fraction of that amount.

(5) For the purposes of sub-paragraph (4) "the appropriate fraction" is—

$$\frac{A}{B}$$

Where—

A is the amount subscribed by the investing company for such of the relevant shares as are shares to which investment relief is or, but for sub-paragraph (2)(b), would be attributable, and

B is the aggregate of that amount and the amount or amounts subscribed by the other company or companies for such shares which are comprised in the same issue of shares.

(6) Where—

(a) the amount of the reduction ("C") in the investing company's liability to corporation tax obtained under paragraph 39 (form of investment relief) in respect of the relevant shares, is less than

(b) the amount ("D") which is equal to 20% of the amount subscribed by the investing company for those shares,

sub-paragraph (4) has effect as if the amount received by the member, or (as the case may be) the appropriate fraction of that amount, were reduced by multiplying it by the fraction—

$$\frac{C}{D}$$

(7) Where the amount of investment relief attributable to the relevant shares has been reduced before the relief was obtained, the amount of the corporation tax reduction obtained in respect of those shares shall be deemed for the purposes of sub-paragraph (6) to be the amount of the corporation tax reduction that would have been obtained had no such reduction of investment relief been made before the relief was obtained.

(8) Sub-paragraph (7) does not apply to a reduction by virtue of paragraph 45(4) (attribution of investment relief where there is a corresponding issue of bonus shares).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F323 Words in Sch. 15 para. 56(3) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(4)(a)** (with Sch. 2)

F324 Words in Sch. 15 para. 56(3) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(4)(b)** (with Sch. 2)

F325 Words in Sch. 15 para. 56(3) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(4)(c)** (with Sch. 2)

F326 Words in Sch. 15 para. 56(3)(c) inserted (11.5.2001 with effect as mentioned in Sch. 16 para. 9(2) of the amending Act) by 2001 c. 9, s. 64, **Sch. 16 para. 8**

F327 Words in Sch. 15 para. 56(3) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(4)(d)** (with Sch. 2)

Insignificant repayments disregarded

57 (1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) if whichever is the greater of—

(a) the market value of the shares to which it relates ("the target shares") immediately before the event occurs, and

(b) the amount received by the member in question,

is insignificant in relation to the market value of the remaining **[**F328issued**]** share capital of the issuing company (or, as the case may be, subsidiary) immediately after the event occurs.

This is subject to sub-paragraph (4).

(2) For the purposes of this paragraph "repayment" means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) (repayments etc. which cause withdrawal of investment relief).

(3) For the purposes of sub-paragraph (1) it shall be assumed that the target shares are cancelled at the time the **[**F329repayment**]** is made.

(4) Sub-paragraph (1) does not apply if, at a relevant time, arrangements are in existence that provide—

(a) for a repayment by the issuing company or any subsidiary of that company (whether or not it is such a subsidiary at the time the arrangements are made), or

(b) for anyone to be entitled to such a repayment,

at any time in the period of restriction relating to the shares.

(5) For the purposes of sub-paragraph (4) "a relevant time" means any time in the period—

(a) beginning one year before the relevant shares are issued, and

(b) expiring at the end of the issue date.

Textual Amendments

F328 Word in Sch. 15 para. 57(1) inserted (11.5.2001 with effect as mentioned in Sch. 15 para. 9(3) of the amending Act) by 2001 c. 9, s. 64, **Sch. 16 Pt. 2 para. 9(1)(3)**

F329 Word in Sch. 15 para. 57(3) substituted (*retrospectively*) by 2001 c. 9, s. 64, **Sch. 16 Pt. 2 para. 9(2)(4)**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Provision supplementary to paragraph 56 and 57

58 (1) Any repayment shall be disregarded for the purposes of paragraph 56(1) (repayments etc. which cause withdrawal of investment relief) to the extent to which investment relief attributable to any shares has already been reduced or withdrawn on its account.

(2) In any case where—

(a) investment relief is attributable to such of the relevant shares as are held by the investing company;

(b) the issuing company has made one or more other issues of shares each of which includes shares ("designated shares") to which investment relief is attributable, and

(c) the repayment falls—

(i) within the period of restriction relating to the relevant shares, and

(ii) within one or more of the equivalent periods relating to any of the designated shares,

paragraph 56(4) shall have effect in relation to each of the issues of shares as if the amount received by the member, or (as the case may be) the appropriate fraction of that amount, were reduced by multiplying it by the relevant fraction.

(3) For the purposes of sub-paragraph (2) "the equivalent period", in relation to any designated shares, means the period—

(a) beginning one year before the shares are issued, and

(b) ending at the end of the qualification period relating to the shares.

For the purposes of determining the qualification period relating to any designated shares, the references in paragraph 3 to the relevant shares shall be read as references to those designated shares.

(4) In sub-paragraph (2)—

(a) "the appropriate fraction" has the meaning given by paragraph 56(5), and

(b) "the relevant fraction" means—

$$\frac{E}{F}$$

Where—

E is the amount subscribed by companies for shares which are included in the issue in question and to which investment relief is or, but for paragraph 56(2)(b), would be attributable; and

F is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.

(5) Where—

(a) a company issues share capital of nominal value equal to the authorised minimum (within the meaning of **[**F330the Companies Act 2006**]**) for the purposes of complying with the requirements of **[**F331section 761**]** of that Act (public company not to do business unless requirements as to share capital complied with), and

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(b) the registrar of companies issues the company with a certificate under **[**F331section 761**]**,

paragraph 56(1) shall not apply in relation to any redemption of those shares within 12 months of the date on which they were issued.

F332(6) . . . . . .

(7) References in paragraphs 56 and 57 and this paragraph to a subsidiary of the issuing company are references to any company which at any time in the period of restriction relating to the relevant shares is a 51% subsidiary of the issuing company whether or not it is such a subsidiary at the time of the repayment in question.

(8) For the purposes of this paragraph "repayment" has the meaning given in paragraph 57(2).

Textual Amendments

F330 Words in Sch. 15 para. 58(5) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **26(a)(i)** (with art. 4)

F331 Words in Sch. 15 para. 58(5) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), **26(a)(ii)** (with art. 4)

F332 Sch. 15 para. 58(6) repealed (6.4.2008) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2008 (S.I. 2008/954), arts. 1(1), 26(b), **Sch.** (with art. 4)

Put options and call options

59 (1) Sub-paragraph (2) applies where—

(a) an option, the exercise of which would bind the grantor to purchase any of the relevant shares, is granted to the investing company during the qualification period relating to those shares; or

(b) an option, the exercise of which would bind the investing company to sell such shares, is granted by the investing company during that period.

(2) Any investment relief attributable to the shares to which the option relates must be withdrawn.

(3) The shares to which the option relates are those which, if—

(a) the option were exercised immediately after the grant, and

(b) any shares in the issuing company acquired by the investing company after the grant were disposed of immediately after being acquired,

would be treated for the purposes of this Schedule as disposed of in pursuance of the option.

(4) Nothing in this paragraph prejudices the operation of paragraph 37 (pre-arranged exits).

Withdrawal of relief

60 (1) Where any investment relief has been obtained which—

(a) is subsequently found not to have been due, or

(b) falls to be withdrawn under this Part,

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it shall be withdrawn by making an assessment to corporation tax [F333]... for the accounting period for which the relief was obtained.

(2) Investment relief obtained by the investing company in respect of the relevant shares may not be withdrawn on the ground—

(a) that the issuing company is not a qualifying issuing company in relation to those shares,

(b) that the requirements of Part IV of this Schedule are not met in respect of the shares,

(c) by virtue of paragraph 47 (value received by investing company), or

(d) by virtue of paragraph 56 (value received by other persons),

unless sub-paragraph (3) is satisfied.

(3) This sub-paragraph is satisfied if—

(a) either—

(i) the issuing company has given notice under paragraph 65 (information to be provided by issuing company etc.) in relation to those shares, or

(ii) the Inland Revenue have given notice to that company stating that, by reason of the ground in question, the whole or any part of the investment relief obtained by any company or companies in respect of shares included in the relevant issue of shares was not in their opinion due,

and

(b) in the case of a withdrawal within sub-paragraph (2)(c) or (d), the Inland Revenue have given notice to the investing company stating the matters mentioned in paragraph (a)(ii) above.

(4) In this paragraph—

(a) references to the withdrawal of investment relief include its reduction; and

(b) "the relevant issue of shares" means the issue of shares in the issuing company which includes the relevant shares.

Textual Amendments

F333 Words in Sch. 15 para. 60(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 468, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Appeals against withdrawal of relief

61 For the purposes of the provisions of the [M91]Taxes Management Act 1970 relating to appeals, the giving of notice by the Inland Revenue under paragraph 60(3)(a)(ii) shall be taken to be a decision disallowing a claim by the issuing company which is not a claim for discharge or repayment of tax.

Marginal Citations

M91 1970 c. 9.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Time limits

62 (1) The Inland Revenue may not—

(a) make an assessment for withdrawing or reducing the investment relief attributable to any of the relevant shares, or

(b) give a notice under paragraph 60(3)(a)(ii) or (b),

more than six years after the end of the relevant accounting period.

(2) In sub-paragraph (1) "the relevant accounting period" means—

(a) the accounting period in which the time mentioned in paragraph 36(1) (time limit for employing money raised) falls, or

(b) the accounting period in which the event which causes the investment relief to be withdrawn or reduced occurs,

whichever is later.

(3) This paragraph is subject to sub-paragraphs (2) and (3) of paragraph 46 of Schedule 18 to the [M92]Finance Act 1998 (fraud or negligence).

Those sub-paragraphs shall apply in relation to any notice under paragraph 60(3)(a)(ii) or (b) as if it were an assessment relating to the accounting period to which any assessment made by virtue of the notice would relate.

Marginal Citations
M92 1998 c. 36.

Interest

63 (1) This paragraph applies where—

(a) investment relief is withdrawn or reduced by virtue of—

(i) a failure to meet any of the requirements of paragraphs 5 to 10 or of Part III of this Schedule (requirements to be met in relation to investing company or issuing company);

[[F334](ia) paragraph 35A (maximum amount raised annually through risk capital schemes);**]**

(ii) paragraph 46 (disposal of shares);

(iii) paragraph 47 (value received by investing company);

(iv) paragraph 56 (value received by other persons); or

(v) paragraph 59 (put options and call options);

(b) as a result, an assessment to corporation tax is made by virtue of paragraph 60; and

(c) the relevant event occurs after the date when the tax assessed became due and payable or, if there is more than one such date, the latest of them.

(2) Section 87A of the [M93]Taxes Management Act 1970 (interest on overdue corporation tax etc.) has effect in relation to the tax assessed as if it became due and payable on the date the relevant event occurred.

(3) In this paragraph references to "the relevant event" are to the event by virtue of which the relief is withdrawn or reduced as mentioned in sub-paragraph (1)(a).

Status: *Point in time view as at 21/07/2009.*
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Textual Amendments

F334 Sch. 15 para. 63(1)(a)(ia) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 16 para. 4(4)**

Marginal Citations

M93 1970 c. 9.

Information to be provided by the investing company

64 (1) This paragraph applies where—

(a) the investing company has obtained investment relief in respect of the relevant shares, and

(b) an event occurs by reason of which—

(i) the company is not a qualifying investing company in relation to those shares,

(ii) the investment relief falls to be withdrawn or reduced by virtue of paragraph 47 (receipt of value by investing company), or

(iii) the investment relief falls to be withdrawn or reduced by virtue of paragraph 59 (put options and call options).

(2) Where this paragraph applies the investing company must give the Inland Revenue a notice containing particulars of the event.

(3) Where the investing company—

(a) is required under this paragraph to give notice of a receipt of value (within paragraph 49(1)), and

(b) has knowledge of any replacement value received (or expected to be received) from the original recipient by the original supplier by reason of a qualifying receipt,

the notice shall include particulars of that receipt of replacement value (or expected receipt).

In this paragraph "replacement value", "original recipient", "original supplier" and "qualifying receipt" shall be construed in accordance with paragraph 54.

(4) Subject to sub-paragraph (5), any notice required to be given by the company under sub-paragraph (2) must be given—

(a) within 60 days after the event, or

(b) where the event is the receipt of value by a person connected with the company (see paragraph 53), within 60 days after the company's coming to know of the event.

(5) In a case within sub-paragraph (1)(b)(ii), where the event occurred before the issue of the relevant shares, any notice required to be given by the investing company under sub-paragraph (2) must be given—

(a) within 60 days after the issue of the shares, or

(b) where—

(i) the event is the receipt of value by a person connected with the company (see paragraph 53), and

(ii) the company comes to know of the event on or after the issue of the shares,

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within 60 days after the company's coming to know of the event.

Information to be provided by the issuing company etc.

65 (1) This paragraph applies where—

(a) the issuing company has provided the Inland Revenue with a compliance statement in respect of an issue of shares, and

(b) an event occurs by reason of which—

(i) the issuing company is not a qualifying issuing company in relation to any of the shares included in that issue, or would not be such a company if investment relief had been obtained in respect of the shares in question,

(ii) the requirements of Part IV of this Schedule are not met in respect of any of the shares included in that issue, or would not be met if investment relief had been obtained in respect of the shares in question, or

(iii) paragraph 47 (value received by investing company) or 56 (value received by other persons) has effect to cause any investment relief attributable to any of the shares included in that issue to be withdrawn or reduced, or would have such an effect if investment relief had been obtained in respect of the shares in question.

(2) Where this paragraph applies—

(a) the company, and

(b) any person connected with the company who has knowledge of the matters mentioned in sub-paragraph (1),

must give the Inland Revenue a notice containing particulars of the event.

(3) Sub-paragraph (3) of paragraph 64 shall apply in relation to a person required to give notice under this paragraph of a receipt of value within paragraph 49(1) as it applies to a company required to give such a notice under paragraph 64.

(4) Subject to sub-paragraph (6) any notice required to be given by a company under sub-paragraph (2)(a) must be given—

(a) within 60 days after the event, or

(b) where the event is—

(i) a failure by the company to meet the requirement of paragraph 18 (the "individual-owners requirement") in respect of any of those shares; or

(ii) a receipt of value within paragraph 49(1) from a person connected with the company (see paragraph 53),

within 60 days after the company's coming to know of the event.

(5) Subject to sub-paragraph (6) any notice required to be given by a person within sub-paragraph (2)(b) must be given within 60 days after the person's coming to know of the event.

(6) In a case within sub-paragraph (1)(b)(iii), any notice required to be given by a person under sub-paragraph (2) must be given within 60 days after the issue of the shares if—

(a) the event occurred, and

(b) the person came to know of it,

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before those shares were issued.

Power of Inland Revenue to obtain information

66 (1) This paragraph applies where the Inland Revenue have reason to believe that a company or other person—

(a) has not given a notice which it is required to give under paragraph 64 or 65 in respect of any event, or

(b) has given or received value (within the meaning of paragraph 49(1)) which, but for the fact that the amount given or received was an amount of insignificant value, would have triggered a requirement to give such a notice.

(2) The Inland Revenue may by notice require the person concerned to furnish them, within such time as the Inland Revenue may direct (not being less than 60 days), with such information relating to the event as the Inland Revenue may reasonably require for the purposes of this Schedule.

(3) In sub-paragraph (1)(b) the reference to an amount of insignificant value shall be construed in accordance with paragraph 47(7)(b).

PART VII

RELIEF FOR LOSSES ON DISPOSALS OF SHARES

Eligibility for relief against income

67 (1) The investing company is eligible for relief under this Part ("loss relief") if—

(a) it incurs an allowable loss on the disposal of shares to which investment relief is attributable (and not withdrawn in full as a result of the disposal), and

(b) the requirements of sub-paragraphs (2) and (3) are met.

(2) The first requirement is that the shares must have been held continuously by the investing company from the time they were issued until the disposal.

(3) The second requirement is that the disposal on which the loss is incurred must be a disposal of the kind described in paragraph (a), (b), (c) or (d) of paragraph 46(2).

Entitlement to claim

68 (1) Where the investing company is eligible for loss relief it may make a claim requiring that the loss be set off for the purposes of corporation tax against income—

(a) of the accounting period in which the loss is incurred, and

(b) if the claim so requires, of accounting periods ending within the preceding 12 month period.

(2) A claim under sub-paragraph (1) must be made within two years after the end of the accounting period in which the loss is incurred.

(3) In this paragraph "the preceding 12 month period" means the 12 months ending immediately before the accounting period in which the loss is incurred.

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Form of loss relief

69 (1) Where a claim is made under sub-paragraph (1) of paragraph 68, the income of any of the accounting periods mentioned in that sub-paragraph shall then be treated as reduced by the amount of the loss or by so much of it as cannot be relieved under this sub-paragraph against income of a later accounting period.

This is subject to loss relief first being obtained for any earlier loss.

(2) The amount of the reduction which may be made under this paragraph in the income of an accounting period beginning before the preceding 12 month period (within the meaning of paragraph 68(3)) shall not exceed a part of that income proportionate to the part of the accounting period falling within that period.

Priority of loss relief

70 (1) Where loss relief is claimed by the investing company it must be claimed—

(a) in priority to any relief claimed by that company under section 573 of the Taxes Act 1988 (relief for loss on disposal of shares in certain trading companies by investment companies), and

(b) before any deduction is made for charges on income or other amounts which can be deducted from or set against or treated as reducing profits of any description.

(2) Where loss relief is obtained for an amount of a loss no deduction shall be made in respect of that amount—

(a) by virtue of section 573(2) of the Taxes Act 1988 (relief for loss on disposal of shares in certain trading companies by investment companies), or

(b) for the purposes of corporation tax on chargeable gains.

Tax avoidance

71 (1) Sub-paragraph (2) applies where shares would, in the absence of paragraph 82 (which disapplies sections 135 and 136 of the 1992 Act in respect of shares to which investment relief is attributable), be the subject of an exchange or arrangement which—

(a) is of the kind mentioned in section 135 or 136 of the 1992 Act (company reconstructions etc.), and

(b) would involve a disposal of shares, by reason of—

(i) section 137(1) of that Act (schemes with tax avoidance purpose), or

(ii) paragraph 96(2)(b) (company treated as disposing of shares in the case of certain **[**[F335]schemes of reconstruction**]** involving tax avoidance).

(2) Where this sub-paragraph applies no loss relief may be obtained in respect of any allowable loss incurred on the disposal.

(3) Where a claim is made under this Part in respect of a loss accruing on the disposal of shares, section 30 of the 1992 Act (value-shifting) shall have effect in relation to the disposal as if for the references in subsections (1)(b) and (5) of that section to a tax-free benefit there were substituted references to any benefit whether tax-free or not.

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Textual Amendments

F335 Words in Sch. 15 para. 71(1)(b)(ii) substituted (24.7.2002 with effect as mentioned in Sch. 9 para. 7(1) of the amending Act) by 2002 c. 23, s. 45, **Sch. 9 Pt. 2 para. 6(2)**

Adjustment of corporation tax

72 The Inland Revenue shall make any adjustment of corporation tax required as a result of—

(a) loss relief being obtained in respect of an allowable loss, or

(b) loss relief not being obtained for the whole or part of a loss in respect of which a claim is made under this Part,

whether by way of assessment, discharge or repayment of tax.

PART VIII

DEFERRAL RELIEF

Introduction

73 (1) This Part applies where—

(a) a chargeable gain ("the original gain") accrues to the investing company at any time ("the accrual time"),

(b) the gain is one accruing either—

(i) on a disposal of shares to which investment relief was attributable immediately before the disposal, or

(ii) by virtue of paragraph 79 on the occurrence of a chargeable event in relation to shares to which deferral relief is attributable immediately before the event,

and

(c) the investing company makes a qualifying investment.

(2) In determining for the purposes of sub-paragraph (1)(a) whether or not a chargeable gain accrues at any time paragraph 76 (postponement of original gain) shall be disregarded.

(3) Sub-paragraph (1)(b)(i) does not apply to a disposal of shares unless the shares were held by the investing company continuously from the time they were issued until the disposal.

Meaning of "qualifying investmen"t

74 (1) For the purposes of this Part the investing company makes a qualifying investment if—

(a) it subscribes for any shares to which investment relief is attributable,

(b) the shares are not issued by a prohibited company,

(c) the shares are issued to the investing company at a qualifying time, and

(d) where the shares were issued before the accrual time—

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(i) they have been held continuously by the investment company from the time they were issued until that time, and

(ii) investment relief is attributable to the shares at that time.

(2) For the purposes of sub-paragraph (1)—

"a prohibited company" means—

(a) the company whose shares comprised the original holding, or

(b) a company that was, at the accrual time or the time of the issue of the qualifying shares (or both), a member of the same group as that company; and

"a qualifying time" means any time in the period of four years beginning one year before the accrual time.

(3) For the purposes of the definition of "a prohibited company" in sub-paragraph (2), "the original holding" means—

(a) where the original gain accrued as mentioned in sub-paragraph (i) of paragraph 73(1)(b), the shares disposed of, and

(b) where the original gain accrued as mentioned in sub-paragraph (ii) of paragraph 73(1)(b), the shares in relation to which the chargeable event occurred.

Meaning of "the qualifying share"s

75 (1) For the purposes of this Part "the qualifying shares", in relation to a case where this Part applies, means the shares which are acquired by the investing company in making the qualifying investment.

This is subject to sub-paragraphs (2) and (4).

(2) If any corresponding bonus shares are issued to the investing company, this Part shall apply as if references to the qualifying shares were to all the shares comprising the qualifying shares and the bonus shares so issued.

(3) In sub-paragraph (2) "corresponding bonus shares" means bonus shares which—

(a) are issued in respect of the qualifying shares, and

(b) are in the same company, of the same class and carry the same rights as those shares.

(4) If in circumstances where paragraph 83 (certain exchanges resulting in acquisition of share capital by new company) applies new shares are issued in exchange for old shares, references in this Part to the qualifying shares, so far as they relate to the old shares, shall be construed as references to the new shares.

For this purpose "old shares" and "new shares" have the same meaning as in that paragraph.

Postponement of original gain

76 (1) On the making of a claim by the investing company for the purposes of this Part, so much of the investing company's unused qualifying expenditure on the qualifying shares as—

(a) is specified in the claim, and

(b) does not exceed so much of the original gain as is unmatched,

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shall be set against a corresponding amount of the original gain.

(2) Where an amount of qualifying expenditure on the qualifying shares is set under this paragraph against the whole or part of the original gain, then for the purposes of corporation tax on chargeable gains—

(a) so much of that gain as is equal to that amount shall be treated as not having accrued at the accrual time, but

(b) paragraph 79 applies for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of the qualifying shares.

(3) For the purposes of this Part—

(a) the investing company's qualifying expenditure on the qualifying shares is the amount subscribed by it for the shares, and

(b) that expenditure is unused to the extent that it has not already been set under this paragraph against the whole or any part of a chargeable gain.

(4) For the purposes of this paragraph the original gain is unmatched in relation to any qualifying expenditure on the qualifying shares to the extent that it has not had any other expenditure set against it under this paragraph.

Meaning of "deferral relie"f

77 For the purposes of this Schedule "deferral relief" is attributable to any shares if—

(a) expenditure on the shares has been set under paragraph 76 against the whole or part of any gain, and

(b) there has been no chargeable event for the purposes of this Part in relation to the shares.

Chargeable events

78 (1) There is, for the purposes of this Part, a chargeable event in relation to any of the qualifying shares if—

(a) the investing company disposes of those shares, or

(b) any other event occurs by reason of which the investment relief attributable to those shares is reduced or withdrawn otherwise than by virtue of paragraph 46(2) or (3) (withdrawal of investment relief on disposal of shares).

(2) For the purposes of sub-paragraph (1)(b), where the qualifying investment is made before the time at which the original gain accrues, any reduction of the investment relief attributable to the qualifying shares that is made by reason of an event that occurs before the accrual time shall be disregarded.

Gain accruing on chargeable event

79 (1) This paragraph applies where a chargeable event occurs in relation to any of the qualifying shares in relation to which there has not been a previous chargeable event.

(2) Where this paragraph applies, then for the purposes of corporation tax on chargeable gains—

(a) a chargeable gain shall be treated as accruing to the investing company at the time of the event, and

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(b) the amount of the gain shall be equal to so much of the deferred gain as is attributable to the shares in relation to which the chargeable event occurs.

(3) In order to determine, for this purpose, the amount of the deferred gain attributable to any shares, a proportionate part of the amount of the gain shall be attributed to each of the qualifying shares held immediately before the occurrence of the chargeable event in question by the investing company.

(4) In this paragraph "the deferred gain" means—

(a) the amount of the original gain against which expenditure has been set under paragraph 76, less

(b) the amount of any gain treated as accruing under this paragraph previously in consequence of a chargeable event in relation to any of the qualifying shares.

(5) For the purposes of **[**[F336]section 10B**]** of the 1992 Act (taxation of chargeable gains accruing to non-resident with UK branch or agency) a chargeable gain treated as accruing by virtue of this paragraph shall be treated as a chargeable gain accruing on the disposal of an asset to which subsection (3) of that section applies.

Textual Amendments

F336 Words in Sch. 15 para. 79(5) substituted (10.7.2003) (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 9**

PART IX

COMPANY RESTRUCTURING

Share reorganisations

80 (1) Where a company ("the company") holds shares which—

(a) form part of the ordinary share capital of another company,

(b) are of the same class and held in the same capacity, and

(c) include shares falling within two or more of the categories in sub-paragraph (2),

then, where there is a reorganisation affecting those shares to which section 116 or section 127 of the 1992 Act applies, section 116 or (as the case may be) section 127 shall apply separately to shares falling within each of those categories.

(2) The categories referred to in sub-paragraph (1)(c) are—

(a) shares to which deferral relief is attributable;

(b) shares—

(i) to which investment relief but not deferral relief is attributable, and

(ii) which have been held continuously by the company since the time they were issued until the reorganisation; and

(c) shares not within paragraph (a) or (b) above.

(3) In this paragraph "reorganisation" has the meaning given in section 126 of the 1992 Act.

Status: *Point in time view as at 21/07/2009.*
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Rights issues etc.

81 (1) Where—

(a) a company ("the company") holds shares ("the existing holding") which—

(i) form part of the ordinary share capital of another company, and

(ii) are of the same class and held in the same capacity,

(b) there is by virtue of such an allotment as is mentioned in section 126(2)(a) of the 1992 Act (an allotment of shares or debentures in respect of and in proportion to an original holding), other than an allotment of corresponding bonus shares, a reorganisation affecting the existing holding,

(c) immediately following the reorganisation, investment relief is attributable to the shares comprised in the existing holding or the shares allotted in respect of those shares, and

(d) if investment relief is attributable to the shares comprised in the existing holding at that time, those shares have been held by the company continuously from the time they were issued until the reorganisation,

sections 127 to 130 of that Act (treatment of share capital following a reorganisation) shall not apply in relation to the existing holding.

(2) Subsection (10) of section 116 of that Act (reorganisations, conversions and reconstructions) shall not apply in any case where the old asset consists of shares held (in the same capacity) by a company—

(a) that have been held by it continuously from the time they were issued until the relevant transaction, and

(b) to which investment relief is attributable immediately before that transaction.

In this sub-paragraph "old asset" and "the relevant transaction" have the meanings given in section 116 of that Act.

(3) For the purposes of sub-paragraph (1)—

"corresponding bonus shares" means bonus shares that—

(a) are issued in respect of shares comprised in the existing holding, and

(b) are of the same class, and carry the same rights, as those shares;

"reorganisation" has the meaning given in section 126 of that Act.

Company reconstructions and amalgamations

82 (1) Where—

(a) a company ("the company") holds shares ("the existing holding") in a company ("company A"),

(b) there is a reconstruction or amalgamation affecting the existing holding,

(c) immediately before the reconstruction or amalgamation, investment relief is attributable to the shares comprised in the existing holding, and

(d) the shares comprised in the existing holding have been held by the company continuously from the time they were issued until the reconstruction or amalgamation,

sections 135 and 136 of the 1992 Act (**[**[F337]share exchanges and company reconstructions**]**) shall not apply in respect of the existing holding.

This is subject to paragraph 84 (no disposal on certain exchanges of shares).

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(2) Sub-paragraph (1)(a) applies only where the shares are held by the company in the same capacity.

(3) For the purposes of sub-paragraph (1) a "reconstruction or amalgamation" means an issue by a company ("company B") of shares in or debentures of that company in exchange for or in respect of shares in or debentures of company A.

Textual Amendments

F337 Words in Sch. 15 para. 82(1) substituted (24.7.2002 with effect as mentioned in Sch.9 para.7(1) of the amending Act) by 2002 c. 23, s. 45, **Sch. 9 para. 6(3)**

Certain exchanges resulting in acquisition of share capital by new company

83 (1) Paragraphs 84 and 85 apply where—

(a) arrangements are made in accordance with which a company ("the new company") acquires all the shares ("old shares") in another company ("the old company");

(b) the acquisition provided for by the arrangements falls within sub-paragraph (2); and

(c) the Inland Revenue have, before any exchange of shares takes place under the arrangements, given an approval notification.

(2) An acquisition of shares falls within this sub-paragraph if—

(a) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

(b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than—

(i) subscriber shares, and

(ii) new shares previously issued in consideration of old shares;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description; and

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.

(3) For the purposes of sub-paragraph (1)(c) an approval notification is one which, on an application by either the old company or the new company, is given to the applicant company and states that the Inland Revenue are satisfied that the exchange of shares under the arrangements—

(a) will be effected for commercial reasons, and

(b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act (schemes with tax avoidance purpose).

(4) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.

(5) In this paragraph references to "shares", except in the expression "subscriber shares", include securities.

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(6) References in paragraphs 84 to 87 to "shares", "old shares", "new shares", "the old company" and "the new company" shall be construed in accordance with this paragraph.

No disposal on certain exchanges of shares

84 (1) Where this paragraph applies (see paragraph 83 **[**[F338]and paragraph 4 of Schedule 7AC to the Taxation of Chargeable Gains Act 1992**]**), nothing in paragraph 82 has effect to disapply section 135 of the 1992 Act (exchange of shares etc. for those in another company).

Accordingly, by virtue of section 127 of that Act (as applied by section 135(3)), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.

(2) In its application by virtue of sub-paragraph (1), section 127 of the 1992 Act shall have effect subject to paragraph 80 (shares to which investment relief or investment and deferral relief is attributable treated as separate holdings).

Textual Amendments

F338 Words in Sch. 15 para. 84(1) inserted (24.7.2002 with effect as mentioned in s. 44(3) of the amending Act) by 2002 c.23, s. 44(2), **Sch. 8 Pt. 2 para. 5**

Attribution of relief to new shares

85 (1) Where this paragraph applies (see paragraph 83 **[**[F339]and paragraph 4 of Schedule 7AC to the Taxation of Chargeable Gains Act 1992**]**), any investment relief or deferral relief which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.

(2) Where investment relief becomes so attributable to any new shares—

(a) this Schedule shall have effect as if anything which under paragraph 41, 42, 60 or 65 has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

(b) any appeal brought by the old company against—

(i) the refusal of the Inland Revenue to authorise the issue of a compliance certificate, or

(ii) a notice under paragraph 60(3)(b),

may be prosecuted by the new company as if it had been brought by that company.

Textual Amendments

F339 Words in Sch. 15 para. 85(1) inserted (24.7.2002 with effect as mentioned in s. 44(3) of the amending Act) by 2002 c. 23, s. 44(2), **Sch. 8 Pt. 2 para.5**

Status: *Point in time view as at 21/07/2009.*
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Modifications etc. (not altering text)

C1 Sch. 15 para. 85 excluded (24.7.2002 with effect as mentioned in s. 44(3) of the amending Act) by 1992 c. 12, **Sch. 7AC Pt. 1 para. 4(4)** (as inserted by 2002 c. 23, s. 44(2), **Sch. 8 para. 1**)

Substitution of new shares for old shares

86 (1) This paragraph applies where—

(a) relief becomes attributable, by virtue of paragraph 85, to any new shares held by a company ("the company"), and

(b) the old shares for which those shares were exchanged ("the relevant old shares") were—

(i) subscribed for by and issued to the company, and

(ii) held by it continuously from the time they were issued until the exchange.

(2) Where this paragraph applies this Schedule **[**[F340](except paragraph 29(7))**]** shall have effect as if—

(a) the matching new shares had been subscribed for by the company at the time when, and for the amount for which, the relevant old shares were subscribed for,

(b) the matching new shares had—

(i) been issued at the time when the relevant old shares were issued, and

(ii) been held continuously by the company from that time until the exchange,

(c) any claim for relief under Part V (investment relief), or Part VIII (deferral relief), of this Schedule made in respect of the relevant old shares had been made in respect of the matching new shares, and

(d) the company's liability to corporation tax had been reduced under Part V of this Schedule in respect of the matching new shares for the same accounting period as that for which its liability was so reduced in respect of the relevant old shares.

(3) For the purposes of this paragraph old shares and new shares are matching shares in relation to each other if the old shares are the shares for which those new shares are exchanged under the arrangements.

Textual Amendments

F340 Words in Sch. 15 para. 86(2) inserted (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), **Sch. 16 paras. 10**, 13

Operation of requirements of Parts II and III in relation to new shares

87 (1) This paragraph applies where paragraph 86 (substitution of new shares for old shares) applies in relation to any new shares held by a company.

(2) If, immediately before the exchange, any of the requirements of paragraphs 5, 8 and 13 (requirements to be met by a qualifying investing company in relation to the relevant shares) was (or was deemed to be) met to any extent by the company in

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relation to the matching old shares, the requirement shall be deemed to be met by the company to the same extent in relation to the new shares.

(3) If, immediately before the exchange, any of the requirements of paragraphs 16 to 22 (requirements to be met by a qualifying issuing company) was (or was deemed to be) met to any extent by the old company in relation to the matching old shares, it shall be deemed to be met to the same extent by the new company in relation to the new shares.

(4) In determining whether the requirements of paragraphs 17 (the independence requirement) and 20 (the qualifying subsidiaries requirement) are met in relation to the old company or the new company at a time in the period for giving effect to the arrangements, both—

(a) the arrangements themselves, and

(b) any exchange of new shares for old shares that has already taken place under the arrangements,

shall be disregarded.

(5) If, immediately before the period for giving effect to the arrangements, the requirement of paragraph 23(1) (the trading activities requirement) was (or was deemed to be) met to any extent by the old company in relation to the matching old shares—

(a) it shall be deemed to be met to the same extent by the new company in relation to the new shares, and

(b) to the extent that it would not otherwise be the case, it shall also be deemed to be met by that company in relation to those shares at all times which—

(i) fall in the period for giving effect to the arrangements, and

(ii) do not fall after a time when (apart from the arrangements) the requirement would have ceased to have been met by the old company in relation to the matching old shares.

