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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 1

Section 6.

#### GENERAL BETTING DUTY

For sections 1 to 5 of the Betting and Gaming Duties Act 1981 (c. 63) (general betting duty: charge, rate and payment) substitute—

*“ General betting duty*

#### **The duty**

- 1 A duty of excise to be known as general betting duty shall be charged in accordance with sections 2 to 5D.

#### **Bookmakers: general bets**

- 2 (1) General betting duty shall be charged on a bet made with a bookmaker who is in the United Kingdom.
- (2) Subsection (1) does not apply to—
- (a) an on-course bet,
  - (b) a spread bet,
  - (c) a bet made by way of pool betting, or
  - (d) a bet made by way of coupon betting.
- (3) The amount of duty charged in respect of bets made with a bookmaker in an accounting period shall be 15 per cent. of the amount of his net stake receipts for that period.

#### **Bookmakers: spread bets**

- 3 (1) General betting duty shall be charged on a spread bet made with a bookmaker who—
- (a) is in the United Kingdom, and
  - (b) holds a bookmaker’s permit.
- (2) A bet is a spread bet if it constitutes a contract to which section 63 of the Financial Services Act 1986 applies by virtue of paragraphs 9 and 12 of Schedule 1 to that Act (gaming contracts: investments).
- (3) The amount of duty charged under subsection (1) in respect of spread bets made with a bookmaker in an accounting period shall be—
- (a) 3 per cent. of the amount of his net stake receipts in respect of financial spread bets for that period (if any), plus
  - (b) 10 per cent. of the amount of his net stake receipts in respect of other spread bets for that period (if any).
- (4) A “financial spread bet” is a spread bet the subject of which is a financial matter.

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- (5) The Commissioners may by order provide that a specified matter—
- (a) shall be treated as a financial matter for the purpose of subsection (4), or
  - (b) shall not be treated as a financial matter for that purpose.

### **Other betting**

- 4 (1) General betting duty shall be charged on sponsored pool betting.
- (2) General betting duty shall be charged on a bet made by means of facilities provided by the Horserace Totalisator Board.
- (3) General betting duty shall be charged on a bet made on an event on a track falling within subsection (4) if the bet is made—
- (a) by means of a totalisator which operates on that track, and
  - (b) on the day of the event.
- (4) A track falls within this subsection if—
- (a) a track betting licence is in force for the track under Schedule 3 to the Betting, Gaming and Lotteries Act 1963,
  - (b) a track betting licence is in force for the track under Article 37 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, or
  - (c) the Commissioners designate the track for the purposes of this subsection.
- (5) The amount of duty charged under subsections (1) to (3) in respect of bets made by means of facilities provided by a person in an accounting period shall be 15 per cent. of the amount of his net stake receipts for that period.
- (6) Subsections (1) to (3) do not apply to—
- (a) on-course bets, or
  - (b) coupon betting.

### **Net stake receipts**

- 5 (1) For the purposes of a charge under a provision of sections 2 to 4 in respect of the class of bets to which the provision applies, the amount of a person's net stake receipts for an accounting period is X minus Y, where—
- (a) X is the aggregate of amounts which fall due to that person in the accounting period in respect of bets of that class made with him, and
  - (b) Y is the aggregate of amounts paid by the person in that period by way of winnings to persons who made bets of that class with him (irrespective of when the bets were made or determined).
- (2) Where—
- (a) a person makes a bet other than a spread bet, and
  - (b) the sum which he will lose if unsuccessful is known when the bet is made, that sum shall be treated for the purposes of subsection (1)(a) as falling due when the bet is made (irrespective of when it is actually paid or required to be paid).
- (3) Where the amount of a person's net stake receipts is zero or a negative amount, it shall be disregarded for the purposes of sections 2 to 4.

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- (4) In calculating an amount due to a person in respect of a bet, no deduction shall be made in respect of—
- (a) any other benefit secured by the person who makes the bet as a result of paying the money,
  - (b) a person's expenses, whether in paying duty or otherwise, or
  - (c) any other matter.
- (5) Where a person makes a bet in pursuance of an offer which permits him to pay nothing or less than the amount which he would have been required to pay without the offer, he shall be treated for the purposes of this section as being due to pay that amount—
- (a) to the person with whom the bet is made, and
  - (b) at the time when the bet is made.
- (6) For the purpose of subsection (1)(b)—
- (a) the reference to paying an amount to a person includes a reference to holding it in an account if the person is notified that the amount is being held for him in the account and that he is entitled to withdraw it on demand,
  - (b) the return of a stake shall be treated as a payment by way of winnings, and
  - (c) only payments of money shall be taken into account.
- (7) In the application of this section to a charge under section 4(1) to (3), a reference to bets made with a person shall be treated as a reference to bets made by means of facilities provided by him.