(6) For the purposes of this paragraph—

(a) "the period for giving effect to the arrangements" means the period which—

(i) begins when those arrangements first come into existence; and

(ii) ends when the new company completes its acquisition under the arrangements of all the old shares;

and

(b) references to matching shares shall be construed in accordance with paragraph 86(3).

Relationship between this Part and the 1992 Act

88 The following provisions of the 1992 Act have effect subject to paragraphs 80, 81, 82 and 84 (which make special provision in respect of company reorganisations etc. involving shares to which investment relief is attributable)—

section 116 (reorganisations, conversions and reconstructions); and

Chapter II of Part IV (reorganisation of share capital, conversion of securities etc.).

Status: *Point in time view as at 21/07/2009.*
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PART X

ADVANCE CLEARANCE

Application for advance clearance notice

89 (1) A company ("the applicant") may, before issuing any shares, make an application to the Board for an advance clearance notice in respect of that issue.

(2) An advance clearance notice is a notice issued by the Board in respect of an issue of shares which states that, on the basis of the particulars, declarations and undertakings provided by the applicant, the Board are satisfied that, at the time the shares are issued, the requirements of Parts III and IV of this Schedule will be met (or, in the case of any requirement that cannot be met until a future date, will be met for the time being) in relation to the shares.

(3) For the purposes of determining whether they are satisfied as mentioned in sub-paragraph (2) the Inland Revenue shall assume that the shares included in the issue of shares are "the relevant shares".

(4) An application under this paragraph must—

(a) contain the particulars, declarations and undertakings required by the Board, and

(b) disclose all facts and circumstances material for the decision of the Board.

(5) In this Part references to an "application" are to an application under this paragraph.

Provision of further information

90 (1) On receiving an application for an advance clearance notice, the Board may by notice ("an information notice") require the applicant to provide them, within such time as the Board may direct (not being less than 30 days), with such further particulars as the Board deem necessary to enable them to decide whether or not to issue an advance clearance notice.

(2) An information notice must be given—

(a) within 30 days after the receipt of the application, or

(b) if further particulars have already been provided in response to an earlier information notice, within 30 days after the receipt of those particulars.

(3) If the applicant does not comply with an information notice within the period specified in the notice, the Board need not proceed further on the application.

Decision on application and review procedure

91 (1) The Board must within 30 days after receiving an application or, where an information notice is given in relation to the application, within 30 days after that notice being complied with—

(a) issue an advance clearance notice in respect of the shares to which the application relates, or

(b) notify the applicant that the Board are not satisfied as mentioned in paragraph 89(2) in respect of those shares.

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This is subject to sub-paragraph (3) and to paragraph 90(3) (circumstances in which Board need not proceed on application).

(2) In a case where two or more information notices are given in relation to the application, the time limit in sub-paragraph (1) is calculated by reference to the time when the later (or last) of the notices is complied with.

(3) If before the Board issue an advance clearance notice in respect of the issue of shares to which the application relates, or notify the applicant under sub-paragraph (1), the applicant issues the shares in question, the Board need not proceed further on the application.

(4) If the Board—

(a) notify the applicant that they are not satisfied as mentioned in paragraph 89(2), or

(b) in a case to which sub-paragraph (3) does not apply, fail to notify their decision to the applicant in accordance with sub-paragraph (1),

the applicant may, within 30 days after the notification or failure, require the Board to transmit the application, together with any information notices given and further particulars provided under paragraph 90, to the **[**F341tribunal**]**.

(5) Where sub-paragraph (4) applies any notification by the **[**F342tribunal that it is**]** satisfied as mentioned in paragraph 89(2) shall have effect as if it were an advance clearance notice issued by the Board in respect of the issue of shares in question.

Textual Amendments

F341 Word in Sch. 15 para. 91(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 293(2)(a)**

F342 Words in Sch. 15 para. 91(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 293(2)(b)**

Effect of advance clearance notice

92 (1) For the purposes of this Schedule, where an advance clearance notice is issued in respect of an issue of shares before the shares are issued, the requirements of Parts III and IV of this Schedule shall be treated as met (or, in the case of any requirement that cannot be met until a future date, as met for the time being) in relation to those shares at the time they are issued.

(2) If—

(a) any particulars provided in the application for the notice, or in response to any information notice relating to the application, do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the **[**F343tribunal**]**, or

(b) the applicant or any of its subsidiaries fails to act in accordance with any declaration or undertaking which was given in, or in connection with, the application,

any resulting advance clearance notice shall be void.

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(3) Sub-paragraph (2)(b) applies in relation to a subsidiary of the applicant whether or not it was such a subsidiary at the time the declaration or undertaking in question was given.

Textual Amendments

F343 Word in Sch. 15 para. 92(2)(a) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 293(3)**

PART XI

SUPPLEMENTARY AND GENERAL

Identification of shares on a disposal

93 (1) In any case where—

(a) a company ("the company") disposes of part of a holding of shares ("the holding"), and

(b) the holding includes shares to which investment relief is attributable that have been held continuously by the company from the time they were issued until the disposal,

this paragraph applies for the purpose of identifying the shares disposed of.

(2) For the purposes of this paragraph "holding" means any number of shares of the same class in another company held by the company in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.

(3) Where shares included in the holding have been acquired by the company on different days, then, for the purposes of corporation tax on chargeable gains and of this Schedule, any disposal by the company of any of those shares shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.

(4) Where shares included in the holding have been acquired by the company on the same day, then, for the purposes of corporation tax on chargeable gains and of this Schedule, if there is a disposal by the company of any of those shares, any shares—

(a) to which investment relief is attributable, and

(b) which have been held by the company continuously from the time they were issued until the time of disposal,

shall be treated as disposed of after any other shares included in the holding which were acquired by the company on that day.

(5) Chapter I of Part IV of the 1992 Act (share pooling, etc.) shall have effect subject to this paragraph.

(6) **[**[F344]Sections 104, 105**]** and 107 of that Act (which make provision for the purposes of corporation tax on chargeable gains for the identification of shares on a disposal) shall not apply to shares to which investment relief is attributable.

(7) In a case to which section 127 of that Act (equation of original shares and new holding) applies **[**[F345](including a case where that section applies by virtue of any enactment relating to chargeable gains)**]**, shares comprised in the new holding shall

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be treated for the purposes of sub-paragraphs (3) and (4) as acquired when the original shares were acquired.

In this sub-paragraph "new holding" and "original shares"**[**F346have the same meaning as in section 127 of the 1992 Act (or, as the case may be, that section as applied by virtue of the enactment concerned)**]**.

Textual Amendments

F344 Words in Sch. 15 para. 93(6) substituted (with effect in accordance with s. 72(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 72(2)(e)**

F345 Words in Sch. 15 para. 93(7) substituted (24.7.2002 with effect as mentioned in Sch. 9 para. 7(1) of the amending Act) by 2002 c. 23, s. 45, **Sch. 9 Pt. 2 para. 6(4)(a)**

F346 Words in Sch. 15 para. 93(7) substituted (24.7.2002 with effect as mentioned in Sch. 9 para. 7(1) of the amending Act) by 2002 c. 23, s 45, **Sch. 9 Pt. 2 para. 6(4)(b)**

Determination of loss where investment relief is attributable to shares

94 (1) This paragraph applies for the purposes of corporation tax on chargeable gains where—

(a) a company disposes of shares which were held by it continuously from the time they were issued until the disposal,

(b) investment relief is attributable to the shares (and not withdrawn in full as a result of the disposal), and

(c) apart from sub-paragraph (2), there would be a loss on the disposal.

(2) For the purpose of determining the gain or loss on the disposal the consideration given by the company for the shares is treated as reduced by the amount of the investment relief attributable to the shares immediately after the disposal.

(3) Any gain which accrues by virtue of sub-paragraph (2) is not a chargeable gain.

(4) Notwithstanding the definition of "allowable loss" in section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), nothing in sub-paragraph (3) has effect in relation to any loss determined in accordance with sub-paragraph (2) to prevent it being an allowable loss.

Nominees

95 Shares subscribed for by, issued to, acquired or held by or disposed of by a nominee for any person shall be treated for the purposes of this Schedule as subscribed for by, issued to, acquired or held by or disposed of by that person.

Meaning of "disposa"l

96 (1) Subject to sub-paragraph (2), in this Schedule "disposal" shall be construed in accordance with the 1992 Act, and cognate expressions shall be construed accordingly.

(2) A company shall be treated for the purposes of this Schedule, and for the purposes of corporation tax on chargeable gains, as disposing of any shares which but for paragraph 82 (company reconstructions and amalgamations) it—

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(a) would be treated as exchanging for other shares by virtue of **[**F347section 136**]** of the 1992 Act, or

(b) would be so treated but for section 137(1) of the 1992 Act (which restricts **[**F348section 136 of that Act to bona fide schemes of reconstruction**]**).

Textual Amendments

F347 Words in Sch. 15 para. 96(2)(a) substituted (24.7.2002 with effect as mentioned in Sch. 9 para. 7(1) of the amending Act) by 2002 c. 23, s. 45, **Sch. 9 Pt. 2 para. 6(5)(a)**

F348 Words in Sch. 15 para. 96(2)(b) substituted (24.7.2002 with effect as mentioned in Sch. 9 para. 7(1) of the amending Act) by 2002 c. 23, s. 45, **Sch. 9 Pt. 2 para. 6(5)(b)**

Construction of references to shares being "held continuousl"y

97 (1) This paragraph applies where for the purposes of this Schedule it falls to be determined whether a company has held shares continuously throughout any period.

(2) The company shall not be treated as having held shares continuously throughout a period if—

(a) it is deemed, under any provision of the 1992 Act, to have disposed of and immediately reacquired the shares at any time during the period, or

(b) it is treated as having disposed of the shares at any such time, by virtue of paragraph 96(2) (on reconstruction or amalgamation company treated as disposing of shares continuously held by it to which investment relief is attributable).

Meaning of "issue of share"s

98 In this Schedule—

(a) references (however expressed) to an issue of shares in any company are to such of the shares in the company as are of the same class and issued on the same day; and

(b) references (however expressed) to an issue of shares in a company to a person are references to such of the shares in an issue of shares in that company as are issued to that person in one capacity.

Meaning of "associat"e

99 (1) In this Schedule "associate", in relation to a person, means—

(a) any relative or partner of that person,

(b) the trustee or trustees of any settlement in relation to which that person, or any relative of his (living or dead), is or was a settlor, and

(c) where that person is interested in any shares or obligations of a company which are subject to any trust, or are part of the estate of a deceased person—

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and

(ii) if that person is a company, any other company interested in those shares or obligations.

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(2) In sub-paragraph (1)(a) and (b) "relative" means **[**[F349]spouse or civil partner**]**, parent or remoter forebear or child or remoter issue.

(3) In sub-paragraph (1)(b) "settlor" and "settlement" have the same meaning as in **[**[F350]Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)**]**.

Textual Amendments

F349 Words in Sch. 15 para. 99(2) substituted (5.12.2005) by Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), **132**

F350 Words in Sch. 15 para. 99(3) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 521** (with Sch. 2)

"The Boar"d and "the Inland Revenu"e

100 In this Schedule—

(a) "the Board" means the Commissioners of Inland Revenue; and

(b) references to "the Inland Revenue" are to any officer of the Board.

Power to amend by Treasury order

101 The Treasury may by order amend this Schedule—

(a) to make such amendments of—

(i) paragraphs 10 to 12 (the non-financial activities requirement), or

(ii) paragraphs 23 to 33 (the trading activities requirement),

as they consider expedient;

(b) to substitute different sums of money for those for the time being specified in paragraph 22 (gross assets requirement).

Minor definitions etc.

102 (1) In this Schedule—

"allowable loss" means an allowable loss for the purposes of corporation tax on chargeable gains;

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;

"chargeable gain" means a chargeable gain for the purposes of corporation tax on chargeable gains;

"class", in relation to shares or securities, means a class of shares in or securities of any one company (see sub-paragraph (2));

"director" shall be construed in accordance with section 417(5) of the Taxes Act 1988;

"group" means a parent company and its 51% subsidiaries;

"group company", in relation to a group, means the parent company and any of its 51% subsidiaries;

"ordinary share capital", except in paragraph 7 (meaning of "material interest"), has the meaning given in section 832(1) of the Taxes Act 1988;

"ordinary shares" means shares forming part of a company's ordinary share capital;

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"parent company" means a company that—

(a) has one or more 51% subsidiaries, but

(b) is not itself a 51% subsidiary of another company;

"research and development" has the meaning given by section 837A of the Taxes Act 1988;

"single company" means a company that is not a parent company or a 51% subsidiary of a parent company;

"the 1992 Act" means the [M94]Taxation of Chargeable Gains Act 1992.

(2) For the purposes of this Schedule shares in or securities of a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.

(3) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

(4) References in this Schedule to a company being in administration or receivership shall be construed as follows—

[[F351](a) references to a company being "in administration" are to the company being in administration within the meaning of Schedule B1 to the Insolvency Act 1986, or to there being in force in relation to it—

(i) an administration order under Part III of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom;**]**

(b) references to a company being "in receivership" are to there being in force in relation to it—

(i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the [M95]Insolvency Act 1986 or Part IV of the [M96]Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom.

(5) For the purposes of this Schedule the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.

(6) In this Schedule—

(a) references to investment relief obtained by a company in respect of any shares include references to investment relief obtained by it in respect of those shares at any time after it has disposed of them, and

(b) references to the withdrawal or reduction of investment relief obtained by a company in respect of any shares include references to the withdrawal or reduction of investment relief obtained in respect of those shares at any such time.

(7) In the case of a requirement that cannot be met until a future date—

(a) references in this Schedule to a requirement being met for the time being are to nothing having occurred to prevent its being met, and

(b) references to its continuing to be met are to nothing occurring to prevent its being met.

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[F352(8) In determining for the purposes of paragraph 3(2), 23(5) or 36(1B) when a trade is begun to be carried on by a qualifying 90% subsidiary of the issuing company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary.**]**

[F353(9) References in this Schedule to Part 5 of ITA 2007 or any provision of that Part are to a Part or provision that applies only in relation to shares issued after 5 April 2007.**]**

Textual Amendments

F351 Sch. 15 para. 102(4)(a) substituted (15.9.2003) by Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 34(d)** (with art. 6)

F352 Sch. 15 para. 102(8) inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 13**

F353 Sch. 15 para. 102(9) inserted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 394(5)** (with Sch. 2)

Marginal Citations

M94 1992 c. 12.

M95 1986 c. 45.

M96 S.I. 1989/2405 (N.I.19).

Index of defined expressions

103 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

allowable loss	paragraph 102(1)
application (in Part X)	paragraph 89(5)
arrangements	paragraph 102(1)
associate	paragraph 99
the Board	paragraph 100
chargeable gain	paragraph 102(1)
class (of shares)	paragraph 102(1) and (2)
compliance certificate	paragraph 41
compliance statement	paragraph 42
connected person	paragraph 102(3)
deferral relief	paragraph 77
director	paragraph 102(1)
disposal	paragraph 96
excluded activities	paragraph 26
group	paragraph 102(1)
group company	paragraph 102(1)

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held continuously (in relation to shares)	paragraph 97
the Inland Revenue	paragraph 100
the investing company	paragraph 2
investment relief	paragraph 1
issue of shares	paragraph 98
the issuing company	paragraph 2
loss relief	paragraph 67(1)
market value	paragraph 102(5)
material interest	paragraph 7
new company (in paragraphs 83 to 87)	paragraph 83
new shares (in paragraphs 83 to 87)	paragraph 83
non-financial trade	paragraph 11
non-financial trading group	paragraph 12
old company (in paragraphs 83 to 87)	paragraph 83
old shares (in paragraphs 83 to 87)	paragraph 83
ordinary share capital	paragraphs 7 and 102(1)
ordinary shares	paragraph 102(1)
parent company	paragraph 102(1)
the period of restriction	paragraph 48
the qualification period	paragraph 3
the qualifying shares (in Part VIII)	paragraph 75
qualifying subsidiary	paragraph 21
[[F354]qualifying 90% subsidiary	**[**[F355]paragraph 23A**]]**
qualifying trade	paragraph 25
in receivership	paragraph 102(4)(b)
relevant preference shares	paragraph 9
the relevant shares	paragraph 2
relief attributable to shares	
investment relief	paragraph 45
deferral relief	paragraph 77
research and development	paragraph 102(1)
single company	paragraph 102(1)
the 1992 Act	paragraph 102(1)
trading activities requirement	paragraph 23(2) and (3)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F354 Words in Sch. 15 para. 103 inserted (22.7.2004) (with effect in accordance with Sch. 20 para. 15 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 20 para. 14**

F355 Words in Sch. 15 para. 103 substituted (retrospective to 6.4.2007) by Finance Act 2007 (c. 11), Sch. 16 paras. 15(4), 18

SCHEDULE 16

Section 63(2).

CORPORATE VENTURING SCHEME: CONSEQUENTIAL AMENDMENTS

Penalties in connection with returns etc.

1 (1) In section 98 of the [M97]Taxes Management Act 1970, the Table is amended as follows.

(2) In the second column after the final entry insert—

"paragraph 64 or 65 of Schedule 15 to the Finance Act 2000".

(3) In the first column after the final entry insert—

"paragraph 66 of Schedule 15 to the Finance Act 2000".

Marginal Citations

M97 1970 c. 9.

Enterprise investment scheme

[F356]2 . . . . . .

Textual Amendments

F356 Sch. 16 para. 2 repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Loss relief

3 (1) Chapter VI of Part XIII of the Taxes Act 1988 (relief on losses on shares in trading companies etc.) is amended as follows.

(2) In section 573 (relief for losses incurred by investment companies on disposals of shares in qualifying trading companies)—

(a) in subsection (4)—

(i) for "Relief under subsection (2) above shall be given before any deduction for" substitute " Where relief is claimed under subsection (2) above, it must be claimed before any deduction is made for ";

(ii) for "is given" substitute " is obtained ";

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iii) for "in respect of the amount" substitute " for an amount "; and

(iv) at the end insert—

"This subsection is subject to subsection (4A) below."; and

(b) after that subsection insert—

"(4A) Paragraph 70 of Schedule 15 to the Finance Act 2000 (priority of loss relief) provides that where relief under Part VII of that Schedule (relief for losses on disposals of shares to which investment relief is attributable) is claimed it must be claimed in priority to relief under subsection (2) above."

(3) In section 575(1) (which restricts the disposals in respect of which relief for losses can be obtained), after paragraph (b) insert—

"(ba) a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset); or".

(4) In section 576—

(a) in subsection (1) for "and (1B)" substitute " to (1C) "; and

(b) after subsection (1B) insert—

"(1C) Where the holding mentioned in subsection (1) above comprises any shares—

(a) to which investment relief is attributable under Schedule 15 to the Finance Act 2000 (corporate venturing scheme), and

(b) which have been held continuously (within the meaning of paragraph 97 of that Schedule) from the time they were issued until the disposal,

any such question as is mentioned in that subsection shall not be determined as provided by that subsection, but shall be determined instead as provided by paragraph 93 of that Schedule (identification of shares on a disposal of part of a holding where investment relief is attributable to any shares in the holding held continuously by the disposing company).

For this purpose paragraph 93 of that Schedule shall have effect as if the references in it to a disposal had the same meaning as in subsection (1) above."

EIS: deferral relief

4 (1) The Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In paragraph 14 of Schedule 5B (value received by persons other than claimants)—

(a) in sub-paragraph (1) (repayments etc. which cause revival of a deferred gain under EIS), in paragraph (a) for "an individual" substitute " a person ";

(b) at the end of that sub-paragraph insert—

"This is subject to paragraph 14A below.";

(c) in sub-paragraph (3) (exception where repayment etc. causes withdrawal of income tax relief or revival of a deferred gain under the EIS), for "An individual" substitute " A person "; and

(d) in that sub-paragraph, after paragraph (b) insert "; or

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) causes any investment relief (within the meaning of Schedule 15 to the Finance Act 2000) to be withdrawn or reduced by virtue of paragraph 46 (disposal of shares) or 49(1)(a) (repayment etc. of share capital or securities) of that Schedule."

(3) After that paragraph insert—

" Certain receipts to be disregarded for purposes of paragraph 14

14A(1) Sub-paragraph (4) below applies where, by reason of a repayment, any investment relief which is attributable under Schedule 15 to the Finance Act 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.

(2) For the purposes of this paragraph "repayment" means a repayment, redemption, repurchase or payment mentioned in paragraph 56(1) of that Schedule (repayments etc. which cause withdrawal of investment relief).

(3) For the purposes of sub-paragraph (4) below "the relevant amount" is the amount determined by the formula—

$$X - 5Y$$

Where—

X is the amount of the repayment, and

Y is the aggregate amount of the investment relief withdrawn by reason of the repayment.

(4) Where the relevant amount does not exceed £1,000, the repayment shall be disregarded for the purposes of paragraph 14 above, unless repayment arrangements are in existence at any time in the period—

(a) beginning one year before the shares mentioned in sub-paragraph (1) above are issued, and

(b) expiring at the end of the issue date of those shares.

(5) For this purpose "repayment arrangements" means arrangements which provide—

(a) for a repayment by the company that issued the shares ("the issuing company") or any subsidiary of that company, or

(b) for anyone to be entitled to such a repayment,

at any time.

(6) Sub-paragraph (5)(a) above applies in relation to a subsidiary of the issuing company whether or not it was such a subsidiary—

(a) at the time of the repayment mentioned in sub-paragraph (1) above, or

(b) when the arrangements were made.

(7) Where, but for the existence of paragraph 57(1) of Schedule 15 to the Finance Act 2000 (receipts causing insignificant changes to share capital to be disregarded), any investment relief would be withdrawn by reason of a

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repayment, the repayment shall be disregarded for the purposes of paragraph 14 above.

(8) In this paragraph—

(a) "investment relief" has the same meaning as in that Schedule; and

(b) references to the withdrawal of investment relief include its reduction."

Company tax returns, assessments etc.

5 (1) Schedule 18 to the [M98]Finance Act 1998 is amended as follows.

(2) In paragraph 8 (calculation of tax payable), in sub-paragraph (1) after paragraph number 1 of the second step insert—

"(1A) Any relief under Part V of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: investment relief)."

(3) In paragraph 9 (claims that cannot be made without a return), after sub-paragraph (3) insert—

"(4) This paragraph applies to a claim by a company for relief under Part V of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: investment relief)."

Marginal Citations

M98 1998 c. 36.

SCHEDULE 17

Section 64.

ENTERPRISE INVESTMENT SCHEME: AMENDMENTS

PART I

REDUCTION OF APPLICABLE PERIODS

Meaning of "eligible share"s

[F357]1 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Conditions relating to individuals

[F357]2 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Conditions relating to further investment by connected person

F357 3 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Value received from company

F357 4 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Value received by persons other than claimants

F357 5 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Meaning of "termination dat"e and "relevant perio"d

F357 6 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Postponement of chargeable gains on reinvestment

F358 7 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F358 Sch. 17 para. 7 repealed (11.5.2001 with effect in accordance with Sch. 15 para. 40(2)(3) of the amending Act) by 2001 c. 9, s. 110, **Sch. 33 Pt. 2(3)** Notes 2, 6

Commencement

8 The amendments in this Part of this Schedule have effect in relation to shares issued on or after 6th April 2000.

PART II

QUALIFYING COMPANIES

Company in administration or receivership

F357 9 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Company in liquidation

F357 10 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Independence of qualifying company

F357 11 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Commencement

F357 12 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

PART III

OTHER AMENDMENTS

Qualifying trades

F357 13 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Meaning of "arrangement"s

F357 14 . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

Meaning of "research and developmen"t

15 F357(1) . . . . . .

F357(2) . . . . . .

(3) Nothing in this paragraph affects the operation of any of the following provisions in relation to shares issued before 6th April 2000—

F357(a) . . . . . .

F359(b) . . . . . .

F357(c) . . . . . .

Textual Amendments

F357 Sch. 17 (except paras. 7, 8, 15(3)(b)) repealed (with effect in relation to shares issued after 6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 2** (with Sch. 2)

F359 Sch. 17 para. 15(3)(b) repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 18

Section 65.

VENTURE CAPITAL TRUSTS: AMENDMENTS

PART I

REDUCTION OF APPLICABLE PERIODS

Relief from income tax

F360 1 . . . . . .

Textual Amendments

F360 Sch. 18 para. 1 repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

Deferred CGT charge on reinvestment

2 In Schedule 5C to the M99 Taxation of Chargeable Gains Act 1992 (venture capital trusts: deferred charge on re-investment), in paragraph 3(2), in the definition of "the relevant period" for "five" substitute " three ".

Marginal Citations

M99 1992 c. 12.

Commencement

3 The amendments made by this Part of this Schedule have effect in relation to shares issued on or after 6th April 2000.

F361 PART II

QUALIFYING HOLDINGS

. . . . . .

Textual Amendments

F361 Sch. 18 Pt. II repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 19

Section 68.

MEANING OF "RESEARCH AND DEVELOPMENT"

PART I

THE NEW DEFINITION

Research and development

1 In Part XIX of the Taxes Act 1988 (general supplementary provisions), after section 837 insert—

"**837A Meaning of "research and development".**

(1) The following provisions have effect for the purposes of, and subject to, the provisions of the Tax Acts which apply this section.

(2) "Research and development" means activities that fall to be treated as research and development in accordance with normal accounting practice.

This is subject to regulations under subsection (3) below.

(3) The Treasury may by regulations provide—

(a) that such activities as may be prescribed are not "research and development" for the purposes of this section, and

(b) that such other activities as may be prescribed are "research and development" for those purposes.

(4) Regulations under subsection (3) above may—

(a) make provision by reference to guidelines issued (whether before or after the coming into force of this section) by the Secretary of State, and

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(5) In subsection (2) above "normal accounting practice" means normal accounting practice in relation to the accounts of companies incorporated in a part of the United Kingdom.

(6) Unless otherwise expressly provided, "research and development" does not include oil and gas exploration and appraisal.".

Oil and gas exploration and appraisal

2 In Part XIX of the Taxes Act 1988 (general supplementary provisions), after the section inserted by paragraph 1 above insert—

"**837B Meaning of "oil and gas exploration and appraisal".**

(1) References in the Tax Acts to "oil and gas exploration and appraisal" are to activities carried out for the purpose of—

(a) searching for petroleum anywhere in an area, or

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) ascertaining—

(i) the extent or characteristics of any petroleum-bearing area, or

(ii) what the reserves of petroleum of any such area are,

so that it may be determined whether the petroleum is suitable for commercial exploitation.

(2) For this purpose "petroleum" has the meaning given in section 1 of the [M100]Petroleum Act 1998.".

Marginal Citations
M100 1998 c. 17.

PART II

CONSEQUENTIAL AMENDMENTS

Income and Corporation Taxes Act 1988 (c.1)

3 The [M101]Income and Corporation Taxes Act 1988 is amended as follows.

Marginal Citations
M101 1988 c. 1.

4 In section 495 (regional development grants), in subsection (1)(b) for "scientific research" substitute " research and development ".

5 (1) In Part IV (provisions relating to the Schedule D charge), after section 82 insert—

"**82A Expenditure on research and development.**

(1) Notwithstanding anything in section 74, where a person carrying on a trade incurs expenditure not of a capital nature on research and development—

(a) related to that trade, and

(b) directly undertaken by him or on his behalf,

the expenditure incurred may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) For this purpose expenditure on research and development does not include expenditure incurred in the acquisition of rights in, or arising out of, research and development.

Subject to that, it includes all expenditure incurred in carrying out, or providing facilities for carrying out, research and development.

(3) The reference in subsection (1) above to research and development related to a trade includes—

(a) research and development which may lead to or facilitate an extension of that trade;

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) research and development of a medical nature which has a special relation to the welfare of workers employed in that trade.

(4) The same expenditure may not be taken into account under this section in relation to more than one trade.

(5) In this section "research and development" has the meaning given by section 837A and includes oil and gas exploration and appraisal.

82B Payments to research associations, universities etc.

(1) Notwithstanding anything in section 74, where a person carrying on a trade—

(a) pays any sum to a scientific research association that—

(i) has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs, and

(ii) is for the time being approved for the purposes of this section by the Secretary of State, or

(b) pays any sum to be used for such scientific research as is mentioned in paragraph (a) above to any such university, college research institute or other similar institution as is for the time being approved for the purposes of this section by the Secretary of State,

the sum paid may be deducted as an expense in computing the profits of the trade for the purposes of tax.

(2) In this section "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge.

(3) The reference in this section to scientific research related to a class of trade includes—

(a) scientific research which may lead to or facilitate an extension of trades of that class;

(b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of that class.

(4) If a question arises under this section whether, or to what extent, any activities constitute or constituted scientific research, the Board shall refer the question for decision to the Secretary of State.

The decision of the Secretary of State is final.

(5) The same expenditure may not be taken into account under this section in relation to more than one trade.".

(2) Any approval given by the Secretary of State for the purposes of section 136(b) or (c) of the [M102]Capital Allowances Act 1990 and in force immediately before the commencement of this paragraph has effect as if given under section 82B(1)(a) or (b) of the Taxes Act 1988 as inserted by sub-paragraph (1) above.

(3) So far as is necessary for continuing its effect, any decision made by the Secretary of State under section 139(3) of the [M103]Capital Allowances Act 1990 before the commencement of this paragraph has effect as if given under section 82B(4) of the Taxes Act 1988 as inserted by sub-paragraph (1) above.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M102 1990 c. 1.
M103 1990 c. 1.

6 In Schedule 18 (group relief: equity holders and profits or assets available for distribution), in paragraph 1(6)(b)(iii) for "scientific research" substitute " research and development (within the meaning of Part VII of that Act) ".

Capital Allowances Act 1990 (c.1)

7 The Capital Allowances Act 1990 is amended as follows.

8 For "scientific research", wherever occurring, substitute " research and development ".

The provisions affected by this amendment are: section 4(5), (9) (twice) and (10), section 8(5), section 56D(1)(a), section 118(2), section 137(1) (twice), (1A) (twice), (3) (three times), section 138(1), (3A)(a) and (5)(b), section 138A(3), section 139(1)(b) (twice), (1)(c) (three times), (1)(d) (three times), section 158(2)(d) and section 161(2).

9 In section 137(1)(b) after "that research" insert " and development ".

10 In section 139 (supplementary provisions), in subsection (1) for paragraph (a) substitute—

"(a) "research and development" has the meaning given by section 837A of the principal Act and includes oil and gas exploration and appraisal;".

11 In section 161 after "other than an allowance under section 136" insert " (as that section had effect before it was repealed by the Finance Act 2000) ".

Taxation of Chargeable Gains Act 1992 (c.12)

12 (1) Section 195 of the [M104]Taxation of Chargeable Gains Act 1992 (allowance of certain drilling expenditure) is amended as follows.

(2) In subsections (2) and (3) for "scientific research" in each place substitute " research and development ".

(3) In subsection (3) after "that research" insert " and development ".

(4) After subsection (7) insert—

"(8) In this section "research and development" has the same meaning as in Part VII of the [M105]Capital Allowances Act 1990 (allowances for research and development expenditure)."

Marginal Citations
M104 1992 c. 12.
M105 1990 c. 1.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F362]SCHEDULE 20

Section 69(1).

. . . . . .

Textual Amendments

F362 Sch. 20 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 469, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

SCHEDULE 21

Section 69(2).

R&D TAX CREDITS: CONSEQUENTIAL AMENDMENTS

Interest

1 (1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) is amended as follows.

(2) In subsection (1) (payments which carry interest) after paragraph (c) insert "; or

(d) a payment of R&D tax credit falls to be made to a company under Schedule 20 to the Finance Act 2000 in respect of an accounting period,".

(3) After subsection (3) (material date for repayments of income tax etc.) insert—

"(3A) In relation to a payment of R&D tax credit falling within subsection (1)(d) above the material date is whichever is the later of—

(a) the filing date for the company's company tax return for the accounting period for which the R&D tax credit is claimed, and

(b) the date on which the company tax return or amended company tax return containing the claim for payment of the R&D tax credit is delivered to the Inland Revenue.

For this purpose "the filing date", in relation to a company tax return, has the same meaning as in Schedule 18 to the [M106]Finance Act 1998.".

(4) In subsection (8A) (recovery of overpaid interest)—

(a) in paragraph (a), after "subsection (1)(a)" insert " or (d) ",

(b) for paragraph (b) substitute—

"(b) there is—

(i) a change in the company's assessed liability to corporation tax, or

(ii) a change in the amount of the R&D tax credit payable to the company (which does not result in a change falling within sub-paragraph (i)),

other than a change which in whole or in part corrects an error made by the Board or an officer of the Board, and".

(5) After subsection (8B) insert—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(8BA) For the purposes of subsection (8A)(b) above, the cases where there is a change in the amount of the R&D tax credit payable to the company are those cases where an assessment, or an amendment to an assessment, is made to recover an amount of R&D tax credit paid to the company for the accounting period in question.".

Marginal Citations
M106 1998 c. 36.

Claim must be made in tax return

2 In Schedule 18 to the [M107]Finance Act 1998 (company tax returns, assessments and related matters), in paragraph 10 (other claims and elections to be included in return), for sub-paragraph (2) substitute—

"(2) A claim to which Part VIII, IX or IXA of this Schedule applies (claims for group relief, capital allowances or R&D tax credit) can only be made by being included in a company tax return (see paragraphs 67, 79 and 83B).".

Marginal Citations
M107 1998 c. 36.

Recovery of excessive R&D tax credit

3 In paragraph 52 of that Schedule (recovery of excessive repayments, etc.)—

(a) in sub-paragraph (2) (excessive repayments to which paragraphs 41 to 48 apply), before "or" at the end of paragraph (b) insert—

"(ba) R&D tax credit under Schedule 20 to the Finance Act 2000,";

and

(b) in sub-paragraph (5) (connection of assessment for excessive payment to an accounting period), before "or" at the end of paragraph (a) insert—

"(ab) an amount of R&D tax credit paid to a company for an accounting period,";

and

(c) at the end of that sub-paragraph after "(a)" insert " , (ab) ".

Claims for R&D tax credits

4 After Part IX of that Schedule (claims for capital allowances) insert—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"PART IXA

CLAIMS FOR R&D TAX CREDIT

Introduction

83A This Part of this Schedule applies to claims for R&D tax credits under Schedule 20 to the Finance Act 2000.

Claim to be included in company tax return

83B (1) A claim for an R&D tax credit must be made by being included in the claimant company's company tax return for the accounting period for which the claim is made.

(2) It may be included in the return originally made or by amendment.

Content of claim

83C A claim for an R&D tax credit must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made.

Amendment or withdrawal of claim

83D A claim for an R&D tax credit may be amended or withdrawn by the claimant company only by amending its company tax return.

Time limit for claims

83E (1) A claim for an R&D tax credit may be made, amended or withdrawn at any time up to the first anniversary of the filing date for the company tax return of the claimant company for the accounting period for which the claim is made.

(2) The claim may be made, amended or withdrawn at a later date if the Inland Revenue allow it.

Penalty

83F (1) The company is liable to a penalty where it—

(a) fraudulently or negligently makes a claim for an R&D tax credit which is incorrect, or

(b) discovers that a claim for an R&D tax credit made by it (neither fraudulently or negligently) is incorrect and does not remedy the error without unreasonable delay.

(2) The penalty is an amount not exceeding the excess R&D tax credit claimed, that is, the difference between—

(a) the amount of the R&D tax credit to which the company is entitled for the accounting period to which the claim relates, and

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(b) the amount of the R&D tax credit claimed by the company for that period.".

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.

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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);

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(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 [M108]Merchant Shipping Act 1995 or provisions of the law of a country or territory outside the United Kingdom corresponding to those regulations.

Marginal Citations

M108 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).

Status: *Point in time view as at 21/07/2009.*
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(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).

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(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)

C2 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.

[[F363](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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

Textual Amendments

F363 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[F364 Withdrawal notices

Textual Amendments

F364 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.

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(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—

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(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 [M109]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

M109 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.

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(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 [M110]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

M110 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 **[**[F365]by sea**]** of passengers,

(b) the carriage **[**[F366]by sea**]** of cargo,

(c) towage, salvage or other marine assistance **[**[F367]carried out at sea**]**, or

(d) transport **[**[F368]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

[[F369](a)**]** paragraph 20 (vessels excluded from being qualifying ships);

[[F370](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.

[[F371](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

F365 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)

F366 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)

F367 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)

Status: *Point in time view as at 21/07/2009.*
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F368 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)
F369 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)
F370 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)
F371 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;
[F372(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.

F373(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 M111Oil Taxation Act 1983 (dedicated mobile assets).

[F374(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

F372 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)
F373 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)**
F374 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

M111 1983 c. 56.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F375 Qualifying dredgers and tugs

Textual Amendments

F375 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 **[**F376for 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 **[**F377for 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.

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(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 **[**F378for 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.

[F379(6) This paragraph does not apply for the purposes of sub-paragraphs (2) to (5) of paragraph 20A (qualifying dredgers and tugs).**]**

Textual Amendments

F376 Words in Sch. 22 para. 22(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(2)**, 18(2)

F377 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)

F378 Words in Sch. 22 para. 22(5) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(4)**, 18(2)

F379 Sch. 22 para. 22(6) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 7(5)**, 18(2)

[F380Flagging: rule for ships other than dredgers and tugs

Textual Amendments

F380 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—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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;

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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×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).

Status: *Point in time view as at 21/07/2009.*
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(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.**]**

[*F381**Flagging: rule on first operation of qualifying dredger or tug*

Textual Amendments

F381 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.

Status: *Point in time view as at 21/07/2009.*
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(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.**]**

[*F382**Flagging: restrictions where ship ceases to be qualifying ship under paragraph 22E*

Textual Amendments

F382 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.

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(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.

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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.

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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.

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(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

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(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;

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(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)

C3 Sch. 22 para. 34(2) applied (31.8.2000) by S.I. 2000/2129, **reg. 25**

C4 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—

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(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.

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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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

[F383(3) In this paragraph "tax advantage" has the meaning given by section 840ZA of the Taxes Act 1988.**]**

(4) A F384... 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.

[F385In this sub-paragraph "lease", and "lessor" in relation to a lease, have the meaning given by paragraph 89(2).**]**

Textual Amendments

F383 Sch. 22 para. 41(3) substituted (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 1 para. 395** (with Sch. 2)

F384 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)

F385 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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**[F386]may be made**]** 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.

Textual Amendments

F386 Words in Sch. 22 para. 43(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 294(2)**

[*F387**The requirement to prove compliance with safety etc standards*

Textual Amendments

F387 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—

Status: *Point in time view as at 21/07/2009.*
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(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).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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;

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(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 **[**F388Part 5 of the Corporation Tax Act 2009**]** (loan relationships); **[**F389and**]**

F390(b) . . . . . .

(c) any credit falling to be brought into account **[**F391in accordance with Part 7 of the Corporation Tax Act 2009 (derivative contracts)**]**.

Textual Amendments

F388 Words in Sch. 22 para. 50(2)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(2)(a)** (with Sch. 2 Pts. 1, 2)

F389 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)**

F390 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

F391 Words in Sch. 22 para. 50(2)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(2)(b)** (with Sch. 2 Pts. 1, 2)

General exclusion of investment income

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

Status: *Point in time view as at 21/07/2009.*
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(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.

[F392(3) For the purposes of this paragraph "income from investments" includes anything chargeable to tax under—

(a) Part 4 of the Corporation Tax Act 2009 (property income),

(b) section 299 of that Act (loan relationships: non-trading profits),

(c) Chapter 5 of Part 10 of that Act (distributions from unauthorised unit trusts), or

(d) Chapter 7 of that Part (annual payments not otherwise charged).**]**

(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.).

Textual Amendments

F392 Sch. 22 para. 51(3) substituted for Sch. 22para. 51(3)(4) (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(3)** (with Sch. 2 Pts. 1, 2)

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).

Status: *Point in time view as at 21/07/2009.*
***Changes to legislation:** Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 [M112]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

M112 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,

[[F393]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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F393 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.

[F394(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

F394 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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**F395Part 5 of the Corporation Tax Act 2009**]** (loan relationships) to be brought into account in respect of a loan relationship of the company in respect of non-tonnage tax activities.

Textual Amendments

F395 Words in Sch. 22 para. 61(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(4)** (with Sch. 2 Pts. 1, 2)

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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 **[**F396Part 5 of the Corporation Tax Act 2009**]** (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.

Textual Amendments

F396 Words in Sch. 22 para. 62(6) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(5)** (with Sch. 2 Pts. 1, 2)

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 **[**F397Part 5 of the Corporation Tax Act 2009**]** (loan relationships);

[F398(b) any credit or debit falling to be brought into account **[**F399in accordance with Part 7 of the Corporation Tax Act 2009 (derivative contracts)**]** in relation to debt finance;**]**

(c) any exchange gain or loss within the meaning given by **[**F400section 475 of the Corporation Tax Act 2009**]** 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;

[F401(dd) where the tonnage tax company is the lessee under a long funding operating lease, the amount deductible (or the total amount that could, if there were no tonnage tax election, be deductible) in respect of payments under the lease in computing the profits of the lessee for the purposes of corporation tax (after first making against any such amount any reductions falling to be made by virtue of section 502K of the Taxes Act 1988); 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

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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.

[F402(4) In this paragraph "long funding operating lease" means a long funding operating lease for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act).**]**

Textual Amendments

F397 Words in Sch. 22 para. 63(2)(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(6)(a)** (with Sch. 2 Pts. 1, 2)

F398 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)**

F399 Words in Sch. 22 para. 63(2)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(6)(b)** (with Sch. 2 Pts. 1, 2)

F400 Words in Sch. 22 para. 63(2)(c) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 470(6)(c)** (with Sch. 2 Pts. 1, 2)

F401 Sch. 22 para. 63(2)(dd) substituted (with effect in accordance with Sch. 9 para. 9(4) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 9(2)**

F402 Sch. 22 para. 63(4) inserted (with effect in accordance with Sch. 9 para. 9(4) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 9(3)**

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.

Status: *Point in time view as at 21/07/2009.*
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(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:

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

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 [M113]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

M113 1992 c. 12.

Chargeable gains: roll-over relief for business assets

67 (1) Sections 152 and 153 of the [M114]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.

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(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)

C5 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

M114 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

[[F403](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

F403 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").

[[F404](2) In this paragraph "unrelieved qualifying expenditure" has the same meaning as in Chapter 5 of Part 2 of the Capital Allowances Act 2001.**]**

Status: *Point in time view as at 21/07/2009.*
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(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 **[**F405section 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

F404 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)**

F405 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.

[F406(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

F406 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—

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(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 **[**F407sections 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

F407 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.

[F408(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.**]**

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Textual Amendments

F408 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.

[F409(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.

F409(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

F409 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.

[F410(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.**]**

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Textual Amendments

F410 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 **[**F411Part 2 of the Capital Allowances Act 2001**]** to bring a disposal value into account.

In determining whether such an event has occurred **[**F411references 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

F411 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)**

Status: *Point in time view as at 21/07/2009.*
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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 **[**[F412]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—

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(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

F412 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 [M115]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

M115 1998 c. 36.

During: industrial buildings: mixed use

[[F413]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.**]**

Status: *Point in time view as at 21/07/2009.*
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Textual Amendments

F413 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 **[**F414balancing 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) **[**F415A "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—

[F416(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

F414 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)**

F415 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)**

F416 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

F417 84 . . . . . .

Textual Amendments

F417 Sch. 22 para. 84 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 27 para. 22**

Exit: plant and machinery

85 (1) If a company leaves tonnage tax—

(a) the amount of qualifying expenditure under **[**F418Part 2 of the Capital Allowances Act 2001 (plant and machinery allowances)**]** (plant and machinery), and

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

shall be determined under this paragraph.

[F419(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) **[**F420Where 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

F418 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)**

F419 Sch. 22 para. 85(1A)-(1C) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 13(2)**, 18(2)

F420 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

F421 86 . . . . . .

Textual Amendments

F421 Sch. 22 para. 86 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 27 para. 22**

Status: *Point in time view as at 21/07/2009.*
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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) **[**F422no annual investment allowance or first-year allowance is to be**]** be given in respect of that expenditure, and

[F423(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

F422 Words in Sch. 22 para. 87(1)(a) substituted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 24 para. 19(2)**

F423 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—

[F424"capital allowance" means any allowance under the Capital Allowances Act 2001;**]**

[F425"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.

[F426(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 **[**F427Capital Allowances Act 2001**]**.

Textual Amendments

F424 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)**

F425 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)**

F426 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)**

F427 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)**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

PART X

THE RING FENCE: CAPITAL ALLOWANCES: SHIP LEASING

Introduction

89 (1) In the case of a F428... lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax, the provisions of **[**F429Part 2 of the Capital Allowances Act 2001**]** have effect subject to and in accordance with the provisions of—

paragraphs 90 and 91 (defeased leasing),

[F430paragraphs 91A to 91F (long funding leases),**]**

paragraph 92 (sale and lease back arrangements, and

paragraphs 94 to 102 (quantitative restrictions on allowances).

[F431This is subject to paragraph 89A (exception for ordinary charters).**]**

[F432(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

F428 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)

F429 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)**

F430 Words in Sch. 22 para. 89(1) inserted (with effect in accordance with Sch. 8 para. 15 and Sch. 9 para. 10(5) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 10(2)**

F431 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)

F432 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)

[F433Quantitative restrictions not to apply to ordinary charters

Textual Amendments

F433 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

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(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 **F434**... 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.

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F434 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

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"third party" means a person not connected with either the lessor or the lessee.

[F435 Long funding leases: conditions for alternative treatment

Textual Amendments

F435 Sch. 22 paras. 91A-91F and cross-heading inserted (with effect in accordance with Sch. 8 para. 15 and Sch. 9 para. 10(5) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 10(3)**

91A (1) This paragraph applies if the lease would fall to be regarded as a long funding lease for the purposes of Part 2 of the Capital Allowances Act 2001, apart from this paragraph.

(2) The lease is to be treated for tax purposes as not being a long funding lease at any time when the lease—

(a) meets the conditions in sub-paragraph (3), or

(b) is expected to meet those conditions when the ship is first brought into use under the lease,

but this is subject to the qualification in sub-paragraph (4) and the exception in sub-paragraph (5).

(3) The conditions are—

(a) that the lease falls within paragraph 91B (lease to tonnage tax company or group),

(b) that the lease falls within paragraph 91C (tonnage tax company to operate and manage qualifying ship),

(c) that the lease falls within paragraph 91D (period and rate of sublease of qualifying ship).

(4) The condition in paragraph (c) of sub-paragraph (3) has to be met, or be expected to be met, only at times when the company within tonnage tax is leasing the ship to a company not within tonnage tax.

(5) The conditions in paragraphs (b) and (c) of sub-paragraph (3) do not have to be met, or be expected to be met, if the lease was finalised (within the meaning of Part 4 of Schedule 8 to the Finance Act 2006) before 1st April 2006.

(6) Sub-paragraph (2) is subject to paragraph 91E (anti-avoidance).

Lease to tonnage tax company or group

91B (1) A lease falls within this paragraph if—

(a) it is a lease of a qualifying ship provided directly to a company within tonnage tax, or

(b) it is a lease of a qualifying ship provided indirectly to a company within tonnage tax ("T") and sub-paragraph (2) applies.

(2) This sub-paragraph applies where—

(a) the owner of the qualifying ship provides it directly to a company ("C") under a lease,

(b) C provides the qualifying ship directly to T under a lease, and

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(c) C and T are in the same group.

Tonnage tax company to operate and manage qualifying ship

91C (1) A lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax ("T") falls within this paragraph if T is responsible—

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

(b) for defraying all expenses in connection with the ship, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during any period for which the ship is leased by T to another person.

(2) For the purposes of this paragraph, T is "responsible" if—

(a) he is responsible as principal, or

(b) he appoints another person ("P") to be responsible in his place and the condition in sub-paragraph (3) is met.

(3) The condition is that—

(a) P is not a person to whom the ship is leased by T and is not connected with such a person, or

(b) P is a company within tonnage tax.

(4) Any reference in this paragraph to a lease by T includes a reference to a contract of affreightment entered into by T that provides for the carriage of goods by the qualifying ship.

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

Period and rate of sublease of qualifying ship

91D (1) A lease of a qualifying ship provided, directly or indirectly, to a company within tonnage tax ("T") falls within this paragraph if each lease of the ship by T (a "sublease") to a company not within tonnage tax meets the conditions in sub-paragraph (2).

(2) The conditions are—

(a) that the amount payable under the sublease is the market rate, and

(b) that the period of the sublease does not exceed 7 years.

(3) For the purposes of this paragraph the market rate is the rate at which the qualifying ship could reasonably be expected to be leased, taking into account all the circumstances of the lease including the period of the lease, the date at which the lease commences and the size and description of the qualifying ship.

(4) For the purposes of this paragraph the period of a sublease is the period comprising—

(a) the term specified in the sublease, and

(b) any subsequent periods which meet the conditions in sub-paragraph (5).

(5) The conditions are that—

(a) there is an option to continue the sublease for that period, and

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(b) the amount payable under the sublease for that period is not the market rate applicable at the start of that period.

(6) Where—

(a) an option to continue a sublease for a period is exercised, and

(b) the amount payable under the sublease for that period is the market rate applicable at the start of that period,

the parties to the sublease are to be treated for the purposes of this paragraph as if the sublease had terminated immediately before the commencement of the period and a new sublease had immediately been entered into.

(7) Where a sublease is for an indefinite period, the period of the sublease is to be taken for the purposes of this paragraph to be a period of more than 7 years, unless the condition in sub-paragraph (8) is met.

(8) The condition is that—

(a) the amount payable under the sublease must be reviewed at least once every 7 years, and

(b) if the amount payable under the sublease is found on such a review not to be the market rate applicable at the time of the review, it must be changed to the market rate applicable at that time.

(9) Where there is an option to continue a sublease for an indefinite period, the period of the sublease is to be taken for the purposes of this paragraph to be a period of more than 7 years, unless the condition in sub-paragraph (10) is met.

(10) The condition is that the amount payable under the sublease for any period for which the option may be exercised is the market rate applicable at the start of that period, except that—

(a) the amount for the time being payable under the sublease may subsequently be changed at any time to the market rate applicable at that time,

(b) the amount payable under the sublease must be reviewed at least once every 7 years, and

(c) if the amount payable under the sublease is found on such a review not to be the market rate applicable at the time of the review, it must be changed to the market rate applicable at that time.

(11) Any reference in this paragraph to a lease by T includes a reference to a contract of affreightment entered into by T that provides for the carriage of goods by the qualifying ship.

Anti-avoidance

91E Paragraph 91A(2) does not have effect in the case of the lease if the main purpose, or one of the main purposes—

(a) of the leasing of the ship,

(b) of a series of transactions of which the leasing of the ship is one, or

(c) of any of the transactions in such a series,

was to obtain a writing down allowance determined without regard to any of paragraphs 90, 92 and 94 to 102 in respect of expenditure incurred by any person on the provision of the ship.

Status: *Point in time view as at 21/07/2009.*
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Consequences of paragraph 91A(2) ceasing to have effect

91F (1) This paragraph applies if sub-paragraph (2) of paragraph 91A ceases to have effect in relation to a lease (the "existing lease") because one or more of the conditions in sub-paragraph (3) of that paragraph cease to be met.

(2) In any such case it is to be assumed for tax purposes that—

(a) the existing lease terminates at the time of the cessation;

(b) another lease (the "new lease") is entered into immediately after the cessation;

(c) the term of the new lease is the portion of the term of the existing lease that remains unexpired at the time of the cessation;

(d) the date on which the cessation occurs is the date of both—

(i) the inception of the new lease, and

(ii) the commencement of the term of the new lease.

(3) Where this paragraph applies, subsection (4) of section 70X of the Capital Allowances Act 2001 (transfers, assignments etc by lessee) does not.

(4) For the purposes of this paragraph, the following expressions have the meaning given in Chapter 6A of Part 2 of the Capital Allowances Act 2001 (interpretation of provisions about long funding leases)—

"commencement", in relation to the term of a lease;

"inception", in relation to a lease;

"term", in relation to a lease;

"terminate".**]**

Sale and lease-back arrangements

92 (1) The lessor under the [F436]... 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, **[**[F437]subject 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).

Status: *Point in time view as at 21/07/2009.*
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(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.

[F438(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 **[**F439owned by him for the purposes of Part 2 of the Capital Allowances Act 2001**]**.

Textual Amendments

F436 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)

F437 Words in Sch. 22 para. 92(2) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 14(2)**, 18(2)

F438 Sch. 22 para. 92(3A) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 7 paras. 14(3)**, 18(2)

F439 Words in Sch. 22 para. 92(4) substituted (22.3.2001) by 2001 c. 2,

Certificates required to support claim by F440*... lessor*

Textual Amendments

F440 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 F441... 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 F442...—

(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 **[**F443and, if the lease is one that would (apart from paragraph 91A) fall to be regarded as a long funding lease for the purposes of Part 2 of the Capital Allowances Act 2001, that paragraph 91A(2) has effect 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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 [M116]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

F441 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)

F442 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)**

F443 Words in Sch. 22 para. 93(1)(b) inserted (with effect in accordance with Sch. 8 para 15 and Sch. 9 para. 10(5) to the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 10(4)**

Marginal Citations

M116 1970 c. 9.

Quantitative restrictions on allowances

94 (1) Where the lessor under the [F444]... 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 **[**[F445]annual investment allowance or**]** 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 **[**[F446]20%**]** 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 **[**[F447]Part 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 **[**[F448]20%**]** 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

F444 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)

Status: *Point in time view as at 21/07/2009.*
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F445 Words in Sch. 22 para. 94(2) inserted (with effect in accordance with Sch. 24 para. 23 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 24 para. 19(3)**

F446 Word in Sch. 22 para. 94(3)(a) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(6)(a)**

F447 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)**

F448 Word in Sch. 22 para. 94(4) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(6)(a)**

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 **[**[F449]20%**]** or 10% pool in respect of ships leased by him.

Textual Amendments

F449 Word in Sch. 22 para. 95(4) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(6)(b)**

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 **[**[F450]the 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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

F450 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 **[**F451 20%**]** 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 **[**F451 20%**]** 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.

Textual Amendments

F451 Word in Sch. 22 para. 97(2)(3) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(6)(c)**

Quantitative restrictions: change of circumstances bringing case within restrictions

98 (1) The provisions of this paragraph apply where—

(a) the lessor under a F452... 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

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(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 **[**F453 20%**]** 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

F452 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)

F453 Word in Sch. 22 para. 98(8) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(6)(d)**

Quantitative restrictions: change of circumstances taking case out of restrictions

99 (1) The provisions of this paragraph apply where—

(a) the lessor under a F454... 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.

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(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 **[**F455 20%**]** 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 **[**F456 the appropriate rate**]** 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.

[F457 (5) The appropriate rate is 20%; but if for any part of the period mentioned in sub-paragraph (4) the rate of writing-down allowance to which the lessor would have been entitled under section 56(1) of the Capital Allowances Act 2001 if paragraph 94 had not applied was more than 20%, for that part of the period that rate is the appropriate rate.**]**

Textual Amendments

F454 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)

F455 Word in Sch. 22 para. 99(2) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(6)(e)**

F456 Words in Sch. 22 para. 99(4) substituted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(7)(a)**

F457 Sch. 22 para. 99(5) inserted (with effect in accordance with s. 80(8)-(12) of the amending Act) by Finance Act 2008 (c. 9), **s. 80(7)(b)**

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 **[**F458 section 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 **[**F459 the unrelieved qualifying expenditure

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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

F458 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)**

F459 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.

[F460(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;

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(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 [M117]Continental Shelf Act 1964, and

(b) any waters within the seaward limits of the territorial sea of the United Kingdom.

Textual Amendments

F460 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

M117 1964 c. 29.

Vessels to which special provisions do not apply

[F461]105 . . . . . .

Textual Amendments

F461 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).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**F462Part 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 **[**F463Part 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 **[**F464section 61(1)**]** of that Act apart from this sub-paragraph.

Textual Amendments

F462 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)

F463 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)**

F464 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.

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(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.

[[F465](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.

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(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 **[**[F466]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

F465 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)**

F466 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 **[**[F467]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

F467 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)**

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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

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(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.

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(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—

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(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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**F468may be made**]** 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.

Textual Amendments

F468 Words in Sch. 22 para. 126(5)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 294(3)**

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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 [M118]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
M118 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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**F469Part 2 of the Capital Allowances Act 2001 (plant and machinery allowances)**]**, and

(b) the amount of **[**F470the residue of qualifying expenditure under Part 3 of that Act(industrial buildings allowances)**]**,

as may be specified in the regulations.

Textual Amendments

F469 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)**

F470 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)**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

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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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**F471spouse 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 **[**F472Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)**]**.

Textual Amendments

F471 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**

F472 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.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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
F473	**F473**
. . .	. . .
group	paragraph 116
group election	paragraph 7(1)(b)
initial period	paragraph 10(1) (and see paragraph 11(2))
Inland Revenue	paragraph 145

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F474]lease (and lessor and lessee) (in Part X)**]**	**[**[F474]paragraph 89(2)**]**
leaving (or entering) tonnage tax	paragraph 2(2)
member of group	paragraph 116
[[F475]Member States' registers**]**	**[**[F475]paragraph 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)
[[F475]qualifying dredger**]**	**[**[F475]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)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

F473 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)

F474 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)

F475 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)

[F476]SCHEDULE 23

Section 87.

. . . . . .

Textual Amendments

F476 Sch. 23 repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 523, **Sch. 3** (with Sch. 2)

SCHEDULE 24

Section 91(2).

NEW SCHEDULE 4A TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

The Schedule inserted after Schedule 4 to the [M119]Taxation of Chargeable Gains Act 1992 is as follows:

"SCHEDULE 4A

DISPOSAL OF INTEREST IN SETTLED PROPERTY: DEEMED DISPOSAL OF UNDERLYING ASSETS

Circumstances in which this Schedule applies

1 This Schedule applies where there is a disposal of an interest in settled property for consideration.

Meaning of "interest in settled propert"y

2 (1) For the purposes of this Schedule an "interest in settled property" means any interest created by or arising under a settlement.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) This includes any right to, or in connection with, the enjoyment of a benefit—

(a) created by or arising directly under a settlement, or

(b) arising as a result of the exercise of a discretion or power—

(i) by the trustees of a settlement, or

(ii) by any person in relation to settled property.

Meaning of "for consideratio"n

3 (1) For the purposes of this Schedule a disposal is "for consideration" if consideration is given or received by any person for, or otherwise in connection with, any transaction by virtue of which the disposal is effected.

(2) In determining for the purposes of this Schedule whether a disposal is for consideration there shall be disregarded any consideration consisting of another interest under the same settlement that has not previously been disposed of by any person for consideration.

(3) In this Schedule "consideration" means actual consideration, as opposed to consideration deemed to be given by any provision of this Act.

Deemed disposal of underlying assets

4 (1) Where this Schedule applies and the following conditions are met—

(a) the condition as to UK residence of the trustees (see paragraph 5),

(b) the condition as to UK residence of the settlor (see paragraph 6), and

(c) the condition as to settlor interest in the settlement (see paragraph 7),

the trustees of the settlement are treated for all purposes of this Act as disposing of and immediately reacquiring the relevant underlying assets.

This is referred to below in this Schedule as the "deemed disposal".

(2) In paragraphs 5, 6 and 7 "the relevant year of assessment" means the year of assessment in which the disposal of the interest in settled property is made.

(3) The deemed disposal is treated as taking place when the disposal of the interest in settled property is made.

This is subject to paragraph 13(3)(a) where the beginning of the disposal and its effective completion fall in different years of assessment.

Condition as to UK residence of trustees

5 (1) The condition as to UK residence of the trustees is that the trustees of the settlement were either—

(a) resident in the United Kingdom during the whole or part of the relevant year of assessment, or

(b) ordinarily resident in the United Kingdom during that year.

(2) For this purpose the trustees shall not be regarded as resident or ordinarily resident in the United Kingdom at any time when they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) This paragraph has effect subject to paragraph 13(3)(b) where the beginning of the disposal and its effective completion fall in different years of assessment.

Condition as to UK residence of settlor

6 (1) The condition as to UK residence of the settlor is that in the relevant year of assessment, or any of the previous five years of assessment, a person who is a settlor in relation to the settlement either—

(a) was resident in the United Kingdom during the whole or part of the year, or

(b) was ordinarily resident in the United Kingdom during the year.

(2) Sub-paragraph (1) has effect subject to paragraph 13(3)(c) where the beginning of the disposal and its effective completion fall in different years of assessment.

(3) No account shall be taken for the purposes of this paragraph of any year of assessment before the year 1999-00.

Condition as to settlor interest in the settlement

7 (1) The condition as to settlor interest in the settlement is that at any time in the relevant period the settlement—

(a) was a settlor-interested settlement, or

(b) comprised property derived, directly or indirectly, from a settlement that at any time in that period was a settlor-interested settlement.

(2) The relevant period for this purpose is the period—

(a) beginning two years before the beginning of the relevant year of assessment, and

(b) ending with the date of the disposal of the interest in settled property.

This is subject to paragraph 13(3)(d) where the beginning of the disposal and its effective completion fall in different years of assessment.

(3) The relevant period shall not be treated as beginning before 6th April 1999.

If the rule in sub-paragraph (2) (or, where relevant, that in paragraph 13(3)(d)) would produce that result, the relevant period shall be treated as beginning on that date.

(4) For the purposes of this paragraph a "settlor-interested settlement" means a settlement in which a person who is a settlor in relation to the settlement has an interest or had an interest at any time in the relevant period.

The provisions of section 77(2) to (5) and (8) apply to determine for the purposes of this paragraph whether a settlor has (or had) an interest in the settlement.

(5) The condition as to settlor interest in the settlement is treated as not met in a year of assessment—

(a) where the settlor dies during the year, or

(b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—

(i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse, or

(ii) the fact that a benefit is enjoyed by his spouse,

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where the spouse dies, or the settlor and the spouse cease to be married, during the year.

The relevant underlying assets

8 (1) Where the interest disposed of is a right in relation to a specific fund or other defined part of the settled property, the deemed disposal is of the whole or part of each of the assets comprised in that fund or part.

In any other case the deemed disposal is of the whole or part of each of the assets comprised in the settled property.

(2) Where the interest disposed of is an interest in a specific fraction or amount of the income or capital of—

(a) the settled property, or

(b) a specific fund or other defined part of the settled property,

the deemed disposal is of a corresponding part of each of the assets comprised in the settled property or, as the case may be, each of the assets comprised in that fund or part.

In any other case the deemed disposal is of the whole of each of the assets so comprised.

(3) Sub-paragraphs (1) and (2) have effect subject to paragraph 13(4)(a) where the identity of the underlying assets changes during the period between the beginning of the disposal and its effective completion.

(4) Where part only of an asset is comprised in a specific fund or other defined part of the settled property, that part of the asset shall be treated for the purposes of this Schedule as if it were a separate asset.

Character of deemed disposal

9 (1) The deemed disposal shall be taken—

(a) to be for a consideration equal to the whole or, as the case may be, a corresponding part of the market value of each of the assets concerned, and

(b) to be a disposal under a bargain at arm's length.

(2) Sub-paragraph (1)(a) shall be read with paragraph 13(4)(b) where the value of the assets changes during the period between the beginning of the disposal and its effective completion.

Avoidance of double-counting

10 (1) The provisions of this paragraph have effect to prevent there being both a deemed disposal under this Schedule in relation to the disposal of an interest in settled property and a chargeable disposal of the interest itself.

A "chargeable disposal" means one in relation to which section 76(1) does not apply.

(2) If there would be a chargeable gain on the disposal of the interest in the settlement, then—

(a) if—

(i) the chargeable gain on the disposal of the interest would be greater than the net chargeable gain on the deemed disposal, or

(ii) there would be no net chargeable gain on the deemed disposal,

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the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no chargeable gain is treated as accruing on the disposal of the interest in the settlement.

(3) If there would be an allowable loss on the disposal of the interest in the settlement, then—

(a) if there would be a greater net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply and no allowable loss is treated as accruing on the disposal of the interest in the settlement.

(4) If there would be neither a chargeable gain nor an allowable loss on the disposal of the interest in the settlement, then—

(a) if there would be a net allowable loss on the deemed disposal, the provisions of this Schedule as to a deemed disposal do not apply; and

(b) in any other case, the provisions of this Schedule as to a deemed disposal apply.

(5) For the purposes of this paragraph—

(a) there is a net chargeable gain on a deemed disposal if the aggregate of the chargeable gains accruing to the trustees in respect of the assets involved exceeds the aggregate of the allowable losses so accruing; and

(b) there is a net allowable loss on a deemed disposal if the aggregate of the allowable losses accruing to the trustees in respect of the assets involved exceeds the aggregate of the chargeable gains so accruing.

Recovery of tax from person disposing of interest

11 (1) This paragraph applies where chargeable gains accrue to the trustees on the deemed disposal and—

(a) tax becomes chargeable on and is paid by the trustees in respect of those gains, or

(b) a person who is a settlor in relation to the settlement recovers from the trustees under section 78 an amount of tax in respect of those gains.

(2) The trustees are entitled to recover the amount of the tax referred to in sub-paragraph (1)(a) or (b) from the person who disposed of the interest in the settlement.

(3) For this purpose the trustees may require an inspector to give that person a certificate specifying—

(a) the amount of the gains in question, and

(b) the amount of tax that has been paid.

Any such certificate shall be conclusive evidence of the facts stated in it.

Meaning of "settlo"r

12 The provisions of section 79(1) and (3) to (5) (meaning of "settlor") apply for the purposes of this Schedule as they apply for the purposes of sections 77 and 78.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Cases where there is a period between the beginning of the disposal and its effective completion

13 (1) This paragraph applies in a case where there is a period between the beginning of the disposal of an interest in settled property and the effective completion of the disposal.

(2) For the purposes of this Schedule—

(a) the beginning of the disposal is—

(i) in the case of a disposal involving the exercise of an option, when the option is granted, and

(ii) in any other case of a disposal under a contract, when the contract is entered into; and

(b) the effective completion of the disposal means the point at which the person acquiring the interest becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the disposal.

(3) Where this paragraph applies and the beginning of the disposal and its effective completion fall in different years of assessment—

(a) the deemed disposal is treated as taking place in the year of assessment in which the disposal is effectively completed;

(b) the condition in paragraph 5 (condition as to residence of trustees) is treated as met if it is met in relation to either of those years of assessment or any intervening year;

(c) the condition in paragraph 6 (condition as to residence of settlor) is treated as met if it is met in relation to either or both of those years of assessment or any intervening year; and

(d) the relevant period for the purposes of paragraph 7 (condition as to settlor interest) is the period—

(i) beginning two years before the beginning of the first of those years of assessment, and

(ii) ending with the effective completion of the disposal.

(4) If the identity or value of the underlying assets changes during the period between the beginning of the disposal and its effective completion, the following provisions apply—

(a) an asset is treated as comprised in the settled property and, where relevant, in any specific fund or other defined part of the settled property to which the deemed disposal relates if it is so comprised at any time in that period;

(b) the market value of any asset for the purposes of the deemed disposal is taken to be its highest market value at any time during that period.

(5) The provisions in sub-paragraph (4) do not apply to an asset if during that period it is disposed of by the trustees under a bargain at arm's length and is not reacquired.

Exception: maintenance funds for historic buildings

14 If the trustees of a settlement have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) shall have effect in the case of a settlement or part of a settlement in relation to a year of assessment, this Schedule does not apply in relation to the settlement or part for that year.".

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M119 1992 c. 12).

Marginal Citations
M119 1992 c. 12).

SCHEDULE 25

Section 92(2).

NEW SCHEDULE 4B TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

The Schedule inserted after Schedule 4A to the [M120]Taxation of Chargeable Gains Act 1992 is as follows:

"SCHEDULE 4B

TRANSFERS OF VALUE BY TRUSTEES LINKED WITH TRUSTEE BORROWING

General scheme of this Schedule

1 (1) This Schedule applies where trustees of a settlement—

(a) make a transfer of value (see paragraph 2) in a year of assessment in which the settlement is within section 77, 86 or 87 (see paragraph 3), and

(b) in accordance with this Schedule the transfer of value is treated as linked with trustee borrowing (see paragraphs 4 to 9).

(2) Where this Schedule applies the trustees are treated as disposing of and immediately reacquiring the whole or a proportion of each of the chargeable assets that continue to form part of the settled property (see paragraphs 10 to 13).

Transfers of value

2 (1) For the purposes of this Schedule trustees of a settlement make a transfer of value if they—

(a) lend money or any other asset to any person,

(b) transfer an asset to any person and receive either no consideration or a consideration whose amount or value is less than the market value of the asset transferred, or

(c) issue a security of any description to any person and receive either no consideration or a consideration whose amount or value is less than the value of the security.