### **Multiple bets**

- 5A (1) Subject to subsection (3), this section applies where—
- (a) a person bets on more than one contingency, and
  - (b) he bets on terms that if his bet in respect of one contingency is successful the stake or winnings will be carried forward as the stake in respect of another contingency.
- (2) Where this section applies—
- (a) the person mentioned in subsection (1)(a) shall be treated for the purposes of sections 2 to 4 as making a separate bet on each contingency, and
  - (b) each bet which depends on the result of an earlier bet shall be treated as being made at the time of that result.
- (3) This section does not apply where a person bets on more than one contingency if—
- (a) the betting takes the form of a single bet or of bets placed at a single time, and
  - (b) the terms mentioned in subsection (1) do not permit the arrangement for carrying forward to be varied or terminated.
- (4) In subsection (1)(b) the reference to “the stake or winnings” includes a reference to—
- (a) any part of the stake,
  - (b) any part of the winnings, and
  - (c) any combination of stake and winnings.

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### **Liability to pay**

- 5B (1) At the end of each accounting period all general betting duty chargeable in respect of bets made in the period shall become due.
- (2) In the case of bets made with a bookmaker in an accounting period the general betting duty shall be paid—
- (a) when it becomes due, and
  - (b) by the bookmaker.
- (3) But general betting duty which is due to be paid by a bookmaker in respect of bets may be recovered from the following persons as if they and the bookmaker were jointly and severally liable to pay the duty—
- (a) the holder of a bookmaker’s permit for the business in the course of which the bets were made;
  - (b) a person responsible for the management of that business;
  - (c) where the bookmaker is a company, a director.
- (4) In the case of bets made in an accounting period by means of facilities provided by a person as described in section 4(1) to (3) the general betting duty shall be paid—
- (a) when it becomes due, and
  - (b) by the person who provides the facilities.
- (5) This section is without prejudice to paragraph 2 of Schedule 1 to this Act or regulations made under it.

### **Bet-brokers**

- 5C (1) This section applies where—
- (a) one person (the “bettor”) makes a bet with another person (the “bet-taker”) using facilities provided in the course of a business by a third person (the “bet-broker”), or
  - (b) one person (the “bet-broker”) in the course of a business makes a bet with another person (the “bet-taker”) as the agent of a third person (the “bettor”) (whether the bettor is a disclosed principal or an undisclosed principal).
- (2) For the purposes of sections 2 to 5B—
- (a) the bet shall be treated as if it were made by the bettor with the bet-broker and not with the bet-taker,
  - (b) the bet-broker shall be treated as a bookmaker in respect of the bet,
  - (c) the aggregate of amounts due to be paid by the bettor in respect of the bet shall be treated as being due to the bet-broker, and
  - (d) a sum paid by the bet-taker by way of winnings in respect of the bet shall be treated as having been paid by the bet-broker at that time and for that purpose.
- (3) But subsection (2) does not apply to a bet if—
- (a) the bet-taker holds a bookmaker’s permit, and
  - (b) the bet would not be an on-course bet if the bet-broker were making the bet with the bet-taker as principal.
- (4) In the case of a bet which is excluded from subsection (2) by virtue of subsection (3), for the purposes of sections 2 to 5B—

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- (a) the bet shall be treated as if it were made separately by the bettor with the bet-broker and by the bet-broker with the bet-taker,
  - (b) the bet-broker shall be treated as a bookmaker in respect of the bet,
  - (c) the aggregate of amounts due to be paid by the bettor in respect of the bet shall be treated as being due separately to the bet-broker and to the bet-taker (and any amount due to be paid by the bet-broker to the bet-taker shall be disregarded), and
  - (d) a sum paid by the bet-taker by way of winnings in respect of the bet shall be treated as having been paid separately by the bet-taker and by the bet-broker at that time and for that purpose (and any sum paid by the bet-broker shall be disregarded).
- (5) This section does not apply—
- (a) to bets made by way of pool betting, or
  - (b) to bets made using facilities provided by a person holding (and relying on) a betting agency permit (within the meaning of section 9(2)(c)(ii) of the Betting, Gaming and Lotteries Act 1963).
- (6) Where there is any doubt as to which of two persons is the bettor and which the bet-taker for the purposes of subsection (1)(a), whichever of the two was the first to use the facilities of the bet-broker to offer the bet shall be treated as the bet-taker.

### Accounting period

- 5D (1) For the purposes of sections 2 to 5C—
- (a) each calendar month is an accounting period, but
  - (b) the Commissioners may provide in regulations under paragraph 2 of Schedule 1 to this Act for some other specified period to be an accounting period.
- (2) Regulations made by virtue of subsection (1)(b) may—
- (a) make provision which applies generally or only in relation to a specified person or class of person;
  - (b) make different provision for different purposes;
  - (c) make transitional provision.”