(2) References in this Schedule to "the material time", in relation to a transfer of value, are to the time when the loan is made, the transfer is effectively completed or the security is issued.

Status: *Point in time view as at 21/07/2009.*
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The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

(3) In the case of a loan, the amount of value transferred is taken to be the market value of the asset.

(4) In the case of a transfer, the amount of value transferred is taken to be—

(a) if any part of the value of the asset is attributable to trustee borrowing, the market value of the asset;

(b) if no part of the value of the asset is attributable to trustee borrowing, the market value of the asset reduced by the amount or value of any consideration received for it.

Paragraph 12 below explains what is meant by the value of an asset being attributable to trustee borrowing.

(5) In the case of the issue of a security, the amount of value transferred shall be taken to be the value of the security reduced by the amount or value of any consideration received by the trustees for it.

(6) References in this paragraph to the value of an asset are to its value immediately before the material time, unless the asset does not exist before that time in which case its value immediately after that time shall be taken.

Settlements within section 77, 86 or 87

3 (1) This paragraph explains what is meant in this Schedule by a settlement being "within section 77, 86 or 87" in a year of assessment.

(2) A settlement is "within section 77" in a year of assessment if, assuming—

(a) that there were chargeable gains accruing to the trustees from the disposal of any or all of the settled property, and

(b) that the condition in subsection (1)(b) of that section was met,

chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 77.

(3) A settlement is "within section 86" in a year of assessment if, assuming—

(a) that there were chargeable gains accruing to the trustees by virtue of disposals of any of the settled property originating from the settlor, and

(b) that the other elements of the condition in subsection (1)(e) of that section were met,

chargeable gains would, under that section, be treated as accruing to the settlor in that year.

Expressions used in this sub-paragraph have the same meaning as in section 86.

(4) A settlement is "within section 87" in a year of assessment if, assuming—

(a) there were trust gains for the year within the meaning of subsection (2) of that section, and

(b) that beneficiaries of the settlement received capital payments from the trustees in that year or had received such payments in an earlier year,

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chargeable gains would, under that section or section 89(2), be treated as accruing to the beneficiaries in that year.

Expressions used in this sub-paragraph have the same meaning as in section 87.

Trustee borrowing

4 (1) For the purposes of this Schedule trustees of a settlement are treated as borrowing if—

(a) money or any other asset is lent to them, or

(b) an asset is transferred to them and in connection with the transfer the trustees assume a contractual obligation (whether absolute or conditional) to restore or transfer to any person that or any other asset.

In the following provisions of this Schedule "loan obligation" includes any such obligation as is mentioned in paragraph (b).

(2) The amount borrowed (the "proceeds" of the borrowing) is taken to be—

(a) in the case of a loan, the market value of the asset;

(b) in the case of a transfer, the market value of the asset reduced by the amount or value of any consideration received for it.

(3) References in this paragraph to the market value of an asset are to its market value immediately before the loan is made, or the transfer is effectively completed, unless the asset does not exist before that time in which case its market value immediately after that time shall be taken.

The effective completion of a transfer means the point at which the person acquiring the asset becomes for practical purposes unconditionally entitled to the whole of the intended subject matter of the transfer.

Transfer of value linked with trustee borrowing

5 (1) For the purposes of this Schedule a transfer of value by trustees is treated as linked with trustee borrowing if at the material time there is outstanding trustee borrowing.

(2) For the purposes of this Schedule there is outstanding trustee borrowing at any time to the extent that—

(a) any loan obligation is outstanding, and

(b) there are proceeds of trustee borrowing that have not been either—

(i) applied for normal trust purposes, or

(ii) taken into account under this Schedule in relation to an earlier transfer of value.

(3) An amount of trustee borrowing is "taken into account" under this Schedule in relation to a transfer of value if the transfer of value is in accordance with this Schedule treated as linked with trustee borrowing.

The amount so taken into account is—

(a) the amount of the value transferred by that transfer of value, or

(b) if less, the amount of outstanding trustee borrowing at the material time in relation to that transfer of value.

Status: *Point in time view as at 21/07/2009.*
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Application of proceeds of borrowing for normal trust purposes

6 (1) For the purposes of this Schedule the proceeds of trustee borrowing are applied for normal trust purposes in the following circumstances, and not otherwise.

(2) They are applied for normal trust purposes if they are applied by the trustees in making a payment in respect of an ordinary trust asset and the following conditions are met—

(a) the payment is made under a transaction at arm's length or is not more than the payment that would be made if the transaction were at arm's length;

(b) the asset forms part of the settled property immediately after the material time or, if it does not do so, the alternative condition in paragraph 8 below is met; and

(c) the sum paid is (or but for section 17 or 39 would be) allowable under section 38 as a deduction in computing a gain accruing to the trustees on a disposal of the asset.

(3) They are applied for normal trust purposes if—

(a) they are applied by the trustees in wholly or partly discharging a loan obligation of the trustees, and

(b) the whole of the proceeds of the borrowing connected with that obligation (or all but an insignificant amount) have been applied by the trustees for normal trust purposes.

(4) They are applied for normal trust purposes if they are applied by the trustees in making payments to meet bona fide current expenses incurred by them in administering the settlement or any of the settled property.

Ordinary trust assets

7 (1) The following are "ordinary trust assets" for the purposes of this Schedule—

(a) shares or securities;

(b) tangible property, whether movable or immovable, or a lease of such property;

(c) property not within paragraph (a) or (b) which is used for the purposes of a trade, profession or vocation carried on—

(i) by the trustees, or

(ii) by a beneficiary who has an interest in possession in the settled property;

(d) any right in or over, or any interest in, property of a description within paragraph (b) or (c).

(2) In sub-paragraph (1)(a) "securities" has the same meaning as in section 132.

The alternative condition for assets no longer part of the settled property

8 (1) The alternative condition referred to in paragraph 6(2)(b) in relation to an asset which no longer forms part of the settled property is that—

(a) the asset is treated as having been disposed of by virtue of section 24(1), or

(b) one or more ordinary trust assets which taken together directly or indirectly represent the asset—

(i) form part of the settled property immediately after the material time, or

(ii) are treated as having been disposed of by virtue of section 24(1).

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(2) Where there has been a part disposal of the asset, the condition in paragraph 6(2)(b) and the provisions of sub-paragraph (1) above may be applied in any combination in relation to the subject matter of the part disposal and what remains.

(3) References in this paragraph to an asset include part of an asset.

Normal trust purposes: power to make provision by regulations

9 (1) The Treasury may make provision by regulations as to the circumstances in which the proceeds of trustee borrowing are to be treated for the purposes of this Schedule as applied for normal trust purposes.

(2) The regulations may—

(a) add to, amend or repeal any of the provisions of paragraphs 6 to 8 above,

(b) make different provision for different cases, and

(c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

Deemed disposal of remaining chargeable assets

10 (1) Where in accordance with this Schedule a transfer of value by trustees is treated as linked with trustee borrowing, the trustees are treated for all purposes of this Act—

(a) as having at the material time disposed of, and

(b) as having immediately reacquired,

the whole or a proportion (see paragraph 11) of each of the chargeable assets that form part of the settled property immediately after the material time ("the remaining chargeable assets").

(2) The deemed disposal and reacquisition shall be taken—

(a) to be for a consideration equal to the whole or, as the case may be, a proportion of the market value of each of those assets, and

(b) to be under a bargain at arm's length.

(3) For the purposes of sub-paragraph (1) an asset is a chargeable asset if a gain on a disposal of the asset by the trustees at the material time would be a chargeable gain.

Whether deemed disposal is of whole or a proportion of the assets

11 (1) This paragraph provides for determining whether the deemed disposal and reacquisition is of the whole or a proportion of each of the remaining chargeable assets.

(2) If the amount of value transferred—

(a) is less than the amount of outstanding trustee borrowing, and

(b) is also less than the effective value of the remaining chargeable assets,

the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:

$$\frac{VT}{EV}$$

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where—

VT is the amount of value transferred, and

EV is the effective value of the remaining chargeable assets.

(3) If the amount of value transferred—

(a) is not less than the amount of outstanding trustee borrowing, but

(b) is less than the effective value of the remaining chargeable assets,

the deemed disposal and reacquisition is of the proportion of each of the remaining chargeable assets given by:

$$\frac{TB}{EV}$$

where—

TB is the amount of outstanding trustee borrowing, and

EV is the effective value of the remaining chargeable assets.

(4) In any other case the deemed disposal and reacquisition is of the whole of each of the remaining chargeable assets.

(5) For the purposes of this paragraph the effective value of the remaining chargeable assets means the aggregate market value of those assets reduced by so much of that value as is attributable to trustee borrowing.

(6) References in this paragraph to amounts or values, except in relation to the amount of value transferred, are to amounts or values immediately after the material time.

Value attributable to trustee borrowing

12 (1) For the purposes of this Schedule the value of an asset is attributable to trustee borrowing to the extent determined in accordance with the following rules.

(2) Where the asset itself has been borrowed by trustees, the value of the asset is attributable to trustee borrowing to the extent that the proceeds of that borrowing have not been applied for normal trust purposes.

This is in addition to any extent to which the value of the asset may be attributable to trustee borrowing by virtue of sub-paragraph (3).

(3) The value of any asset is attributable to trustee borrowing to the extent that—

(a) the trustees have applied the proceeds of trustee borrowing in acquiring or enhancing the value of the asset, or

(b) the asset represents directly or indirectly an asset whose value was attributable to the trustees having so applied the proceeds of trustee borrowing.

(4) For the purposes of this paragraph an amount is applied by the trustees in acquiring or enhancing the value of an asset if it is applied wholly and exclusively by them—

(a) as consideration in money or money's worth for the acquisition of the asset,

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(b) for the purpose of enhancing the value of the asset in a way that is reflected in the state or nature of the asset,

(c) in establishing, preserving or defending their title to, or to a right over, the asset, or

(d) where the asset is a holding of shares or securities that is treated as a single asset, by way of consideration in money or money's worth for additional shares or securities forming part of the same holding.

(5) Trustees are treated as applying the proceeds of borrowing as mentioned in sub-paragraph (4) if and to the extent that at the time the expenditure is incurred there is outstanding trustee borrowing.

(6) In sub-paragraph (4)(d) "securities" has the same meaning as in section 132.

Assets and transfers

13 (1) In this Schedule any reference to an asset includes money expressed in sterling.

References to the value or market value of such an asset are to its amount.

(2) Subject to sub-paragraph (3), references in this Schedule to the transfer of an asset include anything that is or is treated as a disposal of the asset for the purposes of this Act, or would be if sub-paragraph (1) above applied generally for the purposes of this Act.

(3) References in this Schedule to a transfer of an asset do not include a transfer of an asset that is created by the part disposal of another asset.".

Marginal Citations
M120 1992 c. 12.

Marginal Citations
M120 1992 c. 12.

SCHEDULE 26

Section 92(4).

TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

PART I

NEW SCHEDULE 4C TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

1 The Schedule inserted after Schedule 4B to the [M121]Taxation of Chargeable Gains Act 1992 is as follows:

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"SCHEDULE 4C

TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

Introduction

1 (1) This Schedule applies where in any year of assessment a chargeable gain or allowable loss accrues by virtue of Schedule 4B to trustees of a settlement within section 87.

For this purpose a settlement is "within section 87" for a year of assessment if in that year the conditions specified in section 87(1) or section 88(1) are met in relation to the trustees of the settlement.

(2) The provisions of this Schedule have effect in relation to any such chargeable gain or allowable loss as is mentioned in sub-paragraph (1) above in place of the provisions of sections 86A to 95.

(3) No account shall be taken—

(a) of any such chargeable gain or allowable loss in computing the trust gains for a year of assessment in accordance with sections 87 to 89; or

(b) of any chargeable gain or allowable loss to which those sections apply in computing the Schedule 4B trust gains in accordance with this Schedule.

General scheme of this Schedule

2 The general scheme of this Schedule is that—

(a) Schedule 4B trust gains are attributed to beneficiaries—

(i) of the transferor settlement, or

(ii) of any transferee settlement,

who have received capital payments from the trustees; and

(b) any allowable loss accruing by virtue of Schedule 4B may only be set against a chargeable gain so accruing.

Computation of Schedule 4B trust gains

3 (1) This paragraph explains what is meant for the purposes of this Schedule by "Schedule 4B trust gains".

(2) The Schedule 4B trust gains are computed in relation to each transfer of value to which that Schedule applies.

(3) In relation to a transfer of value the amount of the Schedule 4B trust gains for the purposes of this Schedule is given by—

$$CA - SG - AL$$

where—

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CA is the chargeable amount computed under paragraph 4 or 5 below,

SG is the amount of any gains attributed to the settlor that fall to be deducted under paragraph 6 below, and

AL is the amount of any allowable losses that may be deducted under paragraph 7 below.

Chargeable amount: non-resident settlement

4 (1) If the transfer of value is made in a year of assessment during which the trustees of the transferor settlement are at no time resident or ordinarily resident in the United Kingdom the chargeable amount is computed under this paragraph.

(2) Where this paragraph applies the chargeable amount is the amount on which the trustees would have been chargeable to tax under section 2(2) by virtue of Schedule 4B if they had been resident or ordinarily resident in the United Kingdom in the year.

Chargeable amount: dual resident settlement

5 (1) If the transfer of value is made in a year of assessment where—

(a) the trustees of the transferor settlement are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, and

(b) at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,

the chargeable amount is computed under this paragraph.

(2) Where this paragraph applies the chargeable amount is the lesser of—

(a) the amount on which the trustees would be chargeable to tax under section 2(2) by virtue of Schedule 4B on the assumption that the double taxation relief arrangements did not apply, and

(b) the amount on which the trustees would be so chargeable to tax by virtue of disposals of protected assets.

(3) For this purpose "protected assets" has the meaning given by section 88(4).

Gains attributed to settlor

6 (1) For the purposes of this Schedule the chargeable amount in relation to a transfer of value shall be reduced by the amount of any chargeable gains arising by virtue of that transfer of value that—

(a) are by virtue of section 86(4) treated as accruing to the settlor, or

(b) where section 10A applies, are treated by virtue of that section (as it has effect subject to paragraph 12 below) as accruing to the settlor in the year of return.

(2) In determining for the purposes of sub-paragraph (1)(a) the amount of chargeable gains arising by virtue of a transfer of value that are treated as

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accruing to the settlor, there shall be disregarded any losses which arise otherwise than by virtue of Schedule 4B.

(3) In computing the chargeable amount in relation to a transfer of value the effect of sections 77 to 79 shall be ignored.

Reduction for allowable losses

7 (1) An allowable loss arising under Schedule 4B in relation to a transfer of value by the trustees of a settlement may be taken into account in accordance with this paragraph to reduce for the purposes of this Schedule the chargeable amount in relation to another transfer of value by those trustees.

(2) Any such allowable loss goes first to reduce chargeable amounts arising from other transfers of value made in the same year of assessment.

If there is more than one chargeable amount and the aggregate amount of the allowable losses is less than the aggregate of the chargeable amounts, each of the chargeable amounts is reduced proportionately.

(3) If in any year of assessment the aggregate amount of the allowable losses exceeds the aggregate of the chargeable amounts, the excess shall be carried forward to the next year of assessment and treated for the purposes of this paragraph as if it were an allowable loss arising in relation to a transfer of value made in that year.

(4) Any reduction of a chargeable amount under this paragraph is made after any deduction under paragraph 6.

Attribution of gains to beneficiaries

8 (1) The Schedule 4B trust gains relating to a transfer of value shall be treated as chargeable gains accruing to beneficiaries—

(a) of the transferor settlement, and

(b) of any transferee settlement,

in accordance with the following rules.

(2) The Schedule 4B trust gains shall be treated as chargeable gains accruing to beneficiaries who—

(a) receive capital payments from the trustees in the year of assessment in which the transfer of value is made, or

(b) have received such payments in any earlier year,

to the extent that such payments exceed the amount of any gains attributed to the beneficiaries under section 87(4) or 89(2).

(3) Any Schedule 4B trust gains remaining after the application of sub-paragraph (2) in relation to the year of assessment in which the transfer of value was made shall be carried forward to the following year of assessment and treated for the purposes of this paragraph as if they were gains from a transfer of value made in that year.

(4) The attribution of chargeable gains to beneficiaries under this paragraph shall be made in proportion to, but shall not exceed, the amounts of the capital payments received by them.

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Attribution of gains to beneficiaries: supplementary

9 (1) A capital payment shall be left out of account—

(a) for the purposes of paragraph 8, to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient in an earlier year of assessment; and

(b) for the purposes of sections 87(4) and (5) and 89(2), to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient under paragraph 8.

(2) A beneficiary shall not be charged to tax on chargeable gains treated by virtue of paragraph 8 as accruing to him in any year unless he is domiciled in the United Kingdom at some time in that year.

(3) For the purposes of paragraph 8 capital payments received—

(a) before 21st March 2000, or

(b) before the year of assessment preceding the year of assessment in which the transfer of value is made,

shall be disregarded.

Residence of trustees from whom capital payment received

10 (1) Subject to sub-paragraph (2) below, it is immaterial for the purposes of paragraph 8 that the trustees of the transferor settlement, or any transferee settlement, are or have at any time been resident or ordinarily resident in the United Kingdom.

(2) A capital payment received by a beneficiary of a settlement from the trustees in a year of assessment—

(a) during the whole of which the trustees are resident in the United Kingdom, or

(b) in which the trustees are ordinarily resident in the United Kingdom,

shall be disregarded for the purposes of paragraph 8 if it was made before, but was not made in anticipation of, chargeable gains accruing under Schedule 4B or of a transfer of value being made to which that Schedule applies.

(3) For the purposes of sub-paragraph (2) the trustees of a settlement shall not be regarded as resident or ordinarily resident in the United Kingdom at any time when they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

Taper relief

11 Without prejudice to so much of this Schedule as requires section 2A to be applied in the computation of the amount of Schedule 4B trust gains, chargeable gains that are treated as accruing to beneficiaries under this Schedule shall not be eligible for taper relief.

Attribution of gains to settlor in section 10A cases

12 (1) This paragraph applies where by virtue of section 10A an amount of gains—

Status: *Point in time view as at 21/07/2009.*
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(a) arising under Schedule 4B in an intervening year, and

(b) falling within section 86(1)(e),

would (apart from this Schedule) be treated as accruing to a person ("the settlor") in the year of return.

(2) Where this paragraph applies, only so much (if any) of the Schedule 4B trust gains falling within section 86(1)(e) as exceeds the amount charged to beneficiaries shall fall in accordance with section 10A to be attributed to the settlor for the year of return.

(3) The "amount charged to beneficiaries" means, subject to sub-paragraph (4) below, the total of the amounts on which beneficiaries of the transferor or transferee settlements are charged to tax under this Schedule by reference to those gains for all the intervening years.

(4) Where the property comprised in the transferor settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment taken into account for the purposes of paragraph 8 above as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account in computing the amount charged to beneficiaries.

(5) Expressions used in this paragraph and section 10A have the same meanings in this paragraph as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in sub-paragraph (4) above to property originating from the settlor as it applies for the purposes of that Schedule.

Increase in tax payable under this Schedule

13 (1) This paragraph applies where—

(a) a capital payment is made by the trustees of a settlement,

(b) the payment is made in circumstances where paragraph 8 above treats chargeable gains as accruing in respect of the payment, and

(c) a beneficiary is charged to tax in respect of the payment by virtue of that paragraph.

(2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under sub-paragraph (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.

(3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this paragraph) carried interest for the chargeable period at the specified rate.

The "specified rate" means the rate for the time being specified in section 91(3).

(4) The chargeable period is the period which—

(a) begins with the later of the 2 days specified in sub-paragraph (5) below, and

(b) ends with 30th November in the year of assessment following that in which the capital payment is made.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) The 2 days are—

(a) 1st December in the year of assessment following that in which the transfer of value was made, and

(b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.

Interpretation

14 (1) In this Schedule—

(a) "transfer of value" has the same meaning as in Schedule 4B; and

(b) references to the time at which a transfer of value was made are to the time which is the material time for the purposes of that Schedule.

(2) In this Schedule, in relation to a transfer of value—

(a) references to the transferor settlement are to the settlement the trustees of which made the transfer of value; and

(b) references to a transferee settlement are to any settlement of which the settled property includes property representing, directly or indirectly, the proceeds of the transfer of value.

(3) References in this Schedule to beneficiaries of a settlement include—

(a) persons who have ceased to be beneficiaries by the time the chargeable gains accrue, and

(b) persons who were beneficiaries of the settlement before it ceased to exist,

but who were beneficiaries of the settlement at a time in a previous year of assessment when a capital payment was made to them.".

Marginal Citations

M121 1992 c. 12.

PART II

CONSEQUENTIAL AMENDMENTS

Taxation of Chargeable Gains Act 1992 (c.12)

2 In section 90 of the [M122]Taxation of Chargeable Gains Act 1992 (transfers between settlements), after subsection (4) add—

"(5) This section shall not apply—

(a) to a transfer to the extent that it is in accordance with Schedule 4B treated as linked with trustee borrowing; or

(b) to any chargeable gains arising by virtue of that Schedule.".

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M122 1992 c. 12.

3 In section 96 of the [M123]Taxation of Chargeable Gains Act 1992 (payments by and to companies), in subsections (1) and (2) after "sections 87 to 90" insert " and Schedule 4C "

Marginal Citations
M123 1992 c. 12.

4 In section 97 of the [M124]Taxation of Chargeable Gains Act 1992 (supplementary provisions)—

(a) in subsections (1), (3)(a), (4) and (7), after "sections 86A to 96", and

(b) in subsections (5) and (8), after "sections 86A to 90",

insert " and Schedule 4C ".

Marginal Citations
M124 1992 c. 12.

5 In section 98 of the [M125]Taxation of Chargeable Gains Act 1992, after subsection (2) add—

"(3) The provisions of subsections (1) and (2) above have effect as if the references to sections 87 to 90 included references to Schedule 4C.".

Marginal Citations
M125 1992 c. 12.

Taxes Act 1988

[F477]6 . . . . . .

Textual Amendments
F477 Sch. 26 para. 6 repealed (6.4.2007) by Income Tax Act 2007 (c. 3), s. 1034(1), **Sch. 3 Pt. 1** (with Sch. 2)

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 27

Section 97.

GROUP RELIEF IN CASE OF NON-RESIDENT COMPANIES ETC.

PART I

AMENDMENTS OF CHAPTER IV OF PART X OF THE TAXES ACT 1988

Availability of relief

1 In section 402 of the Taxes Act 1988 (availability of group relief), after subsection (3) insert—

"(3A) Group relief is not available unless the following condition is satisfied in the case of both the surrendering company and the claimant company.

(3B) The condition is that the company is resident in the United Kingdom or is a non-resident company carrying on a trade in the United Kingdom through a branch or agency.".

2 (1) In section 413 of that Act (interpretation of Chapter IV), in subsection (2), insert the following definitions at the appropriate places—

""company" means any body corporate;"

""non-resident company" means a company that is not resident in the United Kingdom;".

(2) In subsection (5) of that section, the words from the beginning to "Kingdom; and", paragraph (c) and the word "or" immediately preceding that paragraph shall cease to have effect.

Limits on amount of relief

3 In section 403A of that Act (limits on group relief), in subsection (10) (qualifying conditions)—

F478(a) . . . . . .

(b) in paragraph (b), after "the conditions specified in section 402(3) for the making of that claim" insert " and the condition specified in section 402(3B) ".

Textual Amendments

F478 Sch. 27 para. 3(a) repealed (with effect in accordance with Sch. 1 to the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(2)**

4 After section 403C of that Act insert—

"**403D Relief for or in respect of non-resident companies.**

(1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated as so available except in so far as—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company's chargeable profits for that period for corporation tax purposes;

(b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and

(c) no part of—

(i) the loss or other amount, or

(ii) any amount brought into account in computing it,

corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.

(2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—

(a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and

(b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.

(3) In this section "non-UK profits", in relation to any person, means amounts which—

(a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and

(b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period,

or amounts taken into account in computing such amounts.

(4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.

(5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—

(a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or

(b) an amount brought into account in computing the amount of any profits falling to be so excluded.

(6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the deductibility of any amount dependent on whether or not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company's chargeable profits.

(8) In this section "double taxation arrangements" means any arrangements having effect by virtue of section 788.

(9) In this section "foreign tax" means any tax chargeable under the law of any territory outside the United Kingdom which—

(a) is charged on income and corresponds to United Kingdom income tax; or

(b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;

but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

(10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.

403E Relief for overseas losses of UK resident companies.

(1) In determining, for the purposes of this Chapter, the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by any company resident in the United Kingdom ("the resident company"), a loss or other amount shall be treated as not so available in so far as it—

(a) is attributable to an overseas branch or agency of that company, and

(b) is a loss or other amount falling within subsection (2) below.

(2) Subject to subsection (3) below, a loss or other amount attributable to an overseas branch or agency falls within this subsection if the whole or any part of it is, or represents, an amount which, for the purposes of foreign tax under the law of the territory where that branch or agency is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.

(3) A loss or other amount does not fall within subsection (2) above if it is referable to life assurance business (within the meaning of Chapter I of Part XII) carried on by the resident company.

(4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas branch or agency of a company is a reference to the loss or other amount (if any) that would be surrenderable by that company by way of group relief if the amount surrenderable by that company were computed—

(a) by reference only to that branch or agency, and

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(b) by the application in relation to that branch or agency of principles corresponding in all material respects to those applicable for the purposes of corporation tax to the computation of the equivalent losses or other amounts in the case of the UK branch or agency of a non-resident company.

(5) In subsection (4)(b) above the reference to the UK branch or agency of a non-resident company is a reference to any branch or agency through which a company which is not resident in the United Kingdom carries on a trade in the United Kingdom.

(6) References in this section to an overseas branch or agency of a company are references to any branch or agency through which that company carries on a trade in a territory outside the United Kingdom.

(7) In this section "foreign tax" and "non-UK profits" have the same meaning as in section 403D.

(8) Where the deductibility of any amount for the purposes of any foreign tax is dependent on whether or not that amount, or a corresponding amount, is deductible for tax purposes in the United Kingdom, this section shall have effect as if that amount were deductible for the purposes of that foreign tax if, and only if, the resident company is treated for the purposes of that tax as resident in the territory where that tax is charged.".

Amendments of Schedule 18 to the Taxes Act 1988

5 (1) Schedule 18 to that Act (group relief: equity holders and profits or assets available for distribution) is amended as follows.

(2) In paragraph 1 (meaning of equity holders), in sub-paragraphs (3)(d) and (5)(c), for "in the Official List of the Stock Exchange" substitute " on a recognised stock exchange ".

(3) In paragraph 2 (meaning of profits available for distribution), after sub-paragraph (1) insert—

"(1A) The total profits of a non-resident company arising in an accounting period shall be determined for the purposes of sub-paragraph (1)(a) above as if it were resident in the United Kingdom in that accounting period.".

(4) In paragraph 4 (cases where rights to a distribution or assets are limited), after sub-paragraph (4) insert—

"(5) In determining in a case in which paragraph 5F below applies whether any rights in respect of dividend or interest or assets on a winding-up are limited as mentioned in sub-paragraph (1) above, the limitations so mentioned shall be treated as not including so much of any limitation as has effect as mentioned in sub-paragraph (2) of that paragraph.".

(5) After paragraph 5E insert—

"5F (1) This paragraph has effect, in the cases specified in sub-paragraphs (2) and (3) below, for the following purposes ("the relevant purposes")—

(a) the determination, in a case where the surrendering company or the claimant company is a non-resident company, of whether that

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company is a 75 per cent. or a 90 per cent. subsidiary of another company;

(b) the determination of a member's share in a consortium in any case where the surrendering company or the claimant company is a non-resident company owned by the consortium.

(2) The first case in which this paragraph applies is where any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up of that company,

holds, as such an equity holder of the non-resident company, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which have effect wholly or partly by reference to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(3) The second case in which this paragraph applies is where—

(a) option arrangements (within the meaning of paragraph 5B above) exist at any time in the relevant accounting period; and

(b) the percentage which, in any of the states of affairs referred to in sub-paragraph (5) of that paragraph, is—

(i) the percentage of profits to which any of the equity holders of the non-resident company would be entitled on the profit distribution, or

(ii) the percentage of assets to which any of the equity holders of that company would be entitled on the notional winding-up,

would differ, at any of the times so referred to, according to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(4) If the percentage of profits to which, on the profit distribution, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 2(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(5) If the percentage of assets to which, on the notional winding-up, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 3(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(6) If the percentage that falls to be taken for any of the purposes of section 403C or section 413(7) would, under any of paragraphs 4 to 5E above, be the lower or lowest of a number of percentages determined on different bases—

(a) each of the percentages falling to be compared for the purposes of that paragraph shall be determined both—

(i) on the basis specified in sub-paragraph (7) below, and

(ii) without making the assumption required for a determination on that basis;

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and

(b) the comparison required by that paragraph, so far as made for the relevant purposes, shall be made using, in the case of each of the percentages to be compared, only the lower of the percentages determined under paragraph (a) above.

(7) That basis is the assumption—

(a) that the profit distribution or the distribution on the notional winding-up is confined to a distribution of profits or assets that are referable to the non-resident company's UK trade; and

(b) that the amount of the distribution does not exceed whichever is the greater of £100 and the following amount—

(i) in the case of a profit distribution, the amount (if any) of so much of the company's chargeable profits for the relevant accounting period as is referable to its UK trade; and

(ii) in the case of a distribution on a notional winding-up, its net UK assets;

and

(c) that none of the ordinary equity holders has an entitlement to a proportion of the profits or assets mentioned in paragraph (a) above that is any greater than the proportion of the distribution to which he would be entitled if—

(i) the assumptions specified in paragraphs (a) and (b) above were disregarded; but

(ii) it were assumed, where it is less, that the distribution is equal to £100.

(8) In sub-paragraph (7) above—

"net UK assets", in relation to a non-resident company, means the excess, if any, of the total amount of the assets of the company that are referable to its UK trade (as shown in the relevant balance sheet), over the total amount of those of its liabilities (as so shown) which are so referable and are not liabilities to equity holders as such; and

"ordinary equity holder" means any equity holder whose entitlement on the profit distribution or the distribution on the notional winding-up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to the non-resident company's UK trade.

(9) In sub-paragraph (8) above "relevant balance sheet", in relation to a company, means any balance sheet relating to its affairs as at the end of the relevant accounting period.

(10) For the purposes of this paragraph profits, assets or liabilities of a non-resident company shall be taken to be referable to its UK trade to the extent only that they—

(a) are attributable to, or used for the purposes of, activities the income and gains from which are, or (were there any) would be, brought into account in computing the company's chargeable profits for any accounting period, and

(b) are not attributable to, or used for the purposes of, any activities which (within the meaning of section 403D) are made exempt from

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corporation tax for any accounting period by any double taxation arrangements.".

(6) In paragraph 6 (indirect entitlements), for "5E" substitute " 5F ".

Commencement

6 (1) Nothing in this Part of this Schedule has effect in relation to any determination whether the qualifying conditions for the purposes of section 403A(9) of the Taxes Act 1988 were met at any time before 1st April 2000.

(2) Nothing in section 403E of the Taxes Act 1988 (inserted by paragraph 4 above) has effect in relation to the determination of the amount available for surrender—

(a) for an accounting period ending before 1st April 2000, or

(b) for an accounting period beginning before 1st April 2000 and ending on or after that date if or to the extent that the loss or other amount is attributable to the part of the period falling before that date.

Any apportionment necessary for the purposes of paragraph (b) shall be made on a time basis except where that would work in an unjust or unreasonable manner in relation to any person, in which case it shall be made in such manner as may be just and reasonable.

(3) Paragraph 5 above has effect in relation to the application of Schedule 18 of the Taxes Act 1988, for any purpose, in relation to times on or after (but not before) 1st April 2000.

(4) Subject to the above provisions of this paragraph, this Part of this Schedule has effect in relation to accounting periods ending on or after 1st April 2000.

PART II

CONSEQUENTIAL AMENDMENTS

Section 76 of the Taxes Act 1988

F479 7 . . . . . .

Textual Amendments

F479 Sch. 27 para. 7 repealed (22.7.2004) (with effect in accordance with s. 42 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(3)**

Section 434A of the Taxes Act 1988

F480 8 . . . . . .

Textual Amendments

F480 Sch. 27 para. 8 repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(7)**

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Section 502 of the Taxes Act 1988

9 In section 502 of the Taxes Act 1988 (interpretation of Chapter V of Part XII), for the words in subsection (3) after paragraph (c) substitute—

"(3A) Section 413(6) applies for the purposes of subsection (3)(c) above but as if section 413 were modified as follows—

(a) as if the definition of "company" in subsection (2) were omitted;

(b) as if at the beginning of subsection (5) there were inserted "References in this Chapter to a company apply only to bodies corporate resident in the United Kingdom; and"; and

(c) as if in that subsection, after the word "receipt", in the second place where it occurs, there were inserted "; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom. "".

Schedule 24 to the Taxes Act 1988

10 In Schedule 24 to the Taxes Act 1988 (assumptions for calculating chargeable profits etc. of foreign companies), make paragraph 5 sub-paragraph (1) of that paragraph; and after that sub-paragraph insert—

"(2) Where, under Chapter IV of Part X, any relief is in fact surrendered by the company and allowed to another company by way of group relief, it shall be assumed that the chargeable profits of the company, apart from this paragraph, are to be increased by an amount of additional profits equal to the amount of the relief so surrendered and allowed.".

Schedule 18 to the Finance Act 1998

11 In paragraph 68 of Schedule 18 to the [M126]Finance Act 1998 (contents of claim for group relief), after sub-paragraph (2) insert—

"(3) A claim for group relief must also state whether or not there is a company mentioned in sub-paragraph (4) that was not resident in the United Kingdom in either or both of the following periods—

(a) the accounting period of the surrendering company to which the surrender relates,

(b) the corresponding accounting period of the claimant company.

(4) Those companies are the claimant company, the surrendering company and any other company by reference to which—

(a) the claimant company and the surrendering company are members of the same group, or

(b) the conditions specified in section 402(3) of the Taxes Act 1988 for the making of the claim are satisfied in the case of the claimant company and the surrendering company.".

Marginal Citations
M126 1998 c. 36.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement

12 (1) Paragraphs 7, 8, 10 and 11 have effect in relation to accounting periods ending on or after 1st April 2000.

(2) Paragraph 9 has effect wherever the enactment amended by that paragraph falls to be construed, so far as it applies provisions of Chapter IV of Part X of the Taxes Act 1988, as applying those provisions as amended by Part I of this Schedule.

SCHEDULE 28

Section 98.

RECOVERY OF TAX PAYABLE BY NON-RESIDENT COMPANY

Introduction

1 This Schedule applies where—

(a) an amount of corporation tax has been assessed on a company ("the taxpayer company") for an accounting period,

(b) the whole or any part of that amount is unpaid at the end of the period of six months after the time when it became payable, and

(c) that company is not resident in the United Kingdom.

Companies that may be required to pay unpaid tax

2 (1) The following companies may, by notice under this Schedule, be required to pay the unpaid tax—

(a) any company which was, at any time in the relevant period, a member of the same group of companies as the taxpayer company;

(b) any company which, at any time in the relevant period, was a member of a consortium which at that time owned the taxpayer company;

(c) any company which, at any time in the relevant period, was a member of the same group of companies as a company which at that time was a member of a consortium owning the taxpayer company.

(2) In this Schedule "the relevant period", in relation to an amount of unpaid corporation tax for an accounting period of the taxpayer company, means the period—

(a) beginning with whichever is the later of—

(i) twelve months before the start of that accounting period, and

(ii) 1st April 2000; and

(b) ending when the unpaid tax first became payable.

(3) Two companies shall be regarded as members of the same group of companies—

(a) for the purposes of sub-paragraph (1)(a), whenever one is the 51% subsidiary of the other or both are 51% subsidiaries of a third company;

(b) for the purposes of sub-paragraph (1)(c), whenever one would be treated as a member of the same group of companies as the other for the purposes of Chapter IV of Part X of the Taxes Act 1988 (group relief).

(4) For the purposes of this Schedule—

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(a) a company shall be treated as a member of a consortium at any time when it would fall to be so treated for the purposes of Chapter IV of Part X of the Taxes Act 1988 (group relief); and

(b) references to a company being owned by a consortium shall be construed in the same way as any such references falling for the purposes of that Chapter to be construed in accordance with section 413(6)(b) of the Taxes Act 1988.

Notice requiring payment of unpaid tax

3 (1) The Board may serve a notice on any company within paragraph 2(1) requiring it, within 30 days of the service of the notice, to pay—

(a) the amount of the unpaid tax, or

(b) in a consortium case, the appropriate proportion of that amount (see paragraph 5).

(2) The notice must state—

(a) the amount of corporation tax assessed on the taxpayer company for the accounting period in question that remains unpaid,

(b) the date when it first became payable, and

(c) the amount required to be paid by the company on which the notice is served.

(3) The notice has effect—

(a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and

(b) for the purposes of appeals,

as if it were a notice of assessment and that amount were an amount of tax due from that company.

(4) In section 87A(3) of the [M127]Taxes Management Act 1970 (date from which interest runs in the case of an assessment of a company's tax on another person)—

(a) after "In relation to corporation tax assessed" insert " or treated as assessed ", and

(b) after "Schedule 18 to the Finance Act 1998" insert " or Schedule 28 of the Finance Act 2000 ".

Marginal Citations
M127 1970 c. 9.

Time limit for giving notice

4 (1) Any notice under this Schedule must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the accounting period in question is finally determined.

(2) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the [M128]Finance Act 1998 (determination where no return delivered or return incomplete), that date shall be taken to be the date on which the determination is made.

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(3) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), that date shall be taken to be the latest of—

(a) the last date on which notice of enquiry may be given into the return containing the self-assessment;

(b) if notice of enquiry is given, 30 days after the enquiry is completed;

(c) if more than one notice of enquiry is given, 30 days after the last notice of completion;

(d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;

(e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

(4) If the unpaid tax is charged in a discovery assessment, that date shall be taken to be—

(a) where there is no appeal against the assessment, the date when the tax becomes due and payable;

(b) where there is such an appeal, the date on which the appeal is finally determined.

Marginal Citations

M128 1998 c. 36.

Limit on amount payable in consortium case

5 (1) In a consortium case, the amount that the company may be required to pay by notice under this Schedule is limited to the proportion of the unpaid tax corresponding—

(a) in the case of a company falling only within paragraph 2(1)(b), to the share which that company has had in the consortium for the relevant period;

(b) in the case of a company falling only within paragraph 2(1)(c), to the share which companies that have been members of the same group of companies as that company have had in the consortium for the relevant period;

(c) in the case of a company falling within paragraph 2(1)(b) and (c), to whichever is the greater of the amounts given by paragraphs (a) and (b) above.

(2) A "consortium case" means a case where the company falls within paragraph 2(1)(b) or (c) (or both), but does not fall within paragraph 2(1)(a).

(3) A member's share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by that member;

(b) the percentage to which that member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company;

(c) the percentage to which that member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding-up.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

If any of those percentages has fluctuated in the relevant period, the average percentage over the period shall be taken.

(4) Schedule 18 to the Taxes Act 1988 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) above as it applies for the purposes of section 403C of that Act.

Supplementary provisions

6 (1) In this Schedule "company" means any body corporate.

(2) A company that has paid an amount in pursuance of a notice under this Schedule may recover that amount from the taxpayer company.

(3) A payment in pursuance of a notice under this Schedule is not allowed as a deduction in computing income or profits for any tax purposes.

SCHEDULE 29

Section 102.

CHARGEABLE GAINS: NON-RESIDENT COMPANIES AND GROUPS ETC.

PART I

APPLICATION OF TAXATION OF CHARGEABLE GAINS ACT 1992

Main amendments

1 (1) In section 170 of the [M129]Taxation of Chargeable Gains Act 1992 (groups of companies: interpretation), the following provisions shall cease to have effect—

(a) paragraph (a) of subsection (2) (which provides that references to companies apply only to companies resident in the United Kingdom); and

(b) in subsection (9)(b) the words "(although resident in the United Kingdom)".

(2) The above amendments (referred to in this Schedule as "the main amendments") have effect in accordance with the following provisions of this Schedule.

Marginal Citations
M129 1992 c. 12.

Transfers within a group

2 (1) Section 171 of the [M130]Taxation of Chargeable Gains Act 1992 (transfers within a group: general provisions) is amended as follows.

(2) For subsection (1) (treatment for corporation tax purposes of transfer of asset within group) substitute—

"(1) Where—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) a company ("company A") disposes of an asset to another company ("company B") at a time when both companies are members of the same group, and

(b) the conditions in subsection (1A) below are met,

company A and company B are treated for the purposes of corporation tax on chargeable gains as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal.

(1A) The conditions referred to in subsection (1)(b) above are—

(a) that company A is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately before that time, and

(b) that company B is resident in the United Kingdom at the time of the disposal, or the asset is a chargeable asset in relation to that company immediately after that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(3) In subsection (2)—

(a) in paragraph (a), for "a member of a group of companies" substitute " company B ", and

(b) in the closing words, for "a member of a group of companies" substitute " company A ".

(4) In subsection (3) for "the company first mentioned in that subsection" substitute " company A ".

(5) After subsection (5) add—

"(6) Subsection (1) above applies notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition.

But where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale or acquisition to which this section applies.".

(6) The above amendments, and the main amendments so far as they apply for the purposes of section 171, have effect in relation to disposals on or after 1st April 2000.

Marginal Citations

M130 1992 c. 12.

Transfer of United Kingdom branch or agency

3 (1) Section 172 of the [M131]Taxation of Chargeable Gains Act 1992 (transfer of United Kingdom branch or agency) shall cease to have effect.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The above amendment has effect in relation to disposals on or after 1st April 2000.

Marginal Citations
M131 1992 c. 12.

De-grouping charge

4 (1) Section 179 of the [M132]Taxation of Chargeable Gains Act 1992 (company ceasing to be member of group) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies where—

(a) a company ("company A") acquires an asset from another company ("company B") at a time when company B is a member of a group,

(b) the conditions in subsection (1A) below are met, and

(c) company A ceases to be a member of that group within the period of six years after the time of the acquisition.

References in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.

(1A) The conditions referred to in subsection (1)(b) above are—

(a) that company A is resident in the United Kingdom at the time it acquires the asset, or the asset is a chargeable asset in relation to that company immediately after that time, and

(b) that company B is resident in the United Kingdom at the time of that acquisition, or the asset is a chargeable asset in relation to that company immediately before that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(3) In subsection (2A)—

(a) in paragraph (a)—

(i) after "a company" insert " ("company A") ", and

(ii) after "another company" insert " ("company B") ",

(b) in paragraph (b) for "that company's" substitute " company A's ",

(c) in paragraph (c) for "the company that made the acquisition" substitute " company A ", and

(d) in the closing words for "the company's" substitute " company A's ".

(4) In subsections (2B) (three times), (2C), (2D), (3) (three times), (4) (twice), (10)(c) and (13) for "the chargeable company" substitute " company A ".

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Subsections (11) and (12) (which are superseded by the provision made by paragraph 9 below) shall cease to have effect.

(6) The amendments made by sub-paragraphs (2) to (4) above, and the main amendments so far as they apply for the purposes of section 179, have effect in relation to assets acquired on or after 1st April 2000.

(7) The amendments made by sub-paragraph (5) above have effect in relation to gains accruing on or after 1st April 2000.

Marginal Citations
M132 1992 c. 12.

Reconstruction or amalgamation involving transfer of business

5 (1) Section 139 of the [M133]Taxation of Chargeable Gains Act 1992 (reconstruction or amalgamation involving transfer of business) is amended as follows.

(2) In subsection (1) (transfer of business on basis of no gain and no loss) for paragraph (b) (requirement that both companies are resident in the United Kingdom) substitute—

"(b) the conditions in subsection (1A) below are met in relation to the assets included in the transfer, and".

(3) After subsection (1) insert—

"(1A) The conditions referred to in subsection (1)(b) above are—

(a) that the company acquiring the assets is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time, and

(b) that the company from which the assets are acquired is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately before that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(4) The above amendments have effect in relation to disposals made on or after 1st April 2000.

Marginal Citations
M133 1992 c. 12.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Deemed disposal on non-resident ceasing to carry on trade in United Kingdom through branch or agency

6 (1) Section 25 of the [M134]Taxation of Chargeable Gains Act 1992 (non-residents: deemed disposals) is amended as follows.

(2) After subsection (3) insert—

"(3A) Subsection (3) above shall not apply if—

(a) the person ceasing to carry on the trade is a company, and

(b) the trade is transferred to another company in circumstances in which section 139 or 171 applies in relation to the assets transferred.".

(3) Subsection (4) shall cease to have effect.

(4) The amendment in sub-paragraph (2) above has effect in relation to cases where section 139 or, as the case may be, section 171 has effect as amended by this Schedule.

(5) The amendment in sub-paragraph (3) above has effect in relation to cases where section 139 has effect as amended by this Schedule.

Marginal Citations
M134 1992 c. 12.

Restriction on set-off of pre-entry losses

7 (1) In Schedule 7A to the Taxation of Chargeable Gains Act 1992 (restriction on set-off of pre-entry losses), paragraph 1 (application and construction of Schedule) is amended as follows.

(2) In sub-paragraph (3)—

(a) for "it became a member of the relevant group" substitute " the relevant event occurred in relation to it ", and

(b) for "that group" substitute " the relevant group ".

(3) After sub-paragraph (3) insert—

"(3A) In this paragraph references to the relevant event occurring in relation to a company—

(a) in a case in which—

(i) the company was resident in the United Kingdom at the time when it became a member of the relevant group, or

(ii) the asset was a chargeable asset in relation to the company at that time,

are references to the company becoming a member of that group;

(b) in any other case, are references to whichever is the first of—

(i) the company becoming resident in the United Kingdom, or

(ii) the asset becoming a chargeable asset in relation to the company.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes."

(4) In sub-paragraph (4)(a) for "it became a member of the relevant group" substitute " the relevant event occurred in relation to it ".

(5) In sub-paragraph (5)—

(a) in the opening words, for the words from "the company" to "the relevant group" substitute " the relevant event occurred in relation to the company by reference to which that asset is a pre-entry asset ",

(b) in paragraph (a), for "a company has become a member of the relevant group" substitute " a relevant event has occurred in relation to a company ", and

(c) in paragraph (b), for "a company became a member of the relevant group" substitute " a relevant event occurred in relation to a company ".

(6) The above amendments, and the main amendments so far as they apply for the purposes of Schedule 7A, have effect in relation to the amount to be included in respect of chargeable gains in a company's total profits for any accounting period ending on or after 21st March 2000.

(7) Any question whether a company was, in relation to times before 21st March 2000, a member of a group shall be determined by reference to the position under the [M135]Taxation of Chargeable Gains Act 1992 as it stood before the main amendments.

(8) Any question whether a company was, in relation to times before 6th April 1992, a member of a group shall be determined by reference to the position under the [M136]Capital Gains Tax Act 1979.

(9) Where—

(a) immediately before the time when the main amendments have effect in relation to a company in accordance with sub-paragraph (6), the company was not a member of a group of companies for the purposes of section 170 of the Taxation of Chargeable Gains Act 1992 (as it stood before the main amendments), and

(b) immediately after that time, the company is a member of a group of companies for the purposes of that section (as amended by the main amendments),

Schedule 7A to that Act shall not have effect in relation to any losses accruing to the company before that time or any chargeable assets (within the meaning of paragraph 1(3A) of that Schedule) held by it immediately before that time.

Marginal Citations

M135 1992 c. 12.

M136 1979 c. 14.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Restrictions on setting losses against pre-entry gains

F481 8 . . . . . .

Textual Amendments

F481 Sch. 29 para. 8 repealed (with effect in accordance with s. 70(6)-(11) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(9)**

Recovery of unpaid tax

9 (1) For sections 190 and 191 of the Taxation of Chargeable Gains Act 1992 substitute—

"**190 Tax recoverable from another group company or controlling director.**

(1) This section applies where—

(a) a chargeable gain has accrued to a company ("the taxpayer company"),

(b) the condition in subsection (2) below is met, and

(c) the whole or part of the corporation tax assessed on the company for the accounting period in which the gain accrued ("the relevant accounting period") is unpaid at the end of the period of six months after it became payable.

(2) The condition referred to in subsection (1)(b) above is—

(a) that the taxpayer company is resident in the United Kingdom at the time when the gain accrued, or

(b) that the gain forms part of the taxpayer company's chargeable profits for corporation tax purposes by virtue of section 10(3).

(3) The following persons may, by notice under this section, be required to pay the unpaid tax—

(a) if the taxpayer company was a member of a group at the time when the gain accrued—

(i) a company which was at that time the principal company of the group, and

(ii) any other company which in any part of the period of twelve months ending with that time was a member of that group and owned the asset disposed of, or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset; and

(b) if the gain forms part of the chargeable profits of the taxpayer company for corporation tax purposes by virtue of section 10(3), any person who is, or during the period of twelve months ending with the time when the gain accrued was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company.

(4) The Board may serve a notice on a person within subsection (3) above requiring him, within 30 days of the service of the notice, to pay—

(a) the amount which remains unpaid of the corporation tax assessed on the taxpayer company for the relevant accounting period, or

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) if less, an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(5) The notice must state—

(a) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid,

(b) the date when it first became payable, and

(c) the amount required to be paid by the person on whom the notice is served.

(6) The notice has effect—

(a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and

(b) for the purposes of appeals,

as if it were a notice of assessment and that amount were an amount of tax due from that person.

(7) Any notice under this section must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined.

(8) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the [M137]Finance Act 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (7) above shall be taken to be the date on which the determination was made.

(9) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in subsection (7) above shall be taken to be the latest of—

(a) the last date on which notice of enquiry may be given into the return containing the self-assessment;

(b) if notice of enquiry is given, 30 days after the enquiry is completed;

(c) if more than one notice of enquiry is given, 30 days after the last notice of completion;

(d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;

(e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.

(10) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (7) above shall be taken to be—

(a) where there is no appeal against the assessment, the date when the tax becomes due and payable;

(b) where there is such an appeal, the date on which the appeal is finally determined.

(11) A person who has paid an amount in pursuance of a notice under this section may recover that amount from the taxpayer company.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(12) A payment in pursuance of a notice under this section is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

(13) In this section—

"director", in relation to a company, has the meaning given by section 168(8) of the Taxes Act (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act);

"group" and "principal company" have the meaning which would be given by section 170 if in that section for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.".

(2) In section 87A(3) of the [M138]Taxes Management Act 1970 (date from which interest runs in the case of an assessment of a company's tax on another person)—

(a) after "In relation to corporation tax assessed" insert " or treated as assessed ", and

(b) after "139(7)" insert " or 190 ".

(3) The above amendments, and the main amendments so far as they apply for the purposes of section 190 (as substituted by sub-paragraph (1) above), have effect in relation to gains accruing on or after 1st April 2000.

(4) Any question whether a company was a member of a group during the period of twelve months ending when such a gain accrued shall be determined in accordance with section 170 as amended by the main amendments.

Marginal Citations

M137 1988 c. 36.

M138 1970 c. 9.

Replacement of business assets by members of group

10 (1) Section 175 of the [M139]Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In subsection (1) after "all the trades" insert " to which this section applies ".

(3) After subsection (1) insert—

"(1A) The trades to which this section applies are—

(a) any trade carried on by a company that is resident in the United Kingdom, and

(b) any trade carried on in the United Kingdom through a branch or agency by a company not so resident.".

(4) In subsection (2A), after paragraph (b) insert—

"(ba) the conditions in subsection (2AA) below are met, and".

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) After subsection (2A) insert—

"(2AA) The conditions referred to in subsection (2A)(ba) above are—

(a) that the company making the disposal is resident in the United Kingdom at the time of the disposal, or the assets are chargeable assets in relation to that company immediately before that time, and

(b) that the acquiring company is resident in the United Kingdom at the time of the acquisition, or the assets are chargeable assets in relation to that company immediately after that time.

For this purpose an asset is a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time, any gain accruing to the company would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.".

(6) For subsection (3) substitute—

"(3) Section 154(2) applies where the company making the claim is a member of a group of companies—

(a) as if all members of the group for the time being carrying on a trade to which this section applies were the same person, and

(b) in accordance with subsection (1) above, as if all those trades were the same trade;

so that the gain accrues to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).".

(7) The above amendments, and the main amendments so far as they apply for the purposes of section 175, have effect in relation to cases in which—

(a) either the disposal or acquisition is on or after 1st April 2000, or

(b) both the disposal and acquisition are on or after that date.

(8) In a case falling within paragraph (a) of sub-paragraph (7) above, any question whether a company was, at the time of the acquisition or disposal corresponding to the disposal or acquisition referred to in that paragraph, a member of a group shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 as amended by the main amendments.

Marginal Citations
M139 1992 c. 12.

Transfers of assets within a group: trading stock

11 (1) For section 173 of the Taxation of Chargeable Gains Act 1992 substitute—

"**173 Transfers within a group: trading stock.**

(1) Where—

(a) a company ("company A") acquires an asset as trading stock of a trade to which this section applies,

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the acquisition is from a company ("company B") that at the time of the acquisition is a member of the same group of companies, and

(c) the asset did not form part of the trading stock of any such trade carried on by company B,

company A is treated for the purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where—

(a) a company ("company C") disposes of an asset forming part of the trading stock of a trade to which this section applies carried on by that company,

(b) the disposal is to another company ("company D") that at the time of the disposal is a member of the same group of companies, and

(c) the asset is acquired by company D otherwise than as trading stock of any such trade carried on by it,

company C is treated for the purposes of section 161 as having appropriated the asset immediately before the disposal for some purpose other than the purpose of use as trading stock.

(3) The trades to which this section applies are—

(a) any trade carried on by a company resident in the United Kingdom, and

(b) any trade carried on in the United Kingdom through a branch or agency by a company not so resident.".

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 173 (as substituted by sub-paragraph (1) above), have effect in relation to acquisitions and disposals on or after 1st April 2000.

Restriction of losses by reference to capital allowances

12 (1) In section 41 of the Taxation of Chargeable Gains Act 1992, after subsection (7) add—

"(8) Where there is a disposal of an asset acquired in circumstances in which—

(a) section 140A applies, or

(b) section 171 applies or would apply but for subsection (2) of that section,

this section has effect in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in such circumstances.

This does not affect the consideration for which an asset is deemed under section 140A or 171 to be acquired.".

(2) The above amendment has effect in relation to cases where the disposal first referred to in section 41(8) (as inserted by sub-paragraph (1) above) is on or after 1st April 2000.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Assets held on 6th April 1965: disposal outside group

13 (1) Section 174 of the [M140]Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In subsection (4) for “at a time when both were members of the group" substitute “ in a transfer to which section 171(1) applied ”.

(3) Subsection (5) shall cease to have effect.

(4) The above amendments, and the main amendments so far as they apply for the purposes of section 174, have effect in relation to acquisitions on or after 1st April 2000.

(5) Any question whether a company was, in relation to times before 1st April 2000, a member of a group shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 as it stood before the main amendments.

Marginal Citations
M140 1992 c. 12.

PART II

MINOR AND CONSEQUENTIAL AMENDMENTS

Section 97 of the [M141]Inheritance Tax Act 1984

Marginal Citations
M141 1984 c. 51.

14 The main amendments have effect for the purposes of section 97 of the Inheritance Tax Act 1984 (transfer of asset within a group of companies) in relation to disposals on or after 1st April 2000.

Section 132 of the [M142]Finance Act 1988

Marginal Citations
M142 1988 c. 39.

15 (1) In section 132 of the Finance Act 1988 (recovery of tax from another group company or controlling director), in subsection (6), in the definition of “group", the words “references to residence in the United Kingdom were omitted and" shall cease to have effect.

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 132, have effect in relation to cases in which the migrating company ceases to be resident in the United Kingdom on or after 1st April 2000.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Any question whether a company was a member of a group during the period of twelve months ending when the migrating company ceased to be so resident shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 as amended by the main amendments.

Section 14 of the Taxation of Chargeable Gains Act 1992

16 (1) Section 14 of the Taxation of Chargeable Gains Act 1992 (non-resident groups of companies) is amended as follows.

(2) For subsection (2) substitute—

"(2) The following provisions—

(a) section 41(8),

(b) section 171 (except subsections (1)(b) and (1A)),

(c) section 173 (with the omission of the words "to which this section applies" in subsections (1)(a) and (2)(a) and "such" in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),

(d) section 174(4) (with the substitution of " at a time when both were members of the group" for "in a transfer to which section 171(1) applied"), and

(e) section 175(1) (with the omission of the words "to which this section applies"),

shall apply in relation to non-resident companies which are members of a non-resident group of companies as they apply in relation to companies which are members of a group of companies."

(3) In subsection (3), for "Sections 178 to 180" substitute " Section 179 (except subsections (1)(b) and (1A)) ".

(4) In subsection (4)(b), the words "without subsections (2)(a), (9) and (12) to (14)" shall cease to have effect.

(5) The above amendments, and the main amendments so far as they apply for the purposes of section 14, have effect in cases in which section 41, 171, 173, 174(4), 175(1) or 179, as the case may be, have effect as amended by this Schedule.

Section 31A of the [M143] Taxation of Chargeable Gains Act 1992

Marginal Citations
M143 1992 c. 12.

17 (1) Section 31A of the Taxation of Chargeable Gains Act 1992 (asset-holding company leaving a group of companies) is amended as follows.

(2) In subsection (9)(b) for "the principal company of that group" substitute—

"any other company which—

(i) is a member of that group immediately before that event, and

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) is designated as the chargeable company for the purposes of this section in a notice served on the company by an officer of the Board."

(3) After subsection (10) add—

"(11) Where a notice is served on a company under subsection (9)(b) above, the Inland Revenue may make an assessment to tax in the amount which in their opinion ought to be charged under this section."

(4) The above amendments, and the main amendments so far as they apply for the purposes of sections 30 to 34 of that Act, have effect in relation to disposals on or after 1st April 2000.

Section 106 of the Taxation of Chargeable Gains Act 1992

F482 18 . . . . . .

Textual Amendments

F482 Sch. 29 para. 18 repealed (with effect in accordance with s. 72 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 3(9)**

Section 116 of the Taxation of Chargeable Gains Act 1992

19 (1) In section 116 of the M144Taxation of Chargeable Gains Act 1992 (reorganisations, conversions and reconstructions), in subsection (11) for "171(1) or 172" substitute " or 171(1) ".

(2) The above amendment has effect in accordance with paragraph 3(2).

Marginal Citations

M144 1992 c. 12.

Section 117A of the Taxation of Chargeable Gains Act 1992

F483 20 . . . . . .

Textual Amendments

F483 Sch. 29 para. 20 repealed (with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the repealing Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2

Section 117B of the Taxation of Chargeable Gains Act 1992

F484 21 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F484 Sch. 29 para. 21 repealed (with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the repealing Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2

Section 138A of the Taxation of Chargeable Gains Act 1992

22 The main amendments have effect for the purposes of section 138A of the Taxation of Chargeable Gains Act 1992 (use of earn-out rights for exchange of securities) in relation to rights conferred on or after 1st April 2000.

Section 140 of the Taxation of Chargeable Gains Act 1992

23 (1) In section 140 of the Taxation of Chargeable Gains Act 1992 (postponement of charge on transfer of assets to non-resident company), in subsection (6)(b) for "apart from section 170(2)(a) and (9)" substitute " if subsections (1)(b) and (1A) of that section and section 170(9) were disregarded ".

(2) The above amendment has effect in relation to disposals on or after 1st April 2000.

Section 176 of the Taxation of Chargeable Gains Act 1992

24 (1) In section 176 of the Taxation of Chargeable Gains Act 1992 (depreciatory transactions within a group), in subsection (7), paragraph (c) and the word "and" immediately preceding it shall cease to have effect.

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 176, have effect in relation to cases in which the depreciatory transaction (within the meaning of that section) is on or after 1st April 2000.

Section 177 of the Taxation of Chargeable Gains Act 1992

25 (1) In section 177 of the Taxation of Chargeable Gains Act 1992 (dividend stripping), in subsection (2) for "171 or 172" substitute " or 171 ".

(2) The above amendment, and the main amendments so far as they apply for the purposes of section 177, have effect in relation to disposals on or after 1st April 2000.

Section 178 of the Taxation of Chargeable Gains Act 1992

26 Section 178 of the Taxation of Chargeable Gains Act 1992 (which is spent) shall cease to have effect.

Section 180 of the Taxation of Chargeable Gains Act 1992

27 Section 180 of the Taxation of Chargeable Gains Act 1992 (which is spent) shall cease to have effect.

Section 181 of the Taxation of Chargeable Gains Act 1992

28 (1) In section 181 of the Taxation of Chargeable Gains Act 1992 (exemption from de-grouping charge in the case of certain mergers)—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in subsection (1), for "neither section 178 nor section 179 shall" substitute " section 179 shall not "; and

(b) subsection (5) shall cease to have effect.

(2) The amendment made by sub-paragraph (1)(b) above, and the main amendments so far as they apply for the purposes of section 181, have effect in relation to cases in which the company ceases to be a member of a group on or after 1st April 2000.

Section 192 of the Taxation of Chargeable Gains Act 1992

29 In section 192 of the [M145]Taxation of Chargeable Gains Act 1992 (tax exempt distributions), in subsection (3) for "neither section 178 nor 179 shall" substitute " section 179 shall not ".

Marginal Citations
M145 1992 c. 12.

Section 211 of the Taxation of Chargeable Gains Act 1992

[F485]30 . . . . . .

Textual Amendments
F485 Sch. 29 para. 30 repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(9)**

Section 216 of the Taxation of Chargeable Gains Act 1992

31 The main amendments have effect for the purposes of section 216 of the Taxation of Chargeable Gains Act 1992 (assets transferred from building society to company) in relation to transfers on or after 1st April 2000.

Section 217C of the Taxation of Chargeable Gains Act 1992

32 (1) In section 217C of the Taxation of Chargeable Gains Act 1992 (disposal of assets by incorporated friendly society), for subsection (2) substitute—

"(2) If the disposal by the incorporated society is in the circumstances mentioned in subsection (8) of section 41, the disposal to which section 217A(3) applies shall for the purposes of that subsection be taken to have been a previous transfer of the asset in such circumstances.".

(2) The above amendment has effect in relation to cases in which the disposal by the incorporated society is on or after 1st April 2000.

Section 228 of the Taxation of Chargeable Gains Act 1992

33 The main amendments have effect for the purposes of section 228 of the Taxation of Chargeable Gains Act 1992 (conditions for roll-over relief: supplementary) in relation to disposals on or after 1st April 2000.

Status: *Point in time view as at 21/07/2009.*
***Changes to legislation:** Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Section 253 of the Taxation of Chargeable Gains Act 1992

34 The main amendments have effect for the purposes of section 253 of the [M146]Taxation of Chargeable Gains Act 1992 (relief for loans to traders)—

(a) in relation to loans made on or after 1st April 2000;

(b) in relation to guarantees given on or after that date.

Marginal Citations

M146 1992 c. 12.

Section 276 of the Taxation of Chargeable Gains Act 1992

35 (1) In section 276 of the Taxation of Chargeable Gains Act 1992 (application of the 1992 Act to the territorial sea and the continental shelf), for subsection (8) substitute—

"(8) The provisions specified in subsection (9) below shall apply in relation to a disposal of exploration or exploitation rights or exploration or exploitation assets if (and only if) the disposal is—

(a) by a company resident in a territory outside the United Kingdom to a company resident in the same territory,

(b) by a company resident in the United Kingdom to another company which is so resident, or

(c) by a company which is not resident in the United Kingdom to another company which is resident there.

(9) Those provisions are—

(a) section 41(8),

(b) section 171 (except subsections (1)(b) and (1A)),

(c) section 173 (with the omission of the words "to which this section applies" in subsections (1)(a) and (2)(a) and "such" in subsections (1)(c) and (2)(c) and with the omission of subsection (3)),

(d) section 174(4) (with the substitution of "at a time when both were members of the group" for "in a transfer to which section 171(1) applied"),

(e) section 179 (except subsections (1)(b) and (1A)), and

(f) section 181.

(10) The provisions specified in subsection (9) above shall apply in accordance with subsection (8) above with the following modifications—

(a) for the purposes of paragraph (a) of subsection (9) above, section 41(8) applies as if section 170 applied, for the purposes of section 171, with the omission of subsection (9), and

(b) for the purposes of paragraphs (b) to (f) of subsection (9) above, the provisions specified in those paragraphs apply as if in section 170 subsection (9) were omitted."

(2) The above amendment has effect in cases in which section 41, 171, 173, 174(4), 179 or 181, as the case may be, has effect as amended by this Schedule.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Schedule A1 to the Taxation of Chargeable Gains Act 1992

36 The main amendments have effect for the purposes of paragraph 11 of Schedule A1 to the Taxation of Chargeable Gains Act 1992 (rules for application of taper relief) in relation to any determination whether, at any time on or after 1st April 2000, a company is a 51 per cent subsidiary of another company.

Schedule 2 to the Taxation of Chargeable Gains Act 1992

37 The main amendments have effect for the purposes of paragraph 5 of Schedule 2 to the [M147]Taxation of Chargeable Gains Act 1992 (disposals of assets held on 6th April 1965) in relation to any determination whether, at any time on or after 1st April 2000, a company is a member, or the principal company, of a group of companies.

Marginal Citations

M147 1992 c. 12.

Schedule 3 to the Taxation of Chargeable Gains Act 1992

38 The main amendments have effect for the purposes of paragraphs 8 and 9 of Schedule 3 to the Taxation of Chargeable Gains Act 1992 (disposals of assets held on 31st March 1982: supplementary provisions) in relation to any determination whether, at any time on or after 1st April 2000, a company is a member, or the principal company, of a group of companies.

Schedule 7B to the Taxation of Chargeable Gains Act 1992

[F486]39 . . . . . .

Textual Amendments

F486 Sch. 29 para. 39 repealed (with effect in relation to periods of account (whenever beginning) which end on or after 31.12.2006) by The Overseas Life Insurance Companies Regulations 2006 (S.I. 2006/3271), reg. 1, **Sch. Pt. 1**

Schedule 7C to the Taxation of Chargeable Gains Act 1992

40 The main amendments have effect for the purposes of Schedule 7C to the Taxation of Chargeable Gains Act 1992 (which is inserted by virtue of section 48 of this Act).

Section 136 of the Finance Act 1993

[F487]41 . . . . . .

Textual Amendments

F487 Sch. 29 paras. 41-43 repealed (with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the repealing Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Section 136A of the Finance Act 1993

F488 42 . . . . . .

Textual Amendments

F488 Sch. 29 paras. 41-43 repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the repealing Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(10)** Note 2

Schedule 17 to the Finance Act 1993

F489 43 . . . . . .

Textual Amendments

F489 Sch. 29 paras. 41-43 repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(10) Note 2 of the repealing Act) by 2002 c. 23, s. 41, **Sch. 40**, Pt. 3(10) Note 2

Schedule 9 to the Finance Act 1996

F490 44 . . . . . .

Textual Amendments

F490 Sch. 29 para. 44 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

Schedule 15 to the Finance Act 1996

45 (1) In Schedule 15 to the Finance Act 1996 (loan relationships: savings and transitional provisions), in paragraph 8(2) for "171(1) or 172" substitute " or 171(1) ".

(2) The above amendment has effect in accordance with paragraph 3(2) above.

PART III

TRANSITIONAL PROVISIONS

46 (1) For the purposes of this paragraph—

(a) references to a company which was a member of an old group are references to it being, immediately before the time when the main amendments have effect in accordance with the preceding provisions of this Schedule, a member of a group for the purposes of section 170 of the M148Taxation of Chargeable Gains Act 1992 (as it stood before the main amendments), and

(b) references to a company which is a member of a new group are references to it being, immediately after that time, a member of a group for the purposes of that section (as amended by the main amendments).

(2) Where the same two or more companies were members of an old group and are members of a new group, those groups shall be regarded as the same group for the

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purposes of the provisions amended by this Schedule in relation to which the main amendments have effect.

(3) Sub-paragraph (2) above applies irrespective of whether the new group includes companies which were not members of the old group.

(4) Sub-paragraph (5) below applies in relation to a company which—

(a) was a member of an old group, but

(b) is not a member of a new group by reason only that—

(i) the principal company of the old group is not the principal company of the new group, and

(ii) the company in question is not an effective 51 per cent subsidiary of the principal company of the new group.

(5) For the purposes of the provisions amended by this Schedule in relation to which the main amendments have effect, section 170(3)(b) of the Taxation of Chargeable Gains Act 1992 shall not apply in relation to the company for so long as it remains an effective 51 per cent subsidiary of the company which was the principal company of the old group.

(6) Expressions used in this paragraph and in section 170 of the [M149]Taxation of Chargeable Gains Act 1992 shall be construed for the purposes of this paragraph in accordance with that section.

Marginal Citations

M148 1992 c. 12.

M149 1992 c. 12.

De-grouping charge: deferral until company leaves new group

[F491](1) This paragraph has effect for the purposes of section 179 of the Taxation of Chargeable Gains Act 1992 as that section has effect in relation to assets acquired before 1st April 2000 ("old section 179").

(2) Where—

(a) a company would (apart from this paragraph) fall to be regarded for the purposes of old section 179 as ceasing to be a member of an old group at any time, but

(b) immediately before that time, it is also a member of a new group for the purposes of new section 179,

the company shall not be regarded for the purposes of old section 179 as ceasing to be a member of the old group unless or until it also ceases to be a member of the new group for the purposes of new section 179.

(3) Sub-paragraph (2) above does not prevent the company from being or becoming a member of another old group at any time.

(4) Where a company ceases to be a member of a new group on any occasion, it shall not by virtue of sub-paragraph (2) above be treated for the purposes of old section 179 as if it had on that occasion ceased to be a member of the same old group more than once.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) For the purposes of this paragraph—

(a) references to a company being a member of an old group are references to its being, for the purposes of old section 179, a member of a group of companies within the meaning given by old section 170;

(b) references to a company being a member of a new group are references to its being, for the purposes of new section 179, a member of a group of companies within the meaning given by new section 170; and

(c) references to a company ceasing to be a member of an old group or a new group shall be construed in accordance with paragraph (a) or (b) above, as the case may be.

(6) Where, for the purposes of sub-paragraph (2)(b) above, a company is not a member of a new group by reason only that—

(a) the principal company of the old group is not the principal company of the new group, and

(b) the company in question is not an effective 51 per cent subsidiary of the principal company of the new group,

subsection (3)(b) of new section 170 shall not apply in relation to the company for the purposes of this paragraph for so long as it remains an effective 51 per cent subsidiary of the company which was the principal company of the old group.

(7) In this paragraph—

(a) "new section 179" means section 179 of the Taxation of Chargeable Gains Act 1992 (c. 12) as it has effect in relation to assets acquired on or after 1st April 2000;

(b) "new section 170" means section 170 of that Act, as amended by the main amendments;

(c) "old section 170" means section 170 of the Taxation of Chargeable Gains Act 1992, as it stands before the main amendments.

(8) Expressions used in this paragraph and in section 170 of the Taxation of Chargeable Gains Act 1992 shall be construed in accordance with that section.**]**

Textual Amendments

F491 Sch. 29 para. 47 added (*retrospectively*) by 2001 c. 9, **s. 79**

SCHEDULE 30

Section 103.

DOUBLE TAXATION RELIEF

Power to make treaty provision for matching credit for tax spared in foreign country

1 (1) In section 788 of the Taxes Act 1988 (relief by agreement with other countries) in subsection (5) (matching credit for tax spared in foreign country) in the second sentence, paragraph (b) (power to provide for relief in the arrangements themselves) shall cease to have effect.

(2) This paragraph comes into force on 1st April 2000.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Matching credit for tax spared below immediate overseas subsidiary: treaty relief

2 (1) In section 788 of the Taxes Act 1988 (relief by agreement with other countries) in subsection (5) (which in certain circumstances treats tax spared under the foreign law as tax payable) after the second sentence insert—

"Relief does not fall to be given in accordance with section 801 by virtue of this subsection unless the arrangements in question make express provision for such relief (but this paragraph is without prejudice to section 790(10B))."

(2) This paragraph has effect in relation to any claim for credit in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Matching credit for tax spared below immediate overseas subsidiary: unilateral relief

3 (1) Amend section 790 of the Taxes Act 1988 (unilateral relief) as follows.

(2) In subsection (3) (which postulates notional arrangements containing the provisions specified in subsections (4) to (10) of that section) for "(10)" substitute " (10C) ".

(3) After subsection (10) (credit for underlying tax under section 801) insert—

"(10A) In any case where—

(a) under the law of the territory outside the United Kingdom, an amount of tax ("the spared tax") would, but for a relief, have been payable by a company resident in that territory ("company A") in respect of any of its profits,

(b) company A pays a dividend out of those profits to another company resident in that territory ("company B"),

(c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom ("company C"), and

(d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, under arrangements made with the government of the territory outside the United Kingdom and having effect by virtue of section 788, to a relief to which subsection (5) of that section applies in respect of the spared tax,

subsection (10B) below shall apply.

(10B) In any case falling within subsection (10A) above, the spared tax shall be taken into account for the purposes of—

(a) the other provisions of this section, and

(b) subject to section 795(3), Chapter II of this Part in its application to relief under this section in relation to the dividend paid to company C,

as if it had been payable and paid; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

(10C) Except as provided by subsection (10B) above, in relation to any dividend paid—

(a) to a company resident in the United Kingdom,

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) by a company resident in the territory outside the United Kingdom,

credit by virtue of section 801 does not fall to be given by virtue of this section in respect of tax which would have been payable under the law of that or any other territory outside the United Kingdom but for a relief (notwithstanding any arrangements made with the government of that or any other territory outside the United Kingdom which have effect by virtue of section 788 and provide for a relief to which subsection (5) of that section applies)."

(4) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Relief for persons resident outside the UK who have branches or agencies in the UK

4 (1) Amend section 790 of the Taxes Act 1988 (unilateral relief) in accordance with sub-paragraphs (2) and (3).

(2) In subsection (6) (dividend paid to company resident in United Kingdom) for "company resident in the United Kingdom" substitute " company falling within subsection (6A) below ".

(3) After subsection (6) insert—

"(6A) A company falls within this subsection if—

(a) it is resident in the United Kingdom; or

(b) it is resident outside the United Kingdom but the dividend mentioned in subsection (6) above forms part of the profits of a branch or agency of the company's in the United Kingdom."

(4) Amend section 794 of the Taxes Act 1988 (requirement as to residence) in accordance with sub-paragraphs (5) and (6).

(5) In subsection (2) (cases where credit may be allowed by way of unilateral relief) after paragraph (b) insert—

"(bb) for tax paid under the law of any territory outside the United Kingdom in respect of the income or chargeable gains of a branch or agency in the United Kingdom of a person who is not resident in the United Kingdom, where the following conditions are fulfilled, namely—

(i) that the territory under whose law the tax was paid is not one in which the person is liable to tax by reason of domicile, residence or place of management; and

(ii) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a person resident in the United Kingdom and the income or gains in question had been income or gains of that person."

(6) Omit subsection (2)(c) (which is superseded by the amendment made by sub-paragraph (5)).

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) Amend section 801 of the Taxes Act 1988 (dividends paid between related companies: relief for UK and third country taxes) in accordance with sub-paragraphs (8) and (9).

(8) In subsection (1) (dividend paid to company resident in the United Kingdom)—

(a) for "company resident in the United Kingdom ("the United Kingdom company")" substitute " company falling within subsection (1A) below ("the relevant company") "; and

(b) for "to the United Kingdom company" substitute " to the relevant company ".

(9) After subsection (1) insert—

"(1A) A company falls within this subsection if—

(a) it is resident in the United Kingdom; or

(b) it is resident outside the United Kingdom but the dividend mentioned in subsection (1) above forms part of the profits of a branch or agency of the company's in the United Kingdom."

(10) Amend section 801A of the Taxes Act 1988 (restriction of relief for underlying tax) in accordance with sub-paragraphs (11) and (12).

(11) In subsection (1)(a) (company resident in United Kingdom making claim for allowance by way of credit) for "a company resident in the United Kingdom ("the United Kingdom company")" substitute " a company ("the claimant company") ".

(12) In subsections (2), (7) and (11), for "the United Kingdom company" substitute " the claimant company ".

(13) In Schedule 19AC to the Taxes Act 1988 (modification of Act in relation to overseas life insurance companies) amend paragraph 13 (which notionally inserts certain provisions into section 794) as follows—

(a) omit sub-paragraph (1) (which notionally inserts subsection (2)(d));

(b) in sub-paragraph (2) (which notionally inserts subsections (3) and (4)) in the words preceding the notionally inserted subsections, for "subsections shall be treated as inserted after that subsection" substitute " subsection shall be treated as inserted after subsection (2) of section 794 ";

(c) omit the subsection (3) notionally inserted by sub-paragraph (2);

(d) in the subsection (4) notionally inserted by sub-paragraph (2), for "subsection (2)(d)" substitute " subsection (2)(bb) ".

(14) The amendments made by this paragraph have effect in relation to[F492chargeable periods] ending on or after 21st March 2000.

Textual Amendments

F492 Words in Sch. 30 para. 4(14) substituted (*retrospectively*) by 2001 c. 9, s. 83, **Sch. 27 para. 7**

No double relief etc.

5 (1) After section 793 of the Taxes Act 1988 insert—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"**793A No double relief etc.**

(1) Where relief in respect of an amount of tax that would otherwise be payable under the law of a territory outside the United Kingdom may be allowed—

(a) under arrangements made with the government of that territory, or

(b) under the law of that territory in consequence of any such arrangements,

credit may not be allowed in respect of that tax, whether the relief has been used or not.

(2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.

(3) Where arrangements made with the government of a territory outside the United Kingdom contain express provision to the effect that relief by way of credit shall not be given under the arrangements in cases or circumstances specified or described in the arrangements, then neither shall credit by way of unilateral relief be allowed in those cases or circumstances."

(2) Subsections (1) and (2) of the section inserted by sub-paragraph (1) have effect in relation to claims for credit made on or after 21st March 2000.

(3) Subsection (3) of the section inserted by sub-paragraph (1) has effect in relation to arrangements made on or after 21st March 2000.

Limits on credit: minimisation of the foreign tax

6 (1) After section 795 of the Taxes Act 1988 insert—

"**795A Limits on credit: minimisation of the foreign tax.**

(1) The amount of credit for foreign tax which, under any arrangements, is to be allowed against tax in respect of any income or chargeable gain shall not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the territory concerned, and

(b) under any arrangements made with the government of that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) above include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances; and

(b) making elections for tax purposes.

(3) For the purposes of subsection (1) above, any question as to the steps which it would have been reasonable for a person to take shall be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom."

(2) This paragraph has effect in relation to claims for credit made on or after 21st March 2000.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Foreign tax on amounts underlying non-trading credits

7 (1) Amend section 797A of the Taxes Act 1988 (foreign tax on interest brought into account as a non-trading credit) as follows.

(2) In subsection (1)—

(a) in paragraph (a) for "amount of interest" substitute " item ", and

(b) in paragraph (b) for "that amount" and "that interest" substitute " that item ".

(3) In consequence of sub-paragraph (2) above, in the sidenote for "interest brought into account as" substitute " items giving rise to ".

(4) The amendments made by this paragraph have effect in relation to accounting periods ending on or after 21st March 2000.

Restriction of relief for underlying tax

8 (1) Amend section 799 of the Taxes Act 1988 (computation of underlying tax) as follows.

(2) In subsection (1) (underlying tax to be taken into account to be so much of the foreign tax on the relevant profits as is attributable to the proportion represented by the dividend) after "as" insert " (a) " and at the end of the subsection add ", and

(b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below."

(3) After subsection (1) insert—

"(1A) The formula is—

$$\frac{D \times M}{(100 - M)}$$

where—

D is the amount of the dividend; and

M is the maximum relievable rate;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid."

(4) In subsection (3) (profits by reference to which underlying tax to be taken into account is calculated)—

(a) at the end of paragraph (a) insert " and ";

(b) omit paragraph (b); and

F493(c) . . . . . .

(5) This paragraph has effect in relation to any claim for an allowance by way of credit made on or after 31st March 2001 in respect of a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, unless the dividend was paid before that date.

(6) In determining, for the purpose of any such claim made on or after that date, the underlying tax of any such third, fourth or successive company as is mentioned in

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section 801(2) or (3) of the Taxes Act 1988, this paragraph shall be deemed to have had effect at the time the dividend paid by that company was paid.

Textual Amendments

F493 Sch. 30 para. 8(4)(c) omitted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 30(b)**

Computation of underlying tax: the relevant profits

9 (1) Amend section 799 of the Taxes Act 1988 as follows.

(2) After subsection (4) add—

"(5) For the purposes of paragraphs (a) and (c) of subsection (3) above, "profits", in the case of any period, means the profits available for distribution.

(6) In subsections (4) and (5) above, "profits available for distribution" means, in the case of any company, the profits available for distribution as shown in accounts relating to the company—

(a) drawn up in accordance with the law of the company's home State, and

(b) making no provision for reserves, bad debts or contingencies other than such as is required to be made under that law.

(7) In this section, "home State", in the case of any company, means the country or territory under whose law the company is incorporated or formed."

(3) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Dividends paid between related companies but not covered by arrangements

10 (1) Section 800 of the Taxes Act 1988 (dividends paid between related companies but not covered by arrangements) shall cease to have effect.

(2) This paragraph has effect in relation to dividends paid on or after 1st April 2000.

Restriction of relief for underlying tax: dividends paid between related companies

11 (1) Amend section 801 of the Taxes Act 1988 as follows.

(2) After subsection (2) (cases where the overseas company receives a dividend from a related third company) insert—

"(2A) Section 799(1)(b) applies for the purposes of subsection (2) above only—

(a) if the overseas company and the third company are not resident in the same territory; or

(b) in such other cases as may be prescribed by regulations made by the Treasury."

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) This paragraph has effect in relation to any claim for an allowance by way of credit made on or after 31st March 2001 in respect of a dividend paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, unless the dividend was paid before that date.

(4) In determining, for the purpose of any such claim made on or after that date, the underlying tax of any such third, fourth or successive company as is mentioned in section 801(2) or (3) of the Taxes Act 1988, this paragraph shall be deemed to have had effect at the time the dividend paid by that company was paid.

Dividends paid out of transferred profits

12 (1) After section 801A of the Taxes Act 1988 insert—

"**801B Dividends paid out of transferred profits.**

(1) This section applies where—

(a) a company ("company A") resident outside the United Kingdom has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits;

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than by virtue of the payment of a dividend to company B; and

(c) company B pays a dividend out of those profits to another company ("company C"), wherever resident.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b) above.

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom shall not exceed the amount which would have been allowable to that company had those profits become profits of company B by virtue of the payment of a dividend by company A to company B."

(2) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Separate streaming of dividend so far as representing an ADP dividend of a CFC

F494 13 . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F494 Sch. 30 para. 13 omitted (with effect in accordance with Sch. 16 para. 6 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 5(f)** (with Sch. 16 paras. 78)

UK insurance companies trading overseas: repeal of section 802

14 (1) Section 802 of the Taxes Act 1988 shall cease to have effect.

(2) This paragraph has effect in relation to accounting periods beginning on or after 1st April 2000.

Underlying tax: foreign taxation of group as a single entity

15 (1) After section 803 of the Taxes Act 1988 insert—

"**803A Foreign taxation of group as a single entity.**

(1) This section applies in any case where, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in that territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of that company and one or more other companies so resident, taken together as a single taxable entity.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1) above (the "non-resident companies") to another company ("the recipient company"), as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the recipient company, if that one of the non-resident companies which actually pays the dividend is related to the recipient company,

(so that, in particular, the relevant profits for the purposes of section 799(1) is a single aggregate figure in respect of that single company and the foreign tax paid by the responsible company is foreign tax paid by that single company).

(3) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company."

(2) This paragraph has effect in relation to any claim for credit, under any arrangements, in respect of underlying tax in relation to a dividend paid on or after 21st March 2000 by a company resident outside the United Kingdom to a company resident in the United Kingdom.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Life assurance companies with overseas branches etc: restriction of credit

16 (1) Amend section 804A of the Taxes Act 1988 (overseas life assurance business: restriction of credit) as follows.

(2) For subsection (1) (application of subsection (2)) substitute—

"(1) Subsection (2) below applies where credit for tax—

(a) which is payable under the laws of a territory outside the United Kingdom in respect of insurance business carried on by a company through a branch or agency in that territory, and

(b) which is computed otherwise than wholly by reference to profits arising in that territory,

is to be allowed (in accordance with this Part) against corporation tax charged under Case I or Case VI of Schedule D in respect of the profits, computed in accordance with the provisions applicable to Case I of Schedule D, of life assurance business or any category of life assurance business carried on by the company in an accounting period (in this section referred to as "the relevant profits").

(1A) For the purposes of paragraph (b) of subsection (1) above, the cases where tax payable under the laws of a territory outside the United Kingdom is "computed otherwise than wholly by reference to profits arising in that territory" are those cases where the charge to tax in that territory falls within subsection (1B) below.

(1B) A charge to tax falls within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in computing the amount chargeable) to require sums payable and other liabilities arising under policies to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company."

(3) In subsection (3) (the shareholders' share of the overseas tax) for the definition of A (the amount of profits chargeable under section 441) substitute—

"A is an amount equal to the amount of the relevant profits before making any deduction authorised by subsection (5) below;".

(4) In subsection (5) (relaxation of rule in section 795(2)(a) against deducting foreign tax in computing the profits of the overseas life assurance business) for "the profits of the overseas life assurance business" substitute " the relevant profits ".

(5) In consequence of the amendments made by this paragraph, the sidenote to the section becomes "Life assurance companies with overseas branches etc: restriction of credit."

(6) This paragraph has effect in relation to accounting periods beginning on or after 1st April 2000.

Allocation of foreign tax to different categories of insurance business

17 (1) After section 804A of the Taxes Act 1988 insert—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"**804B Insurance companies carrying on more than one category of business: restriction of credit.**

(1) Where—

(a) an insurance company carries on more than one category of business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section, is attributable to that category of business.

(3) Where the relevant income arises from an asset—

(a) which is linked solely to a category of business (other than overseas life assurance business), or

(b) which is an asset of the company's overseas life assurance fund,

the whole of the foreign tax is attributable to the category mentioned in paragraph (a) above or, as the case may be, to the company's overseas life assurance business, unless the case is one where subsection (7) below applies in relation to the category of business in question.

(4) Where subsection (3) above does not apply and the category of business in question is—

(a) basic life assurance and general annuity business, or

(b) long term business which is not life assurance business,

the fraction of the foreign tax that is attributable to that category of business is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432A and whose denominator is the whole of the relevant income.

(5) Subsections (6) and (7) below apply where the category of business in question is neither—

(a) basic life assurance and general annuity business; nor

(b) long term business which is not life assurance business.

(6) Where—

(a) subsection (3) above does not apply, and

(b) some or all of the relevant income is taken into account in accordance with section 83 of the [M150]Finance Act 1989 in an account in relation to which the provisions of section 432C or 432D apply,

the fraction of the foreign tax that is attributable to the category of business in question is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432C or 432D and whose denominator is the whole of the relevant income.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(7) Where some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of the Finance Act 1989 the amount referred to in section 432E(1) as the net amount, the fraction of the foreign tax that is attributable to the category of business in question is the fraction—

(a) whose numerator is the part of that net amount which is referable by virtue of section 432E to that category; and

(b) whose denominator is the whole of that net amount.

(8) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (7) above.

(9) Where for the purposes of this section an amount of foreign tax is attributable to a category of life assurance business other than basic life assurance and general annuity business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under Case VI of Schedule D arising from carrying on that category of business."

(2) This paragraph has effect in relation to accounting periods beginning on or after 1st April 2000.

Marginal Citations
M150 1989 c. 26.

Allocation of expenses etc in a computation under Case I of Schedule D

18 (1) After section 804B of the Taxes Act 1988 insert—

"**804C Insurance companies: allocation of expenses etc in computations under Case I of Schedule D.**

(1) Where—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a computation in accordance with the provisions applicable to Case I of Schedule D falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned ("the relevant income") shall be limited by treating the amount of the relevant income as reduced in accordance with subsections (3) and (4) below.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) The first limitation is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(4) If—

(a) the amount of the relevant income after any reduction under subsection (3) above,

exceeds

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the relevant amount as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

In this subsection any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(5) In determining the amount of the credit for foreign tax which is to be allowed as mentioned in subsection (2) above, the relevant amount shall not be reduced except in accordance with that subsection.

(6) For the purposes of subsection (3) above, the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(7) In subsection (6) above, the "appropriate fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above, and

(b) whose denominator is the total income of the category of business concerned for the period of account in question,

unless the denominator so determined is nil, in which case the denominator shall instead be the amount described in subsection (8) below.

(8) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax falls to be allowed under any arrangements,

as are referable to the category of business concerned (before any reduction in accordance with subsection (2) above).

(9) In subsection (4) above, the "relevant fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above; and

(b) whose denominator is the amount described in subsection (8) above.

(10) Where a 75 per cent subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

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Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the purpose, or one of the main purposes, of that scheme or arrangement is to prevent or restrict the application of subsection (2) above to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary shall be found by setting off against that item the amount of expenses that would be attributable to it under subsection (3) above if that item had arisen directly to the insurance company.

(11) Where the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is, by virtue of subsection (2) above, less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the category of business concerned.

(12) Where, by virtue of subsection (10) above, the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is less than it would be apart from that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the income of the 75 per cent subsidiary.

(13) Any reference in this section to any income or gain being to any extent referable to a category of insurance business shall, in the case of—

(a) life assurance business or any category of life assurance business, or

(b) long term business which is not life assurance business,

be taken as a reference to the income or gain being to that extent referable to that category of business for the purposes of Chapter I of Part XII.

(14) This section shall be construed—

(a) in accordance with section 804D, where the category of business concerned is life assurance business or a category of life assurance business; and

(b) in accordance with section 804E, where the category of business concerned is not life assurance business or any category of life assurance business.

804D Interpretation of section 804C in relation to life assurance business etc.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is life assurance business or a category of life assurance business.

(2) The “total income" of the category of business concerned for the period of account in question is the amount (if any) by which—

(a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,

exceeds

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, so far as referable to that category of business.

(3) Where any amounts fall to be brought into account in accordance with section 83 of the [M151]Finance Act 1989, the amounts that are referable to the category of business concerned shall be determined for the purposes of subsection (2) above in accordance with sections 432B to 432F.

(4) The "total relevant expenses" of the category of business concerned for any period of account is the amount of the claims incurred—

(a) increased by any increase in the liabilities of the company, or

(b) reduced (but not below nil) by any decrease in the liabilities of the company.

(5) For the purposes of subsection (4) above, the amounts to be taken into account in the case of any period of account are the amounts as shown in the company's periodical return for the period so far as referable to the category of business concerned.

804E Interpretation of section 804C in relation to other insurance business.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is not life assurance business or any category of life assurance business.

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3) below,

exceeds

(b) the sum of the amounts specified in subsection (4) below.

(3) The amounts mentioned in subsection (2)(a) above are—

(a) earned premiums, net of reinsurance;

(b) investment income and gains;

(c) other technical income, net of reinsurance;

(d) any amount treated under section 107(2) of the Finance Act 2000 as a receipt of the company's trade.

(4) The amounts mentioned in subsection (2)(b) above are—

(a) acquisition costs;

(b) the change in deferred acquisition costs;

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

unless that sum is a negative amount, in which case the total relevant expenses shall be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) above are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5) above, and

(b) in the provisions of section B of Schedule 9A to the [M152]Companies Act 1985 (form and content of accounts of insurance companies and groups) which relate to the profit and loss account format (within the meaning of paragraph 7(1) of that section),

have the same meaning in those paragraphs as they have in those provisions."

(2) In consequence of the provision made by subsection (11) of the section 804C inserted into the Taxes Act 1988 by sub-paragraph (1), in section 82 of the [M153]Finance Act 1989 (calculation of profits of insurance company in respect of its life assurance business) in subsection (1)(a) (amounts to be taken into account as an expense) omit "or foreign tax".

[F495](3) . . . . . .

(4) This paragraph has effect in relation to periods of account beginning on or after 1st April 2000.

Textual Amendments

F495 Sch. 30 para. 18(3) repealed (10.7.2003) (with effect in accordance with Sch. 43 Pt. 3(12) Note 1 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(12)**

Marginal Citations

M151 1989 c. 26.
M152 1985 c. 6.
M153 1989 c. 26.

Interpretation of sections 804A to 804E

19 (1) After section 804E of the Taxes Act 1988 insert—

"**804F Interpretation of sections 804A to 804E.**

Expressions used in sections 804A to 804E and in Chapter I of Part XII have the same meaning in those sections as in that Chapter."

(2) The section inserted by sub-paragraph (1)—

(a) so far as relating to sections 804A and 804B, has effect in relation to accounting periods beginning on or after 1st April 2000; and

(b) so far as relating to sections 804C to 804E, has effect in relation to periods of account beginning on or after 1st April 2000.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Time limits for claims for credit relief

20 (1) Amend section 806 of the Taxes Act 1988 as follows.

(2) For subsection (1) substitute—

"(1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain—

(a) shall, in the case of any income or chargeable gain which falls to be charged to income tax for a year of assessment, be made on or before—

(i) the fifth anniversary of the 31st January next following that year of assessment, or

(ii) if later, the 31st January next following the year of assessment in which the foreign tax is paid;

(b) shall, in the case of any income or chargeable gain which falls to be charged to corporation tax for an accounting period, be made not more than—

(i) six years after the end of that accounting period, or

(ii) if later, one year after the end of the accounting period in which the foreign tax is paid."

(3) This paragraph has effect in relation to claims for credit made on or after 21st March 2000.

Foreign dividends: onshore pooling and utilisation of certain unrelieved foreign tax

F496 21 . . . . . .

Textual Amendments

F496 Sch. 30 para. 21 omitted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 30(b)**

Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere

F497 22 . . . . . .

Textual Amendments

F497 Sch. 30 para. 22 omitted (with effect in accordance with Sch. 14 para. 31 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 14 para. 30(b)**

Unrelieved foreign tax: profits of overseas branch or agency

23 (1) After section 806K of the Taxes Act 1988 insert—

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

" Unrelieved foreign tax: profits of overseas branch or agency

806L Carry forward or carry back of unrelieved foreign tax.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of unrelieved foreign tax arises in respect of any of the company's qualifying income from an overseas branch or agency of the company.

(2) The amount of the unrelieved foreign tax so arising shall be treated for the purposes of allowing credit relief under this Part as if it were foreign tax paid in respect of, and computed by reference to, the company's qualifying income from the same overseas branch or agency—

(a) in the next accounting period (whether or not the company in fact has any such income from that source in that accounting period), or

(b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period in which the unrelieved foreign tax arises, as result from applying the rules in subsection (3) below,

or partly in the one way and partly in the other.

(3) Where any unrelieved foreign tax is to be treated as mentioned in paragraph (b) of subsection (2) above, the rules for determining the accounting periods in question (and the amount of the unrelieved foreign tax to be so treated in relation to each of them) are that the unrelieved foreign tax must be so treated under that paragraph—

1. (a) credit for, or for any remaining balance of, the unrelieved foreign tax is allowed against corporation tax in respect of income of a later one of the accounting periods beginning as mentioned in that paragraph,

that

before

(b) credit for any of the unrelieved foreign tax is allowed against corporation tax in respect of income of any earlier such period;

2 that, before allowing credit for any of the unrelieved foreign tax against corporation tax in respect of income of any accounting period, credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of that accounting period, other than unrelieved foreign tax arising in another accounting period; and

(b) then for unrelieved foreign tax arising in any accounting period before that in which the unrelieved foreign tax in question arises.

(4) For the purposes of this section, the cases where an amount of unrelieved foreign tax arises in respect of any of a company's qualifying income from an overseas branch or agency in an accounting period are those cases where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of that income,

exceeds

Status: *Point in time view as at 21/07/2009.*
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(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of that income;

and in any such case that excess is the amount of the unrelieved foreign tax in respect of that income.

(5) For the purposes of this section, a company's qualifying income from an overseas branch or agency is the profits of the overseas branch or agency which are—

(a) chargeable under Case I of Schedule D; or

(b) included in the profits of life reinsurance business or overseas life assurance business chargeable under Case VI of Schedule D by virtue of section 439B or 441.

(6) Where (whether by virtue of this subsection or otherwise) an amount of unrelieved foreign tax arising in an accounting period falls to be treated under subsection (2) above for the purposes of allowing credit relief under this Part as foreign tax paid in respect of, and computed by reference to, qualifying income of an earlier accounting period, it shall not be so treated for the purpose of any further application of this section.

(7) In this section "overseas branch or agency", in relation to a company, means a branch or agency through which the company carries on a trade in a territory outside the United Kingdom.

806M Provisions supplemental to section 806L.

(1) This section has effect for the purposes of section 806L and shall be construed as one with that section.

(2) If, in any accounting period, a company ceases to have a particular overseas branch or agency, the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas branch or agency shall, to the extent that it is not treated as mentioned in section 806L(2)(b), be reduced to nil (so that no amount arises which falls to be treated as mentioned in section 806L(2)(a)).

(3) If a company—

(a) at any time ceases to have a particular overseas branch or agency in a particular territory ("the old branch or agency"), but

(b) subsequently again has an overseas branch or agency in that territory ("the new branch or agency"),

the old branch or agency and the new branch or agency shall be regarded as different overseas branches or agencies.

(4) If, under the law of a territory outside the United Kingdom, tax is charged in the case of a company resident in the United Kingdom in respect of the profits of two or more of its overseas branches or agencies in that territory, taken together, then, for the purposes of—

(a) section 806L, and

(b) subsection (3) above,

those overseas branches or agencies shall be treated as if they together constituted a single overseas branch or agency of the company.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas branch or agency in any accounting period shall only be treated as mentioned in subsection (2) of section 806L on a claim.

(6) Any such claim must specify the amount (if any) of the unrelieved foreign tax—

(a) which is to be treated as mentioned in paragraph (a) of that subsection; and

(b) which is to be treated as mentioned in paragraph (b) of that subsection.

(7) A claim under subsection (5) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection, or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.”

(2) The amendment made by sub-paragraph (1) has effect in relation to unrelieved foreign tax arising in any accounting period ending on or after 1st April 2000.

(3) No such tax shall be treated by virtue of that amendment as foreign tax in respect of income arising in any accounting period ended on or before 31st March 2000.

Foreign tax on amounts underlying non-trading credits

24 (1) Amend section 807A of the Taxes Act 1988 (disposals and acquisitions of company loan relationships) as follows.

(2) In subsection (2) (tax which is to be treated as if it were to be disregarded for certain purposes) in paragraph (b), after “is attributable, on a just and reasonable apportionment," insert “ (i) ” and at the end insert “; or

(ii) to so much of a relevant qualifying payment as, on such an apportionment, is attributable to a time when the company is not a party to the interest rate or currency contract concerned”.

F498(3) . . . . . .

(4) This paragraph has effect in relation to accounting periods ending on or after 21st March 2000.

Textual Amendments

F498 Sch. 30 para. 24(3) repealed (24.7.2002 with effect as mentioned in Sch. 40 Pt. 3(13) note 2 of the repealing Act) by 2002 c. 23, s. 141, **Sch. 40 Pt. 3(13)** note 2

Royalties: special relationship

25 (1) After section 808A of the Taxes Act 1988 insert—

Status: *Point in time view as at 21/07/2009.*
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"**808B Royalties: special relationship.**

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,

(b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and

(c) where subsection (3) below applies, the factors specified in subsection (4) below.

(3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or

(d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

(4) The factors mentioned in subsection (2)(c) above are—

(a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been so paid in the absence of a special relationship, and

(c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.

(5) The special relationship provision shall be construed as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) the rate or amount of royalties that would have been payable in the absence of the relationship,

as the case may be.

Status: *Point in time view as at 21/07/2009.*
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(6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—

(a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or

(b) to show the matters specified in subsection (7) below,

as the case may be.

(7) Those matters are—

(a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and

(b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.

(8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(9) For the purposes of this section one person ("person A") is an associate of another person ("person B") at a given time if—

(a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or

(b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time."

(2) This paragraph has effect in relation to royalties (as defined in the arrangements) payable on or after the day on which this Act is passed.

Postponement of capital allowances to obtain double taxation relief

26 (1) Section 810 of the Taxes Act 1988 (postponement of capital allowances to obtain double taxation relief) shall cease to have effect.

(2) This paragraph has effect in relation to claims made on or after 1st April 2000.

Time limits where reduction under s.811 rendered excessive or insufficient

27 (1) Amend section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) as follows.

(2) After subsection (3) insert—

"(4) Where the amount by which any income is treated under subsection (1) above as reduced is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—

(a) in the United Kingdom, or

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(b) under the law of any other territory,

nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what reduction under subsection (1) above falls to be treated as made.

(5) Subject to subsection (7) below, where—

(a) the amount of any income of a person is treated under subsection (1) above as reduced by any sum, and

(b) the amount of that reduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the reduction excessive.

(6) A notice under subsection (5) above must be given within one year from the time of the making of the adjustment.

(7) Subsections (5) and (6) above do not apply where the adjustment is one whose consequences in relation to the reduction fall to be given effect to in accordance with regulations made under—

(a) section 182(1) of the [M154]Finance Act 1993 (regulations relating to individual members of Lloyd's); or

(b) section 229 of the [M155]Finance Act 1994 (regulations relating to corporate members of Lloyd's).

(8) A person who fails to comply with the requirements imposed on him by subsections (5) and (6) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (9) below.

(9) The difference is that between—

(a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the reduction that ought to be made under subsection (1) above; and

(b) the amount that would have been the tax so payable after giving effect instead to a reduction under that subsection of the amount rendered excessive as mentioned in subsection (5)(b) above.

(10) For the purposes of subsection (9) above "the relevant chargeable period" means the chargeable period as respects which the reduction was treated as made."

(3) This paragraph has effect in relation to adjustments made on or after 21st March 2000.

Marginal Citations

M154 1993 c. 34.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M155 1994 c. 9.

Mutual agreement procedure

28 (1) After section 815A of the Taxes Act 1988 insert—

"**815AA Mutual agreement procedure and presentation of cases under arrangements.**

(1) Where, under and for the purposes of arrangements made with the government of a territory outside the United Kingdom and having effect under section 788—

(a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and

(b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,

subsections (2) and (3) below have effect.

(2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).

(3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.

(4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.

(5) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts; and

(b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.

(6) Any such case must be presented before the expiration of—

(a) the period of 6 years following the end of the chargeable period to which the case relates; or

(b) such longer period as may be specified in the arrangements."

(2) Subsections (1) to (3) of the section inserted by sub-paragraph (1) have effect where the solution or mutual agreement is reached or made on or after the day on which this Act is passed.

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(3) Subsection (6) (and subsection (4) so far as relating to subsection (6)) of that section has effect in relation to the first presentation of a case on or after the day on which this Act is passed.

Restriction of interest on repayment of tax resulting from carry back of relievable tax

29 (1) Amend section 826 of the Taxes Act 1988 as follows.

(2) After subsection (7B) insert—

"(7BB) Subject to subsection (7BC) below, in any case where—

(a) within the meaning of section 806D, any relievable underlying tax or relievable withholding tax arises in an accounting period of a company ("the later period"),

(b) pursuant to a claim under section 806G, the whole or any part of that tax is treated as mentioned in section 806D(4)(c) or (5)(c) in relation to the single related dividend or the single unrelated dividend arising in an earlier accounting period ("the earlier period"), and

(c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that period,

then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of so much of the amount of the repayment as falls to be made as a result of the claim under section 806G, except so far as concerns interest for any time after the date on which any corporation tax for the later period became due and payable (as mentioned in subsection (7D) below).

(7BC) Where, in a case falling within subsection (7A)(a) and (b) above—

(a) as a result of the claim under section 393A(1), an amount or increased amount of eligible unrelieved foreign tax arises for the purposes of section 806A(1), and

(b) pursuant to a claim under section 806G, the whole or any part of an amount of relievable underlying tax or relievable withholding tax is treated as mentioned in section 806D(4)(c) or (5)(c) in relation to the single related dividend or the single unrelated dividend arising in an accounting period before the earlier period,

then subsection (7BB) above shall have effect in relation to the claim under section 806G as if the reference in the words after paragraph (c) to the later period within the meaning of that subsection were a reference to the period which, in relation to the claim under section 393A(1), would be the later period for the purposes of subsection (7A) above."

(3) In subsection (7D) (date on which corporation tax is due and payable for the purposes of certain provisions) after "(7B)" insert " , (7BB) ".

(4) In subsection (7E) (which, for the purposes of certain provisions, restricts the power in section 59A of the [M156]Taxes Management Act 1970 to alter the date on which corporation tax is due and payable) after "(7B),", in both places where it occurs, insert " (7BB), ".

Status: *Point in time view as at 21/07/2009.*
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Marginal Citations
M156 1970 c. 9.

Time limits where deduction under s.278 of the 1992 Act rendered excessive or insufficient

30 (1) Amend section 278 of the [M157]Taxation of Chargeable Gains Act 1992 as follows.

(2) At the beginning, insert " (1) ".

(3) At the end add—

"(2) Where the amount of any deduction allowed under subsection (1) above is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—

(a) in the United Kingdom, or

(b) under the law of any other territory,

nothing in this Act, the Management Act or the Taxes Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what deduction falls to be made under subsection (1) above.

(3) Where—

(a) a deduction has been allowed under subsection (1) above in the case of the person making the disposal, and

(b) the amount of that deduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the deduction excessive.

(4) A notice under subsection (3) above must be given within one year from the time of the making of the adjustment.

(5) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (6) below.

(6) The difference is that between—

(a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the deduction that ought to be made under subsection (1) above; and

(b) the amount that would have been the tax so payable after giving effect instead to a deduction under that subsection of the amount rendered excessive as mentioned in subsection (3)(b) above.

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(7) For the purposes of subsection (6) above "the relevant chargeable period" means the chargeable period as respects which the deduction was treated as made."

(4) This paragraph has effect in relation to adjustments made on or after 21st March 2000.

Marginal Citations
M157 1992 c. 12.

SCHEDULE 31

Section 104.

CONTROLLED FOREIGN COMPANIES

Introductory

1 Amend Chapter IV of Part XVII of the Taxes Act 1988 as follows.

Conditions for company to be controlled foreign company

2 (1) Amend section 747 as follows.

(2) After subsection (1) insert—

"(1A) A company which would not, apart from this subsection, fall to be regarded as controlled by persons resident in the United Kingdom shall be taken for the purposes of this Chapter to be so controlled if—

(a) there are two persons who, taken together, control the company;

(b) one of those persons is resident in the United Kingdom and is a person in whose case the 40 per cent test in section 755D(3) is satisfied; and

(c) the other is a person in whose case the 40 per cent test in section 755D(4) is satisfied."

Designer rate tax provisions: deemed lower level of taxation

3 After section 750 insert—

"**750A Deemed lower level of taxation: designer rate tax provisions.**

(1) Where—

(a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and

(b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but

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(c) that local tax is determined under designer rate tax provisions,

the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.

(2) In subsection (1) above "designer rate tax provisions" means provisions—

(a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and

(b) which are specified in regulations made by the Board.

(3) Regulations under subsection (2) above—

(a) may make different provision for different cases or with respect to different territories; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made."

"Contro"l and the two "40 per cen"t tests

4 (1) After section 755C insert—

"**755D "Control" and the two "40 per cent" tests.**

(1) For the purposes of this Chapter "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 the company or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.

(3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—

(a) at least 40 per cent, but

(b) not more than 55 per cent,

of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(5) For the purposes of this Chapter any question—

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(a) whether a company is controlled by a person, or by two or more persons taken together, or

(b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,

shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.

(6) The rights and powers referred to in subsection (5) above are—

(a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;

(b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;

(c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and

(d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a "UK connected person") if the UK connected person were himself the person.

(7) Rights and powers fall within this subsection to the extent that they—

(a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—

(i) on behalf of the person;

(ii) under the direction of the person; or

(iii) for the benefit of the person; and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(8) In subsections (6)(b) to (d) and (7) above, the references to a person's rights and powers include references to any rights or powers which he either—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.

(10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.

(11) References in this section—

(a) to rights and powers of a person, or

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(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons."

(2) In consequence of sub-paragraph (1), in section 756(3) (application of provisions of Part XI)—

(a) omit paragraph (a); and

(b) omit the words following paragraph (b).

Exempt activities: wholesale, distributive, financial or service business

5 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.

(2) In sub-paragraph (2)(b) (company mainly engaged in wholesale, distributive or financial business: percentage of gross trading receipts from connected persons etc) —

(a) for "or financial" substitute " financial or service "; and

(b) for the words from "connected" to the end substitute " persons falling within sub-paragraph (2A) below. "

(3) After sub-paragraph (2) insert—

"(2A) Those persons are—

(a) persons who are connected or associated with the company;

(b) persons who have a 25 per cent assessable interest in the company in the case of the accounting period in question; and

(c) if the company is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, persons who are connected or associated with either or both of the two persons mentioned in that subsection."

Local holding companies

6 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.

(2) In sub-paragraph (3) (local holding companies) after "90 per cent of its gross income during the accounting period in question" insert " is received by it in the territory in which it is resident and ".

Other holding companies

7 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 6 as follows.

F499(2) . . . . . .

F499(3) . . . . . .

F499(4) . . . . . .

F499(5) . . . . . .

F499(6) . . . . . .

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F499(7) . . . . . .

(8) In sub-paragraph (5) (interpretation of sub-paragraphs (3) to (4B)) after "a reference to a trading company" insert "to which sub-paragraph (5ZA) or (5ZB) below applies.

(5ZA) This sub-paragraph applies to a trading company".

(9) After sub-paragraph (5ZA) insert—

"(5ZB) This sub-paragraph applies to a trading company if—

(a) it is a controlled foreign company by virtue of subsection (1A) of section 747; and

(b) the person who satisfies the requirement in paragraph (b) of that subsection in relation to the company also controls the holding company or superior holding company."

F500(10) . . . . . .

F500(11) . . . . . .

Textual Amendments

F499 Sch. 31 para. 7(2)-(7) omitted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 11(b)** (with Sch. 16 paras. 13-20)

F500 Sch. 31 para. 7(10)(11) omitted (with effect in accordance with Sch. 16 para. 12 of the amending Act) by virtue of Finance Act 2009 (c. 10), **Sch. 16 para. 11(b)** (with Sch. 16 paras. 13-20)

Businesses to which requirement as to derivation of receipts applies

8 (1) In Part II of Schedule 25 (exempt activities) amend paragraph 11 as follows.

(2) In sub-paragraph (1) (meaning of "wholesale, distributive or financial business" for purposes of paragraph 6(2)(b))—

(a) in the opening words, for "or financial" substitute " financial or service ";

(b) omit the word "and" immediately preceding paragraph (g); and

(c) at the end of paragraph (g) add "; and

(h) the provision of services not falling within any of the preceding paragraphs."

Commencement

9 (1) Paragraph 2 has effect on and after 21st March 2000.

(2) Paragraph 3 has effect in relation to any accounting period of a company resident outside the United Kingdom which begins on or after 6th October 1999.

(3) Paragraph 4 has effect—

(a) for the purpose of determining whether at any time on or after 21st March 2000 a company resident outside the United Kingdom is to be regarded for the purposes of Chapter IV of Part XVII of the Taxes Act 1988 as controlled by persons resident in the United Kingdom; and

(b) for any accounting period of a company resident outside the United Kingdom which begins on or after 21st March 2000.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Paragraphs 5 to 8 have effect in relation to any accounting period of a controlled foreign company which begins on or after 21st March 2000.

(5) In this paragraph "accounting period" and "controlled foreign company" have the same meaning as they have in Chapter IV of Part XVII of the Taxes Act 1988.

SCHEDULE 32

Section 116(2).

STAMP DUTY ON SEVEN YEAR LEASES: TRANSITIONAL PROVISIONS

Introductory

1 In this Schedule—

"additional duty", in relation to an instrument, means additional stamp duty chargeable on the instrument as a result of section 116;

"the appropriate amount of duty", in relation to an instrument, means the stamp duty that would have been chargeable on the instrument if section 116 had been in force when it was executed; and

"the commencement date" means 28th March 2000.

Instruments to which this Schedule applies

2 The instruments to which this Schedule applies are—

(a) leases of land for a term of seven years, and

(b) agreements for leases of land for a term of seven years,

executed on or after 1st October 1999 and before the commencement date.

Instruments which remain duly stamped

3 An instrument to which this Schedule applies which is stamped with the appropriate amount of duty is duly stamped, whenever it was executed.

Instruments which cease to be duly stamped

4 (1) An instrument to which this Schedule applies which—

(a) immediately before the commencement date was duly stamped, but

(b) was stamped with less than the appropriate amount of duty,

ceases to be duly stamped on the commencement date.

(2) Sub-paragraph (1) applies even if the instrument has been stamped in accordance with section 12(5) of the [M158]Stamp Act 1891 with a stamp denoting that it is duly stamped.

(3) If an instrument ceases to be duly stamped on the commencement date as a result of sub-paragraph (1)—

(a) section 12(6) of the [M159]Stamp Act 1891 (adjudicated instruments admissible in evidence) does not apply to it at any time when it is not duly stamped, and

(b) section 14(1) of that Act (receipt in evidence of insufficiently stamped instruments if unpaid duty paid to court) does not apply to it at any time when

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it is not duly stamped, unless the unpaid duty and any interest or penalty is paid in accordance with that subsection.

Marginal Citations
M158 1891 c. 39.
M159 1891 c. 39.

Stamping following earlier adjudication

5 Section 12A(1) of the Stamp Act 1891 (adjudicated instruments not to be stamped other than in accordance with adjudication decision) does not prevent an instrument to which this Schedule applies which is stamped with less than the appropriate amount of duty from being stamped with additional duty.

Use of instruments in evidence, etc.

6 Section 14(4) of the Stamp Act 1891 (instruments not to be used unless duly stamped in accordance with law in force when executed) applies in relation to an instrument to which this Schedule applies as if, as respects any time on or after the commencement date, the reference to the law in force at the time when it was executed were to the law in force on the commencement date.

Adjudication, interest and penalties

7 (1) This paragraph applies for the purpose of applying sections 12 to 13B and 15 to 15B of the Stamp Act 1891 (adjudication by Commissioners and interest and penalties on late stamping) in relation to any additional duty chargeable on an instrument to which this Schedule applies.

(2) Those sections continue to apply without modification as respects any other stamp duty chargeable on the instrument.

(3) Those sections have effect as respects the additional duty as if—
- (a) the additional duty were the only stamp duty chargeable on the instrument;
- (b) the instrument had been executed on the commencement date; and
- (c) in the case of an instrument executed outside the United Kingdom and first received in the United Kingdom before the commencement date, the instrument had been first received in the United Kingdom on the commencement date.

(4) Accordingly, those sections apply as respects additional duty as if—
- (a) references to duty were to additional duty;
- (b) references to stamping were to stamping with additional duty;
- (c) references to an instrument's being stamped were to its being stamped with additional duty;
- (d) references to an instrument's being duly stamped were to its being stamped with all the additional duty chargeable on it;
- (e) references to an instrument's being unstamped were to its not being stamped with any additional duty;

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(f) references to an instrument's being insufficiently stamped were to its being stamped with insufficient additional duty;

(g) references to adjudication, or an appeal, under any of those sections were to adjudication or an appeal under the section in question as it has effect as respects additional duty; and

(h) references to the maximum penalty were to the maximum penalty as respects additional duty.

SCHEDULE 33

Section 117.

POWER TO VARY STAMP DUTIES

Power of Treasury to make provision by regulations

1 (1) The Treasury may if they consider it expedient in the public interest make provision by regulations for the variation of an existing stamp duty.

(2) The power conferred by this paragraph includes, in particular, power to alter the descriptions of document in respect of which an existing stamp duty, or an existing rate or amount of duty, is chargeable.

(3) The power to make regulations under this paragraph is exercisable by statutory instrument.

Power only to be used for cases involving land or shares etc.

2 (1) The power conferred by paragraph 1 does not include power—

(a) to vary the amount chargeable by way of stamp duty on an excepted instrument, or

(b) to cause stamp duty to become chargeable on an excepted instrument.

(2) For the purposes of this paragraph—

(a) an "excepted instrument" is any document that is not a relevant property instrument, and

(b) a "relevant property instrument" is a document that (whether or not it also relates to any other transaction) relates to a transaction that to any extent involves—

(i) land, stock or marketable securities, or

(ii) any estate or interest in land, stock or marketable securities.

Power not to be used to vary rates or thresholds

3 The power conferred by paragraph 1 does not, except as mentioned in paragraph 1(2), include power to vary—

(a) the rate, or rates, of an existing*ad valorem* stamp duty,

(b) the amount of an existing fixed stamp duty,

(c) any threshold specified in paragraph 4 of Schedule 13 to the [M160]Finance Act 1999 (rate bands for conveyance or transfer on sale), or

(d) any threshold specified in paragraph 11 or 12 of that Schedule (duty on leases) in respect of rent or the term of a lease.

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Marginal Citations
M160 1999 c. 16.

Approval of regulations by House of Commons

4 (1) An instrument containing regulations under paragraph 1 shall be laid before the House of Commons after being made.

(2) If the regulations are not approved by the House of Commons before the end of the period of 28 days beginning with the day on which they are made, they shall cease to have effect at the end of that period if they have not already ceased to have effect under sub-paragraph (3).

(3) If on any day during that period of 28 days the House of Commons, in proceedings on a motion that (or to the effect that) the regulations be approved, comes to a decision rejecting the regulations, they shall cease to have effect at the end of that day.

(4) Where regulations cease to have effect under sub-paragraph (2) or (3), their ceasing to have effect is without prejudice to anything done in reliance on them.

(5) In reckoning any such period of 28 days take no account of any time during which—
(a) Parliament is prorogued or dissolved, or
(b) the House of Commons is adjourned for more than four days.

Claim for repayment if regulations not approved

5 (1) Where regulations cease to have effect under paragraph 4(2) or (3), any amount paid by way of stamp duty, or interest or penalty on late stamping, that would not have been payable but for the regulations shall, on a claim, be repaid by the Commissioners.

(2) Section 110 of the [M161]Finance Act 1999 (interest on repayment of duty overpaid etc.) applies to a repayment under this paragraph of any amount paid by way of stamp duty or penalty on late stamping.

In the case of a repayment under this paragraph, the relevant time for the purposes of that section is 30 days after the day on which the instrument in question was executed or, if later, the date on which the payment of duty or penalty was made.

(3) A claim for repayment must be made within two years after the date of the instrument in question or, if it is not dated, within two years after its execution.

(4) No repayment shall be made on a claim until the instrument in question has been produced to the Commissioners for such cancelling of stamps, and such stamping to denote the making of the repayment or the producing of the instrument under this paragraph, as the Commissioners consider appropriate.

(5) Any repayment shall, subject to any regulations under sub-paragraph (6)(d), be made to such person as the Commissioners consider appropriate.

(6) The Commissioners may make provision by regulations—
(a) for varying the time limit having effect under sub-paragraph (3);
(b) for varying or repealing the condition having effect under sub-paragraph (4);

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(c) as to any other conditions that must be met before repayment is made;

(d) as to the person to whom repayment is to be made.

(7) 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.

Marginal Citations

M161 1999 c. 16.

Use in evidence, etc. of instruments affected by regulations ceasing to have effect

6 (1) Where regulations cease to have effect under paragraph 4(2) or (3), the following provisions apply to an instrument that—

(a) was executed at a time when the regulations were in force, and

(b) was at that time chargeable with any amount of stamp duty with which it would not have been chargeable apart from the regulations.

(2) If the instrument was stamped while the regulations were in force, nothing done in pursuance of paragraph 5 (repayment of duty etc.) prevents it being treated for any purpose as duly stamped in accordance with the law in force at the time when it was executed.

(3) If the instrument was not stamped while the regulations were in force, the law in force at the time when it was executed shall be deemed to have been what the law would have been apart from the regulations.

Temporary effect of regulations

7 (1) Regulations under paragraph 1 shall not apply in relation to instruments executed after the end of—

(a) the period of 18 months beginning with the day on which the regulations were made, or

(b) such shorter period as may be specified in the regulations.

(2) This does not affect the power to make further provision by regulations under paragraph 1 to the same or similar effect.

Power to make transitional etc. provision

8 Any power to make regulations under this Schedule includes power to make such transitional, supplementary and incidental provision as appears to the authority making the regulations to be necessary or expedient.

Interpretation

9 **[**F501(1) In relation to a bearer instrument (as defined in paragraph 3 of Schedule 15 to the M162Finance Act 1999), references in this Schedule to the execution of the instrument shall be read as references to its issue.**]**

(2) This Schedule shall be construed as one with the M163Stamp Act 1891.

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Textual Amendments

F501 Sch. 33 para. 9(1) repealed (with effect as mentioned in Sch. 40 Pt. III Note 4 of the amending Act) by 2000 c. 17, s. 156, **Sch. 40 Pt. III**

Marginal Citations

M162 1999 c. 16.
M163 1891 c. 39.

SCHEDULE 34

Section 129.

ABOLITION OF STAMP DUTY ON INSTRUMENTS RELATING TO INTELLECTUAL PROPERTY: SUPPLEMENTARY PROVISIONS

Introduction

1 In this Schedule "intellectual property" has the same meaning as in section 129(1).

Stamp duty reduced in certain other cases

2 (1) This paragraph applies where—

(a) stamp duty under Part I of Schedule 13 to the Finance Act 1999 (conveyance or transfer on sale) is chargeable on an instrument, and

(b) part of the property concerned consists of intellectual property.

(2) In such a case—

(a) the consideration in respect of which duty would otherwise be charged shall be apportioned, on such basis as is just and reasonable, as between the part of the property which consists of intellectual property and the part which does not, and

(b) the instrument shall be charged only in respect of the consideration attributed to such of the property as is not intellectual property.

(3) This paragraph applies to instruments executed on or after 28th March 2000.

Apportionment of consideration for stamp duty purposes

3 (1) Where part of the property referred to in section 58(1) of the [M164]Stamp Act 1891 (consideration to be apportioned between different instruments as parties think fit) consists of intellectual property, that provision shall have effect as if "the parties think fit" read "is just and reasonable".

(2) Where—

(a) part of the property referred to in section 58(2) of the Stamp Act 1891 (property contracted to be purchased by two or more persons etc.) consists of intellectual property, and

(b) both or (as the case may be) all the relevant persons are connected with one another,

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that provision shall have effect as if the words from "for distinct parts of the consideration" to the end of the subsection read ", the consideration is to be apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with*ad valorem* duty in respect of such distinct consideration.".

(3) In a case where sub-paragraph (1) or (2) applies and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty shall have effect as if—

(a) the consideration had been apportioned in a manner that is just and reasonable, and

(b) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth).

(4) For the purposes of sub-paragraph (2)—

(a) a person is a relevant person if he is a person by or for whom the property is contracted to be purchased;

(b) the question whether persons are connected with one another shall be determined in accordance with section 839 of the Taxes Act 1988.

(5) In sub-paragraph (3) "the enactments relating to stamp duty" means the Stamp Act 1891 and any enactment amending or which is to be construed as one with that Act.

(6) This paragraph applies to instruments executed on or after 28th March 2000.

Marginal Citations
M164 1891 c. 39.

Certification of instruments for stamp duty purposes

4 (1) Intellectual property shall be disregarded for the purposes of paragraph 6 of Schedule 13 to the [M165] Finance Act 1999 (certification of instrument as not forming part of transaction or series of transactions exceeding specified amount).

(2) Any statement as mentioned in paragraph 6(1) of that Schedule shall be construed as leaving out of account any matter which is to be so disregarded.

(3) This paragraph applies to instruments executed on or after 28th March 2000.

Marginal Citations
M165 1999 c. 16.

Acquisition under statute

5 (1) Section 12 of the [M166]Finance Act 1895 (property vested by Act or purchased under statutory powers) does not require any person who is authorised to purchase any property as mentioned in that section on or after 28th March 2000 to include any

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intellectual property in the instrument of conveyance required by that section to be produced to the Commissioners.

(2) If the property consists wholly of intellectual property no instrument of conveyance need be produced to the Commissioners under that section.

(3) This paragraph applies where the Act mentioned in that section, and by virtue of which property is vested or a person is authorised to purchase property, is passed on or after 28th March 2000.

Marginal Citations

M166 1895 c. 16.

SCHEDULE 35

Section 135.

. . . . . .

Textual Amendments

F502 Sch. 35 repealed (11.5.2001 with effect in accordance with s. 99(7) of the amending Act) by 2001 c. 9, ss. 99(7), 110, **Sch. 33 Pt. 3(1)** Note 2

SCHEDULE 36

Section 136(8).

NEW SCHEDULE 3A TO THE VALUE ADDED TAX ACT 1994

The Schedule inserted after Schedule 3 to the [M168]Value Added Tax Act 1994 is as follows:

"SCHEDULE 3A

REGISTRATION IN RESPECT OF DISPOSALS OF ASSETS FOR WHICH A VAT REPAYMENT IS CLAIMED

Liability to be registered

1 (1) A person who is not registered under this Act, and is not liable to be registered under Schedule 1, 2 or 3, becomes liable to be registered under this Schedule at any time—

(a) if he makes relevant supplies; or

(b) if there are reasonable grounds for believing that he will make such supplies in the period of 30 days then beginning.

(2) A person shall be treated as having become liable to be registered under this Schedule at any time when he would have become so liable under sub-paragraph (1) above but for any registration which is subsequently cancelled under paragraph 6(2) below, paragraph 13(3) of Schedule 1, paragraph 6(2) of Schedule 2 or paragraph 6(3) of Schedule 3.

Status: *Point in time view as at 21/07/2009.*
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(3) A person shall not cease to be liable to be registered under this Schedule except in accordance with paragraph 2 below.

2 A person who has become liable to be registered under this Schedule shall cease to be so liable at any time if the Commissioners are satisfied that he has ceased to make relevant supplies.

Notification of liability and registration

3 (1) A person who becomes liable to be registered by virtue of paragraph 1(1)(a) above shall notify the Commissioners of the liability before the end of the period of 30 days beginning with the day on which the liability arises.

(2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the beginning of the day on which the liability arises.

4 (1) A person who becomes liable to be registered by virtue of paragraph 1(1)(b) above shall notify the Commissioners of the liability before the end of the period by reference to which the liability arises.

(2) The Commissioners shall register any such person (whether or not he so notifies them) with effect from the beginning of the period by reference to which the liability arises.

Notification of end of liability

5 (1) Subject to sub-paragraph (2) below, a person registered under paragraph 3 or 4 above who ceases to make or have the intention of making relevant supplies shall notify the Commissioners of that fact within 30 days of the day on which he does so.

(2) Sub-paragraph (1) above does not apply if the person would, when he so ceases, be otherwise liable or entitled to be registered under this Act if his registration and any enactment preventing a person from being liable to be registered under different provisions at the same time were disregarded.

Cancellation of registration

6 (1) Subject to sub-paragraph (3) below, where the Commissioners are satisfied that a registered person has ceased to be liable to be registered under this Schedule, they may cancel his registration with effect from the day on which he so ceased or from such later date as may be agreed between them and him.

(2) Where the Commissioners are satisfied that on the day on which a registered person was registered he was not registrable, they may cancel his registration with effect from that day.

(3) The Commissioners shall not under sub-paragraph (1) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement, or entitled, to be registered under this Act.

(4) In determining for the purposes of sub-paragraph (3) above whether a person would be subject to a requirement, or entitled, to be registered at any time, so much of any provision of this Act as prevents a person from becoming liable or entitled to be registered when he is already registered or when he is so liable under any other provision shall be disregarded.

Status: *Point in time view as at 21/07/2009.*
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Exemption from registration

7 (1) Notwithstanding the preceding provisions of this Schedule, where a person who makes or intends to make relevant supplies satisfies the Commissioners that any such supply is zero-rated or would be zero-rated if he were a taxable person, they may, if he so requests and they think fit, exempt him from registration under this Schedule.

(2) Where there is a material change in the nature of the supplies made by a person exempted under this paragraph from registration under this Schedule, he shall notify the Commissioners of the change—

(a) within 30 days of the date on which the change occurred; or

(b) if no particular date is identifiable as the day on which it occurred, within 30 days of the end of the quarter in which it occurred.

(3) Where there is a material alteration in any quarter in the proportion of relevant supplies of such a person that are zero-rated, he shall notify the Commissioners of the alteration within 30 days of the end of the quarter.

(4) If it appears to the Commissioners that a request under sub-paragraph (1) above should no longer have been acted upon on or after any day, or has been withdrawn on any day, they shall register the person who made the request with effect from that day.

Supplementary

8 Any notification required under this Schedule shall be made in such form and shall contain such particulars as the Commissioners may by regulations prescribe.

9 (1) For the purposes of this Schedule a supply of goods is a relevant supply where—

(a) the supply is a taxable supply;

(b) the goods are assets of the business in the course or furtherance of which they are supplied; and

(c) the person by whom they are supplied, or a predecessor of his, has received or claimed, or is intending to claim, a repayment of VAT on the supply to him, or the importation by him, of the goods or of anything comprised in them.

(2) In relation to any goods, a person is the predecessor of another for the purposes of this paragraph if—

(a) that other person is a person to whom he has transferred assets of his business by a transfer of that business, or part of it, as a going concern;

(b) those assets consisted of or included those goods; and

(c) the transfer of the assets is one falling by virtue of an order under section 5(3) (or under an enactment re-enacted in section 5(3)) to be treated as neither a supply of goods nor a supply of services;

and the reference in this paragraph to a person's predecessor includes references to the predecessors of his predecessor through any number of transfers.

(3) The reference in this paragraph to a repayment of VAT is a reference to such a repayment under a scheme embodied in regulations made under section 39."

Marginal Citations

M168 1994 c. 23.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M168 1994 c. 23.

SCHEDULE 37

Section 142.

LANDFILL TAX: NEW PART VIII OF SCHEDULE 5 TO THE FINANCE ACT 1996

"PART VIII

SECONDARY LIABILITY: CONTROLLERS OF LANDFILL SITES

Meaning of controller

48 (1) For the purposes of this Part of this Schedule a person is the controller of the whole, or a part, of a landfill site at a given time if he determines, or is entitled to determine, what disposals of material, if any, may be made—

(a) at every part of the site at that time, or

(b) at that part of the site at that time,

as the case may be.

(2) But a person who, because he is an employee or agent of another, determines or is entitled to determine what disposals may be made at a landfill site or any part of a landfill site is not the controller of that site or, as the case may be, that part of that site.

(3) Where a person is the controller of the whole or a part of a landfill site, that site or, as the case may be, that part of the site is referred to in this Part of this Schedule as being under his control.

(4) Any reference in this Part of this Schedule to a controller (without more) is a reference to a controller of the whole or a part of a landfill site.

Secondary liability

49 (1) Where—

(a) a taxable disposal is made at a landfill site,

(b) at the time when that disposal is made a person is the operator of the landfill site by virtue of section 67(a), (c) or (e) of this Act, and

(c) at that time a person other than the operator mentioned in paragraph (b) above is the controller of the whole or a part of the landfill site,

the controller shall be liable to pay to the Commissioners an amount of the landfill tax chargeable on the disposal.

(2) The amount which the controller is liable to pay shall be determined in accordance with the following provisions of this paragraph.

(3) In a case where the whole of the landfill site is under the control of the controller, he shall be liable to pay the whole of the landfill tax chargeable.

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(4) In a case where a part of the landfill site is under the control of the controller, he shall be liable to pay an amount of the landfill tax calculated in accordance with sub-paragraphs (5) and (6) below.

(5) The amount of landfill tax which the controller is liable to pay is the amount which would have been chargeable had a separate taxable disposal consisting of the amount of material referred to in sub-paragraph (6) below been made at the time of the disposal mentioned in sub-paragraph (1)(a) above.

(6) That amount of material is the amount by weight of the material comprised in the disposal mentioned in sub-paragraph (1)(a) above which was disposed of on the part of the landfill site under the control of the controller.

(7) If the amount mentioned in sub-paragraph (6) above is nil, the controller shall have no liability under sub-paragraph (1) above in relation to landfill tax chargeable on the disposal.

(8) For the purposes of sub-paragraph (1)(b) and (c) above—

(a) section 61 of this Act, and

(b) any regulations made under section 62 of this Act,

shall not apply for determining the time when the disposal in question is made.

Operator entitled to credit

50 (1) This paragraph applies where—

(a) the operator of a landfill site is liable to pay landfill tax on a taxable disposal by reference to a particular accounting period,

(b) a controller of the whole or a part of that site is (apart from this paragraph) liable under paragraph 49 above to pay an amount of that tax, and

(c) for the accounting period in question the operator is entitled to credit under regulations made under section 51 of this Act.

(2) The amount of the tax which the controller is (apart from this sub-paragraph) liable to pay shall be reduced by the amount calculated in accordance with the following formula—

$$\frac{A \times C}{G}$$

where—

A is the amount of tax mentioned in sub-paragraph (1)(b) above;

C is the amount of credit mentioned in sub-paragraph (1)(c) above; and

G is the operator's gross tax liability for the accounting period in question.

(3) For the purposes of sub-paragraph (2) above, the operator's gross tax liability for the accounting period in question is the gross amount of landfill tax—

(a) which is chargeable on disposals made at all landfill sites of which he is the operator, and

(b) for which he is required to account by reference to that accounting period.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In sub-paragraph (3) above, the gross amount of landfill tax means the amount of tax before any credit or any other adjustment is taken into account in the period in question.

(5) If the amount calculated in accordance with the formula in sub-paragraph (2) above is greater than the amount of tax mentioned in sub-paragraph (1)(b) above, the amount of the tax which the controller is liable to pay shall be reduced to nil.

Payment of secondary liability

51 (1) This paragraph applies where a controller is liable under paragraph 49 above (after taking account of any reduction under paragraph 50 above) to pay an amount of landfill tax ("the relevant amount").

(2) The controller is required to pay the relevant amount to the Commissioners only if—

(a) a notice containing the required information is served on him, or

(b) other reasonable steps are taken with a view to bringing the required information to his attention,

before the end of the period of two years beginning with the day immediately following the relevant accounting day.

(3) The relevant accounting day is the last day of the accounting period by reference to which the landfill site operator liable to pay the landfill tax in question is required to account for that tax.

(4) If the controller is required to pay the relevant amount by virtue of this paragraph, the amount shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(5) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.

(6) For the purposes of sub-paragraph (2) above the required information is the relevant amount and, if that amount is one reduced in accordance with paragraph 50 above, also—

(a) the amount of the controller's liability under paragraph 49 above apart from the reduction,

(b) the amount of credit to which the operator is entitled, and

(c) the operator's gross tax liability.

Assessments

52 (1) Where an amount of landfill tax is—

(a) assessed under section 50 of this Act, and

(b) notified to a licensed operator,

the Commissioners may also determine that a controller of the whole or a part of any landfill site operated by the licensed operator shall be liable to pay so much of the amount assessed as they consider just and equitable.

Status: *Point in time view as at 21/07/2009.*
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(2) A controller is required to pay an amount determined under sub-paragraph (1) above only if—

(a) a notice stating the amount is served on him, or

(b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the expiry of the period of two years beginning with the day immediately following the assessment day.

(3) The assessment day is the day on which the assessment in question is notified to the licensed operator.

(4) If a controller is required to pay an amount by virtue of this paragraph, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(5) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.

(6) For the purposes of this paragraph a licensed operator is a person who is the operator of a landfill site by virtue of section 67(a), (c) or (e) of this Act.

Assessment withdrawn or reduced

53 (1) Where—

(a) a controller is liable to pay an amount determined under paragraph 52 above, and

(b) the assessment notified to the licensed operator is withdrawn or reduced,

the Commissioners may determine that the controller's liability is to be cancelled or to be reduced to such an amount as they consider just and equitable.

(2) Sub-paragraphs (3) to (5) below apply where the Commissioners make a determination under sub-paragraph (1) above that the controller's liability is to be reduced (but not cancelled).

(3) In such a case they shall—

(a) serve the controller with notice stating the amount of the reduced liability, or

(b) take other reasonable steps with a view to bringing the reduced amount to the controller's attention.

(4) If the controller has already been served with notice of the amount determined under paragraph 52 above, or if other steps have already been taken to bring that amount to his attention—

(a) the Commissioners shall serve the notice mentioned in sub-paragraph (3)(a) above, or take the steps mentioned in sub-paragraph (3)(b) above, before the end of the period of thirty days beginning with the day immediately following that on which they make the determination under sub-paragraph (1) above, and

(b) the reduced amount shall be payable, or treated as having been payable, on or before the day on which the amount referred to in sub-paragraph (1)(a) above would have been payable apart from this paragraph.

Status: *Point in time view as at 21/07/2009.*
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(5) In a case where the controller has not been served with notice of the amount determined under paragraph 52 above, or no other steps have been taken to bring that amount to his attention, he shall be liable to pay the reduced amount only if—

(a) the notice mentioned in sub-paragraph (3)(a) above is served, or

(b) the other steps mentioned in sub-paragraph (3)(b) above are taken,

before the expiry of the period of two years beginning with the day immediately following that on which the Commissioners make the determination under sub-paragraph (1) above.

(6) Sub-paragraph (7) below applies where—

(a) the Commissioners make a determination under sub-paragraph (1) above that the controller's liability is to be cancelled, and

(b) the controller has already been served with notice of the amount determined under paragraph 52 above, or other steps have already been taken to bring that amount to his attention.

(7) In such a case the Commissioners shall—

(a) serve the controller with notice stating that the liability has been cancelled, or

(b) take other reasonable steps with a view to bringing the cancellation to the controller's attention,

before the end of the period of thirty days beginning with the day immediately following that on which they make the determination that the liability is to be cancelled.

Adjustments

54 (1) This paragraph applies in any case where the liability of a licensed operator to pay landfill tax is adjusted otherwise than by—

(a) his being entitled to credit under regulations made under section 51 of this Act,

(b) his being notified of an amount assessed under section 50 of this Act, or

(c) the withdrawal or reduction of an assessment under section 50 of this Act which was notified to him.

(2) In such a case the Commissioners may determine that a controller of the whole or any part of a landfill site operated by the licensed operator—

(a) shall be liable to pay to the Commissioners such an amount as they consider just and equitable, or

(b) shall be entitled to an allowance of such an amount as they consider just and equitable.

(3) A controller is required to pay an amount determined under sub-paragraph (2)(a) above only if—

(a) a notice stating the amount is served on him, or

(b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the end of the period of two years beginning with the day immediately following the relevant accounting day.

(4) The relevant accounting day is the last day of the accounting period of the operator within which the adjustment in question was taken into account.

Status: *Point in time view as at 21/07/2009.*
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(5) If a controller is required to pay an amount by virtue of sub-paragraph (3) above, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(6) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (3)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (3)(b) above, the day on which the last of those steps is taken.

(7) The Commissioners may determine in what manner a controller is to benefit from an allowance determined under sub-paragraph (2)(b) above.

(8) For the purposes of this paragraph a licensed operator is a person who is the operator of a landfill site by virtue of section 67(a), (c) or (e) of this Act.

Amounts payable to be treated as tax

55 An amount which a controller is required to pay under paragraph 52, 53 or 54(2)(a) above or under paragraph 58 below shall be deemed to be an amount of tax due from him and shall be recoverable accordingly.

Controller not carrying out taxable activity

56 A controller is not to be treated for the purposes of this Act as carrying out a taxable activity by reason only of any liability under this Part of this Schedule.

Joint and several liability

57 (1) In any case where the condition in sub-paragraph (4), (5) or (6) below is satisfied, the controller and the operator shall be jointly and severally liable for the principal liability.

(2) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount of the secondary liability.

(3) For the purposes of this paragraph—

(a) the principal liability is the amount referred to in sub-paragraph (4)(a), (5)(a) or (6)(a) below, as the case may be, and

(b) the secondary liability is the amount referred to in sub-paragraph (4)(b), (5)(b) or (6)(b) below, as the case may be.

(4) The condition in this sub-paragraph is satisfied if—

(a) the operator of a landfill site is liable under section 41 of this Act for landfill tax, and

(b) a controller is liable under paragraph 49 above, after taking account of any reduction under paragraph 50 above, to pay an amount of that tax.

(5) The condition in this sub-paragraph is satisfied if—

(a) the operator of a landfill site is notified of the amount of an assessment made under section 50 of this Act, and

(b) in consequence of a determination made under paragraph 52 above by the Commissioners in connection with the assessment, a controller is liable to pay an amount (after taking account of any reduction under paragraph 53 above).

Status: *Point in time view as at 21/07/2009.*
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(6) The condition in this sub-paragraph is satisfied if—

(a) the liability of the operator of a landfill site to pay landfill tax is adjusted in such a way that paragraph 54 above applies, and

(b) in consequence of a determination made under paragraph 54(2)(a) above by the Commissioners in connection with the adjustment, a controller is liable to pay an amount.

Interest payable by a controller

58 (1) This paragraph applies where—

(a) the operator of a landfill site and the controller of the whole or a part of that site are by virtue of paragraph 57 above jointly and severally liable for an amount, and

(b) that amount carries interest by virtue of any provision of this Schedule.

(2) The controller and the operator shall be jointly and severally liable to pay the interest.

(3) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount calculated in accordance with the following formula—

$$\frac{(I-[A+B])xS}{P}$$

where—

I is the total amount of interest in question;

A is the amount of interest carried for the period which—

(a) begins with the first day of the period for which interest is carried, and

(b) ends with the day on which the controller becomes liable to pay the secondary liability;

B is the amount of interest carried for any day falling after that on which the secondary liability is met in full;

S is the amount of the secondary liability;

P is the amount of the principal liability.

In this paragraph secondary liability and principal liability have the same meaning as in paragraph 57 above.

(4) The controller is liable for an amount of interest only if—

(a) a notice stating the amount is served on him, or

(b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,

before the end of the period of two years beginning with the day immediately following the final day.

(5) The final day is the last day of the period for which the interest in question is carried.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) If the controller is required to pay an amount in accordance with this paragraph, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.

(7) The notification day is—

(a) in a case where notice is served on a controller as mentioned in sub-paragraph (4)(a) above, the day on which the notice is served, or

(b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (4)(b) above, the day on which the last of those steps is taken.

(8) Where by virtue of sub-paragraph (2) above a controller is liable to pay interest which arises under paragraph 27 above, paragraph 28 above shall apply in relation to that interest as it applies to interest which a person is liable under paragraph 27 above to pay.

Reviews

59 Section 54 of this Act shall apply to a decision of the Commissioners under this Part of this Schedule—

(a) that a person is a controller,

(b) that a person is liable under this Part of this Schedule to pay any amount (including a penalty under paragraph 60 below),

(c) that a person is not entitled under this Part of this Schedule to an allowance, or

(d) as to the amount of any liability or any allowance under this Part of this Schedule,

as it applies to the other decisions of the Commissioners specified in subsection (1) of that section.

Notice that person is, or is no longer, a controller

60 (1) This paragraph applies where—

(a) on the date when this paragraph comes into force, a person is a controller of the whole or a part of a landfill site, or

(b) after that date, a person becomes or ceases to be a controller of the whole or a part of a landfill site.

(2) The controller, and the operator of the landfill site in question, shall be under a duty to secure that notice which complies with the requirements of sub-paragraph (3) below appropriate to the case in question is given to the Commissioners.

(3) The requirements of this sub-paragraph are that the notice—

(a) states that a person is, has become or has ceased to be a controller,

(b) identifies that person and the site under his control or formerly under his control,

(c) states the date when he became or ceased to be the controller, and

(d) is given within the period of thirty days beginning with the day immediately following—

(i) the day when this paragraph comes into force, in a case falling within sub-paragraph (1)(a) above, or

(ii) the day when the person in question becomes or ceases to be the controller, in a case falling within sub-paragraph (1)(b) above.

Status: *Point in time view as at 21/07/2009.*
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(4) If a person fails to comply with sub-paragraph (2) above, he is liable to a penalty of £250.

(5) Paragraph 25 above applies to a penalty under sub-paragraph (4) above as it applies to a penalty under Part V of this Schedule.

Extension of time limits where notice not served

61 (1) This paragraph applies where—

(a) a person is liable under paragraph 49 above to pay an amount of landfill tax or liable under paragraph 58 above to pay interest, or

(b) the Commissioners are entitled under paragraph 52, 53 or 54 above to determine an amount which a person is liable to pay.

(2) The reference to two years in paragraph 51(2), 52(2), 53(5), 54(3) or 58(4) above (as the case may be) shall be treated as a reference to twenty years if the requirement of paragraph 60(2) above to give notice to the Commissioners in relation to the person mentioned in sub-paragraph (1) above being or becoming a controller has not been complied with."

SCHEDULE 38

Section 143(1).

REGULATIONS FOR PROVIDING INCENTIVES FOR ELECTRONIC COMMUNICATIONS

Introduction

1 (1) Regulations may be made in accordance with this Schedule for providing incentives to use electronic communications—

(a) for the purposes mentioned in section 132(1) of the [M169]Finance Act 1999 (power to provide for use of electronic communications for delivery of information and making of payments), or

(b) for any other communications with the tax authorities or in connection with taxation matters.

(2) The power to make regulations under this Schedule is conferred—

(a) on the Commissioners of Inland Revenue in relation to matters which are under their care and management, and

(b) on the Commissioners of Customs and Excise in relation to matters which are under their care and management.

Marginal Citations
M169 1999 c. 16.

Kinds of incentive

2 (1) The incentives shall be of such description as may be provided for in the regulations.

(2) They may, in particular, take the form of—

Status: *Point in time view as at 21/07/2009.*
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(a) discounts;

(b) the allowing of additional time to comply with any obligations under tax legislation (including obligations relating to the payment of tax or other amounts); or

(c) the facility to deliver information or make payments at more convenient intervals.

Conditions of entitlement

3 (1) The regulations may make provision as to the conditions of entitlement to an incentive.

(2) They may, in particular, make entitlement conditional—

(a) on the use of electronic communications for all communications or payments (or all communications and payments of a specified description) with, to or from the tax authority concerned, and

(b) on the use of specified means of electronic communication or payment acceptable to the tax authority concerned.

(3) The regulations may make provision for an appeal against a decision that the conditions of entitlement are not met.

Withdrawal of entitlement

4 (1) The regulations may make provision for the withdrawal of an incentive in specified circumstances.

(2) If they do, they may make provision—

(a) for giving notice of the withdrawal,

(b) for an appeal, and

(c) for the recovery of an amount not exceeding the value of the incentive.

(3) The regulations may provide that specified enactments relating to assessments, **[**F503reviews,**]** appeals and recovery of tax are to apply, with such adaptations as may be specified, in relation to the withdrawal of an incentive.

Textual Amendments

F503 Word in Sch. 38 para. 4(3) inserted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 295(2)**

Power to authorise provision by directions

5 The regulations may authorise the making of any such provision as is mentioned in paragraph 3 or 4 by means of a specific or general direction given by the Commissioners of Inland Revenue or the Commissioners of Customs and Excise.

Power to provide for penalties

6 (1) The regulations may provide for contravention of, or failure to comply with, a specified provision of any such regulations to attract a penalty of a specified amount not exceeding £1,000.

Status: *Point in time view as at 21/07/2009.*
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(2) If they do, they may provide that specified enactments relating to penalties imposed in relation to any taxation matter (including enactments relating to assessments, review and appeals) are to apply, with or without modifications, in relation to penalties under the regulations.

General supplementary provisions

7 (1) Power to make provision by regulations under this Schedule includes power—

(a) to make different provision for different cases; and

(b) to make such incidental, supplemental, consequential and transitional provision in connection with any provision contained in any such regulations as the persons exercising the power think fit.

(2) The power to make regulations under this Schedule is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

Interpretation

8 (1) In this Schedule—

"discount" includes payment;

"electronic communications" includes any communications by means of **[**F504an electronic communications service**]**;

"legislation" means any enactment, Community legislation or subordinate legislation;

"payment" includes a repayment;

"subordinate legislation" has the same meaning as in the M170Interpretation Act 1978;

"taxation matter" means any of the matters under the care and management of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise;

"tax authorities" means—

(a) the Commissioners of Inland Revenue or the Commissioners of Customs and Excise,

(b) any officer of either body of Commissioners; or

(c) any other person who for the purposes of electronic communications is acting under the authority of either body of Commissioners;

"tax legislation" means legislation relating to any taxation matter.

(2) References in this Schedule to the delivery of information have the same meaning as in section 132 of the M171Finance Act 1999.

Textual Amendments

F504 Words in Sch. 38 para. 8 substituted (25.7.2003 for specified purposes, 29.12.2003 for remaining purposes) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 160** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, **art. 1(3)**) S.I. 2003/3142, **art. 3(2)**

Status: *Point in time view as at 21/07/2009.*
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Marginal Citations
M170 1978 c. 30.
M171 1999 c. 16.

SCHEDULE 39

Section 149(2).

NEW SCHEDULE 1AA TO THE TAXES MANAGEMENT ACT 1970

The Schedule inserted after Schedule 1 to the [M172]Taxes Management Act 1970 is as follows:

"SCHEDULE 1AA

ORDERS FOR PRODUCTION OF DOCUMENTS

Introduction

1 The provisions of this Schedule supplement section 20BA.

Authorised officer of the Board

2 (1) In section 20BA(1) an "authorised officer of the Board" means an officer of the Board authorised by the Board for the purposes of that section.

(2) The Board may make provision by regulations as to—
(a) the procedures for approving in any particular case the decision to apply for an order under that section, and
(b) the descriptions of officer by whom such approval may be given.

Notice of application for order

3 (1) A person is entitled—
(a) to notice of the intention to apply for an order against him under section 20BA, and
(b) to appear and be heard at the hearing of the application,
unless the appropriate judicial authority is satisfied that this would seriously prejudice the investigation of the offence.

(2) The Board may make provision by regulations as to the notice to be given, the contents of the notice and the manner of giving it.

Obligations of person given notice of application

4 (1) A person who has been given notice of intention to apply for an order under section 20BA(4) shall not—
(a) conceal, destroy, alter or dispose of any document to which the application relates, or
(b) disclose to any other person information or any other matter likely to prejudice the investigation of the offence to which the application relates.

This is subject to the following qualifications.

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(2) Sub-paragraph (1)(a) does not prevent anything being done—

(a) with the leave of the appropriate judicial authority,

(b) with the written permission of an officer of the Board,

(c) after the application has been dismissed or abandoned, or

(d) after any order made on the application has been complied with.

(3) Sub-paragraph (1)(b) does not prevent a professional legal adviser from disclosing any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

This sub-paragraph does not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

(4) A person who fails to comply with the obligation in sub-paragraph (1)(a) or (b) above may be dealt with as if he had failed to comply with an order under section 20BA.

Exception of items subject to legal privilege

5 (1) Section 20BA does not apply to items subject to legal privilege.

(2) For this purpose "items subject to legal privilege" means—

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made—

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(3) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

Resolution of disputes as to legal privilege

6 (1) The Board may make provision by regulations for the resolution of disputes as to whether a document, or part of a document, is an item subject to legal privilege.

(2) The regulations may, in particular, make provision as to—

(a) the custody of the document whilst its status is being decided;

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(b) the appointment of an independent, legally qualified person to decide the matter;

(c) the procedures to be followed; and

(d) who is to meet the costs of the proceedings.

Complying with an order

7 (1) The Board may make provision by regulations as to how a person is to comply with an order under section 20BA.

(2) The regulations may, in particular, make provision as to—

(a) the officer of the Board to whom the documents are to be produced,

(b) the address to which the documents are to be taken or sent, and

(c) the circumstances in which sending the documents by post complies with the order.

(3) Where an order under section 20BA applies to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

Procedure where documents are delivered

8 (1) The provisions of section 20CC(3) to (9) apply in relation to a document delivered to an officer of the Board in accordance with an order under section 20BA as they apply to a thing removed by an officer of the Board as mentioned in subsection (1) of section 20CC.

(2) In section 20CC(9) as applied by sub-paragraph (1) above the reference to the warrant concerned shall be read as a reference to the order concerned.

Sanction for failure to comply with order

9 (1) If a person fails to comply with an order made under section 20BA, he may be dealt with as if he had committed a contempt of the court.

(2) For this purpose "the court" means—

(a) in relation to an order made by a Circuit judge, the Crown Court;

(b) in relation to an order made by a sheriff, a sheriff court;

(c) in relation to an order made by a county court judge, a county court in Northern Ireland.

Notice of order etc.

10 The Board may make provision by regulations as to the circumstances in which notice of an order under section 20BA, or of an application for such an order, is to be treated as having been given.

General provisions about regulations

11 Regulations under this Schedule—

(a) may contain such incidental, supplementary and transitional provision as appears to the Board to be appropriate, and

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(b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.".

Marginal Citations
M172 1970 c. 9.

Marginal Citations
M172 1970 c. 9.

SCHEDULE 40

Section 156.

REPEALS

PART I

EXCISE DUTIES

Commencement Information
I1 Sch. 40 Pt. I(1) in force in accordance with Sch. 40 Pt. I(1) Notes 1-3

(1) Hydrocarbon oils

Chapter	Short title	Extent of repeal
1979 c. 5.	The Hydrocarbon Oil Duties Act 1979.	In section 13(1) the words from "; and the Commissioners" to the end. Section 13A(1B), (1C) and (2). In Schedule 1, paragraph 2(1)(b) and the word "or" immediately preceding it, and paragraph 2(4). In Schedule 2A— (a) paragraph 8(4); (b) in paragraph 11(1), the definitions of "leaded" and "unleaded" petrol.
1997 c. 16.	The Finance Act 1997.	Section 7(3) and (9)(e). In Schedule 6, paragraph 6(2).

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1. The repeals in section 13A of and Schedule 2A to the Hydrocarbon Oil Duties Act 1979 and section 7 of the Finance Act 1997 come into force on the day appointed under section 5(6) of this Act.

2. The repeals in section 13 of the Hydrocarbon Oil Duties Act 1979 and Schedule 6 to the Finance Act 1997 have effect in accordance with section 8 of this Act.

3. The repeals in Schedule 1 to the Hydrocarbon Oil Duties Act 1979 have effect in relation to the use of rebated heavy oil as fuel on or after 1st May 2000.

(2) Tobacco

Chapter	Short title	Extent of repeal
1979 c. 7.	The Tobacco Products Duty Act 1979.	Section 7(1)(c)(i).

(3) Amusement machine licence duty

Chapter	Short title	Extent of repeal
1981 c. 63.	The Betting and Gaming Duties Act 1981.	In section 25(1B)(b), the words “, other than one consisting only in a blank surface onto which light is projected". In section 25(7), the word “or” at the end of paragraph (c).

These repeals have effect in accordance with paragraph 7 of Schedule 2 to this Act.

(4) Air passenger duty

Chapter	Short title	Extent of repeal
1994 c. 9.	The Finance Act 1994.	In section 31, subsections (1), (2) and (6). In section 43, in subsection (2), the words “Subject to subsection (3) below" and subsection (3).
1997 c. 16.	The Finance Act 1997.	Section 9.

1. The repeals in the Finance Act 1994 have effect in accordance with section 19(6) of this Act.

2. The repeal in the Finance Act 1997 has effect in accordance with section 18(8) of this Act.

Status: *Point in time view as at 21/07/2009.*
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PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

(1) Giving to charity

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 202, in subsection (6), the words “must not be paid by the employee under a covenant", and subsection (7). In section 339, subsections (2), (3), (3A), (3F), (6), (7) and (8) and, in subsection (9), the words “in subsections (1) to (4) above includes". In section 347A, subsections (2)(b), (7) and (8). In section 505(6), the words “and, for this purpose, all covenanted payments to charity (within the meaning of section 347A(7)) shall be treated as a single item".
1989 c. 26.	The Finance Act 1989.	Section 59.
1990 c. 29.	The Finance Act 1990.	In section 25, in subsection (2), paragraphs (c) and (g) and, in subsection (12), paragraphs (b) and (e) and the word “and" immediately preceding paragraph (e).
1998 c. 36.	The Finance Act 1998.	In section 48, subsections (3), (6) and (7).

1. The repeals in section 202 of the Taxes Act 1988 have effect in accordance with section 38(7) of this Act.

2. The repeals in section 339 of the Taxes Act 1988 have effect in accordance with section 40(11) of this Act.

3. The repeals in sections 347A and 505 of the Taxes Act 1988 and the repeal of section 59 of the Finance Act 1989 have effect in accordance with section 41(9) of this Act.

4. The repeals in section 25 of the Finance Act 1990 have effect in accordance with section 39(10) of this Act.

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(2) Benefits in kinds: deregulatory amendments

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 155(2).
		Section 160(1C).
		Section 161(1A) and (1B).
1994 c. 9.	The Finance Act 1994.	Section 88(5).

These repeals have effect in accordance with section 57(2) of this Act.

(3) Cars available for private use

Chapter	Short title	Extent of repeal
1996 c. 8.	The Finance Act 1996.	In Schedule 20, paragraph 40.
1999 c. 16.	The Finance Act 1999.	Section 47.

These repeals have effect in accordance with section 59 of this Act.

(4) Occupational and personal pension schemes

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 611(3), the words “retirement benefits" in both places where they occur.
		Section 630(3).
		Section 633(2).
		In section 638(4), the words “the aggregate of", paragraph (b) and the word “and" immediately preceding it.
		Section 641.
		Section 642.
		In section 645(3), the word “and" immediately preceding paragraph (c).
		Section 646(7).
		Section 660A(7).
1996 c. 8.	The Finance Act 1996.	In Schedule 21, paragraph 18.

Status: *Point in time view as at 21/07/2009.*
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1. The repeal of section 633(2) of the Taxes Act 1988 has effect in accordance with paragraph 9 of Schedule 13 to this Act.

2. The repeals in section 638(4) of that Act have effect in relation to contributions paid in the year 2001-02 and subsequent years of assessment.

3. The repeals of section 641 of that Act and paragraph 18 of Schedule 21 to the Finance Act 1996 have effect in accordance with paragraph 17 of Schedule 13 to this Act.

4. The repeal of section 642 of the Taxes Act 1988 has effect in accordance with paragraph 19 of Schedule 13 to this Act.

5. The repeal of section 646(7) of that Act has effect for the year 2001-02 and subsequent years of assessment.

6. The repeal of section 660A(7) of that Act has effect for the year 2001-02 and subsequent years of assessment.

(5) Enterprise investment scheme and venture capital trusts

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 293(6)(b) and the word “and" immediately preceding it. Section 299B(7). In section 312(1), the definition of “the seven year period".
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule 5B, in paragraph 19(1)— (a) the definition of “the five year period"; (b) the definition of “the seven year period".
1994 c. 9.	The Finance Act 1994.	In Schedule 15, paragraph 10(c).

1. The repeal in section 293(6) of the Taxes Act 1988 has effect in accordance with paragraph 12 of Schedule 17 to this Act.

2. The repeal in the Finance Act 1994 has effect in accordance with paragraph 13(2) of that Schedule.

3. The repeal in section 299B of the Taxes Act 1988 has effect in accordance with paragraph 14 of that Schedule.

4. The other repeals have effect in accordance with paragraph 8 of that Schedule.

(6) Taper relief for business assets

Chapter	Short title	Extent of repeal

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule A1, in paragraph 22(1), the definitions of "full-time working officer or employee" and "qualifying office or employment".

These repeals have effect in accordance with section 67(7) of this Act.

(7) Meaning of "research and development"

Chapter	Short title	Extent of repeal
1990 c. 1.	The Capital Allowances Act 1990.	Section 136.
		In section 139(1)(d)—
		(a) in the opening words, the words "or a class of trades";
		(b) in sub-paragraphs (i) and (ii), the words "or, as the case may be, of trades of that class".
		Section 139(3).

These repeals have effect in accordance with section 68(2) of this Act.

(8) Capital allowances

Chapter	Short title	Extent of repeal
1990 c. 1.	The Capital Allowances Act 1990.	In section 41, in subsection (1), paragraphs (b) and (c) and the word "or" at the end of paragraph (a) and, in subsection (4), paragraph (a) and, in paragraph (b), the words from "or within (1)(b) or (c)" to "subsection (1)(c)" and the words "or subsection (1)(b) and (c)".
		Section 53(1)(bb).
1994 c. 9.	The Finance Act 1994.	In section 118, subsections (1) to (5) and (7) to (9).

1. The repeals in section 41 of the Capital Allowances Act 1990 have effect in accordance with section 74(1) of this Act.

2. The repeal in section 53 of that Act has effect in accordance with section 75(6)(a) of this Act.

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3. The repeals in section 118 of the Finance Act 1994 have effect in accordance with section 73(2) of this Act.

(9) Contributions to local enterprise agencies, etc.

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 79(11), the words “and before 1st April 2000".
		In section 79A—
		(a) in subsection (5)(b), the references to the Scottish Development Agency and the Highlands and Islands Development Board;
		(b) in subsection (7), the words “and before 1st April 2000".
1994 c. 9.	The Finance Act 1994.	Section 145(1).

(10) Capital gains tax: gifts and trusts

Chapter	Short title	Extent of repeal
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In Schedule 10, paragraph 14(42).
1996 c. 8.	The Finance Act 1996.	In Schedule 38, paragraph 10(2)(c) and (f).

1. The repeal in Schedule 10 to the Taxation of Chargeable Gains Act 1992 has effect in accordance with section 92(5) of this Act.

2. The repeals in Schedule 38 to the Finance Act 1996 have effect in relation to disposals made on or after 9th November 1999.

(11) Groups and group relief

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 87A(3), the word “or" preceding “paragraph 75A(2)".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 402(4), the words from “if the share in the consortium" to “is nil or".
		In section 413—
		(a) in subsection (5), the words from the beginning

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		to “Kingdom; and", paragraph (c) and the word “or" immediately preceding it; (b) subsections (8) and (9).
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 170(8), the words “, or subsections (7) to (9),". In section 228(10)(b), the words “to (9)".
1992 c. 48.	The Finance (No.2) Act 1992.	In Schedule 6, paragraph 3.
1998 c. 36.	The Finance Act 1998.	Section 81.

1. The repeal in section 87A(3) of the Taxes Management Act 1970 has effect in accordance with section 98(2) of this Act.

2. The repeal in section 402(4) of the Taxes Act 1988, the repeal of section 413(8) and (9) of that Act, the repeals in the Taxation of Chargeable Gains Act 1992 and the repeal of section 81 of the Finance Act 1998 have effect in accordance with section 100(5) of this Act.

3. The repeals in section 413(5) of the Taxes Act 1988 and the repeal in Schedule 6 to the Finance (No.2) Act 1992 have effect in accordance with paragraph 6 of Schedule 27 to this Act.

(12) Groups of companies: chargeable gains

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 87A(3), the words “or 179(11)".
1988 c. 39.	The Finance Act 1988.	In section 132(6), in the definition of group, the words “references to residence in the United Kingdom were omitted and".
1992 c. 12.	The Taxation of Chargeable Gains Act 1992.	In section 14(4)(b), the words “without subsections (2)(a), (9) and (12) to (14)". Section 25(4). In section 30(2)(b), the words “178 or". In section 31(7)(b), the words “178 or". In section 35(3)(d)(i), the words “172,". In section 170— (a) subsection (2)(a);

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		(b) in subsection (9)(b), the words “(although resident in the United Kingdom)".
		Section 172.
		Section 174(1) to (3) and (5).
		In section 176(7), paragraph (c) and the word “and" immediately preceding it.
		Section 178.
		Section 179(11) and (12).
		Section 180.
		Section 181(5).
		In section 192(4), the words “178 or".
		In section 197(2)(b), the words “178(3) or".
		In section 211—
		(a) in subsection (2), the words “Subject to subsection (3) below" and paragraph (b) and the word “or" immediately following it;
		(b) subsection (3).
		In section 216(2)(b), (3) and (4), the words “178 or".
		In Schedule 4—
		(a) in paragraph 4(2), the words “178(3), 179(3)";
		(b) paragraph 4(3);
		(c) paragraph 9(1)(a).
		In Schedule 7B, paragraph 7.
1992 c. 48.	The Finance (No.2) Act 1992.	Section 25(1).
1993 c. 34.	The Finance Act 1993.	Section 90.

1.The repeal in the Finance Act 1988 has effect in accordance with paragraph 15 of Schedule 29 to this Act.

2.The repeal in section 14 of the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 16 of that Schedule.

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3.The repeal in section 25 of that Act has effect in accordance with paragraph 6(5) of that Schedule.

4. The repeals in section 170 of that Act have effect in accordance with paragraph 1 of that Schedule.

5. The repeal of section 172 of that Act, and the repeals in section 35 of and Schedule 7B to that Act, have effect in accordance with paragraph 3 of Schedule 29 to this Act.

6. In section 174 of that Act—

(a) the repeal of subsections (1) to (3) has effect in accordance with paragraph 12 of that Schedule; and

(b) the repeal of subsection (5) has effect in accordance with paragraph 13 of that Schedule.

7. The repeals in section 176 of that Act have effect in accordance with paragraph 24 of that Schedule.

8. The repeals in section 87A(3) of the Taxes Management Act 1970 and in section 179 of the Taxation of Chargeable Gains Act 1992 have effect in accordance with paragraph 4(7) of that Schedule.

9. The repeal in section 181 of the Taxation of Chargeable Gains Act 1992 has effect in accordance with paragraph 28 of that Schedule.

10.The repeals in section 211 of that Act, and the repeal of section 90 of the Finance Act 1993, have effect in accordance with paragraph 30 of that Schedule.

11. The repeal in section 25 of the Finance (No.2) Act 1992 has effect in accordance with paragraph 4(6) of that Schedule.

(13) Double taxation relief

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In section 42(7)(a), the words “,810".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 750(3)(b), the words “other than section 810".
		In section 788(5), in the second sentence, paragraph (b) and the word “and" preceding it.
		Section 794(2)(c).
		Section 799(3)(b).
		Section 800.
		Section 802.
		Section 810.
		In Schedule 19AC, in paragraph 13, sub-

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		paragraph (1) and, in sub-paragraph (2), the subsection (3) which is treated as inserted into section 794 of the Act.
1989 c. 26.	The Finance Act 1989.	In section 82(1)(a), the words "or foreign tax".

These repeals have effect in accordance with Schedule 30 to this Act.

Commencement Information
I2 Sch. 40 Pt. II(13) partly in force at 1.4.2000 see Sch. 30 para. 1

Commencement Information
I2 Sch. 40 Pt. II(13) partly in force at 1.4.2000 see Sch. 30 para. 1

(14) Controlled foreign companies

Chapter	Short title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 756(3), paragraph (a) and the words following paragraph (b). In Schedule 25, in paragraph 11(1), the word "and" immediately preceding paragraph (g).

These repeals have effect in accordance with paragraph 9 of Schedule 31 to this Act.

(15) International matters

Chapter	Short title	Extent of repeal
1993 c. 34.	The Finance Act 1993.	In section 149, in subsections (4) and (5), the words "the asset or contract was held, or the liability was owed, by the company solely for trading purposes and". Section 164(6) and (7).

These repeals have effect in accordance with section 106(17) of this Act.

(16) Insurance

Chapter	Short title	Extent of repeal

Status: *Point in time view as at 21/07/2009.*
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1988 c. 1.	The Income and Corporation Taxes Act 1988.	In section 431(2), the definition of "investment reserve". In Schedule 19AC, paragraph 7(3)(c).
1993 c. 34.	The Finance Act 1993.	Section 177.
1994 c. 9.	The Finance Act 1994.	Section 224.

1. The repeals in the Taxes Act 1988 have effect in accordance with section 109(10) of this Act.

2. The other repeals have effect in accordance with section 107(12)(c) of this Act.

(17) Payments under deduction of tax

Chapter	Short title	Extent of repeal
1970 c. 9.	The Taxes Management Act 1970.	In columns 1 and 2 of the Table in section 98— (a) the words "regulations under section 118D, 118F, 118G, 118H or 118I"; and (b) the words "regulations under section 124(3)".
1988 c. 1.	The Income and Corporation Taxes Act 1988.	In Part IV, Chapter VIIA. Section 124. In section 348(3), the words "or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV". In section 349— (a) in subsection (1), the words "or to any payment which is a relevant payment for the purposes of Chapter VIIA of Part IV"; (b) in subsection (3), paragraph (e). Section 468M(4)(b). Section 482(11)(a). In section 582A(1), the words "and section 118B(4)". Section 841A. In Schedule 23A—

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		(a) in paragraph 1(1), in the definition of "overseas securities", paragraph (b) and the word "and" preceding it; (b) in paragraph 1(1), in the definition of "UK securities", the words "quoted Eurobonds (as defined by section 124) held in a recognised clearing system or"; (c) paragraph 4(8).
1989 c. 26.	The Finance Act 1989.	In section 178(2)(m), the reference to section 118F of the Taxes Act 1988.
1996 c. 8.	The Finance Act 1996.	In Schedule 7, paragraph 28. Schedule 29. In Schedule 38, paragraph 6(2)(a) and (3).
1997 c. 58.	The Finance (No.2) Act 1997.	Section 38.

1. The repeal of Chapter VIIA of Part IV of the Taxes Act 1988, and related repeals, have effect in accordance with section 111(6)(a) of this Act.

2. The repeal of section 124 of that Act, and related appeals, have effect in accordance with section 111(6)(b) of this Act.

.3. The repeal of section 482(11)(a) of that Act has effect in accordance with section 111(6)(c) of this Act.

(18) Tax treatment of expenditure on production or acquisition of films

Chapter	Short title	Extent of repeal
1992 c. 48.	The Finance (No.2) Act 1992.	In section 43(3), paragraph (b) and the word "or" preceding it.

This repeal has effect in accordance with section 113(6) of this Act.

PART III

STAMP DUTY AND STAMP DUTY RESERVE TAX

Chapter	Short title	Extent of repeal
1949 c. 15 (N.I.).	The Finance Act (Northern Ireland) 1949.	Section 8.

Status: *Point in time view as at 21/07/2009.*
Changes to legislation: *Finance Act 2000 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1977 c. 37.	The Patents Act 1977.	Section 126.
1986 c. 41.	The Finance Act 1986.	In sections 67(9), 70(9), 95(1) and 97(1), the words “and is resident in the United Kingdom” and “and is so resident”.
1993 c. 34.	The Finance Act 1993.	In section 204(3), the word “first" (in each place where it occurs).
1994 c. 26.	The Trade Marks Act 1994.	Section 61.
2000 c. 17.	The Finance Act 2000.	Section 133.
		Section 134.
		In Schedule 33, paragraph 9(1).

The repeals in the Patents Act 1977 and the Trade Marks Act 1994 have effect in accordance with section 129(5) of this Act.

2. The repeals in the Finance Act 1986 have effect in accordance with section 134(5) of this Act.

3. The repeals of sections 133 and 134 of this Act have effect—

(a) so far as relating to stamp duty on bearer instruments, in accordance with section 107 of the Finance Act 1990;

(b) so far as relating to stamp duty on instruments other than bearer instruments, in accordance with section 108 of that Act; and

(c) so far as relating to stamp duty reserve tax, in accordance with section 110 of that Act.

4. The repeal in Schedule 33 to this Act has effect in accordance with section 107 of the Finance Act 1990.

PART IV

VALUE ADDED TAX

Chapter	Short title	Extent of repeal
1994 c. 23.	The Value Added Tax Act 1994.	In Schedule A1, in paragraph 1(1), the word “and” at the end of paragraph (b).

PART V

INFORMATION POWERS

Chapter	Short title	Extent of repeal

Status: *Point in time view as at 21/07/2009.*
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1970 c. 9.	The Taxes Management Act 1970.	In section 17, subsections (4B) and (4C). In section 18, subsections (3) and (3AA).
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 482A.

These repeals have effect in relation to amounts paid, credited or received on or after 6th April 2001.

Status:
Point in time view as at 21/07/2009.

Changes to legislation:
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