1 F1 .....

#### Textual Amendments

F1 Sch. 1 para. 1 repealed (*retrospective* to 31.3.2002) by 2002 c. 23, ss. 12(1)(5), 141, Sch. 40 Pt. 1(4)

- 2 For section 9(3)(a) of that Act (protection of revenue) substitute—
- “(a) to any bet which is made by way of pool betting or coupon betting if—
    - (i) the bet is not made by means of a totalisator,
    - (ii) the promoter is in the Isle of Man,
    - (iii) the bet is chargeable with a duty imposed by or under an Act of Tynwald which corresponds to pool betting duty, and

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- (iv) the duty mentioned in sub-paragraph (iii) is chargeable on the bet at a rate not less than the appropriate rate of pool betting duty; or
- (aa) to any bet which is made with a bookmaker if—
- (i) it is not made by way of pool betting or coupon betting,
  - (ii) the bookmaker is in the Isle of Man,
  - (iii) a duty is imposed by or under an Act of Tynwald in respect of bookmaker's receipts from bets of that kind, and
  - (iv) the rates and method of calculation of that duty result in no less duty being charged in respect of bets of that kind than is charged by way of general betting duty in respect of bets of that kind; or<sup>2</sup>.
- 3 Paragraph 2(4)(b) and (c) of Schedule 1 to that Act (general betting duty: administration: records) shall cease to have effect.

## SCHEDULE 2

Section 9.

### RATES OF VEHICLE EXCISE DUTY ON GOODS VEHICLES

- 1 Part 8 of Schedule 1 to the Vehicle Excise and Registration Act 1994 (c. 22) (annual rates of vehicle excise duty: goods vehicles) is amended as follows.
- 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—

<i>Revenue weight of vehicle</i>		<i>Rate</i>		
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Exceeding</i>	<i>Not Exceeding</i>	<i>Two axle vehicle</i>	<i>Three axle vehicle</i>	<i>Four or more axle vehicle</i>
<b>kgs</b>	<b>kgs</b>	<b>£</b>	<b>£</b>	<b>£</b>
3,500	7,500	165	165	165
7,500	12,000	200	200	200
12,000	13,000	200	200	200
13,000	14,000	200	200	200
14,000	15,000	200	200	200
15,000	17,000	650	200	200
17,000	19,000	650	200	200
19,000	21,000	650	200	200
21,000	23,000	650	450	200
23,000	25,000	650	650	450
25,000	27,000	650	650	650

*Status: Point in time view as at 27/03/2006.*

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27,000	29,000	650	650	1,200
29,000	31,000	650	650	1,200
31,000	44,000	650	650	1,200

- 3 In paragraph 9(3) (rigid goods vehicles not satisfying reduced pollution requirements and with a revenue weight exceeding 44,000 kilograms), for “£5,170” substitute “ £2,585 ”.
- 4 In paragraph 9A(3) (rigid goods vehicles satisfying reduced pollution requirements and with a revenue weight exceeding 44,000 kilograms), for “£4,170” substitute “ £2,085 ”.
- 5 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—

<i>Revenue weight of vehicle</i>		<i>Rate</i>		
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Exceeding</i>	<i>Not Exceeding</i>	<i>Two axle vehicle</i>	<i>Three axle vehicle</i>	<i>Four or more axle vehicle</i>
<b>kgs</b>	<b>kgs</b>	<b>£</b>	<b>£</b>	<b>£</b>
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
15,000	17,000	280	160	160
17,000	19,000	280	160	160
19,000	21,000	280	160	160
21,000	23,000	280	210	160
23,000	25,000	280	280	210
25,000	27,000	280	280	280
27,000	29,000	280	280	700
29,000	31,000	280	280	700
31,000	44,000	280	280	700

F26 .....

**Textual Amendments**

**F2** Sch. 2 para. 6 repealed (7.4.2005) by Finance Act 2005 (c. 7), Sch. 11 Pt. 1

*Status: Point in time view as at 27/03/2006.*

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- 7 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—

<i>Revenue weight of tractive unit</i>		<i>Rate for tractive unit with two axles</i>			<i>Rate for tractive unit with three or more axles</i>		
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>	<i>(8)</i>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Any no. of semi-trailer axles</i>	<i>2 or more semi-trailer axles</i>	<i>3 or more semi-trailer axles</i>	<i>Any no. of semi-trailer axles</i>	<i>2 or more semi-trailer axles</i>	<i>3 or more semi-trailer axles</i>
<b>kgs</b>	<b>kgs</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
3,500	7,500	165	165	165	165	165	165
7,500	12,000	165	165	165	165	165	165
12,000	16,000	165	165	165	165	165	165
16,000	20,000	165	165	165	165	165	165
20,000	23,000	165	165	165	165	165	165
23,000	25,000	165	165	165	165	165	165
25,000	26,000	450	165	165	165	165	165
26,000	28,000	450	165	165	165	165	165
28,000	31,000	650	650	165	450	165	165
31,000	33,000	1,200	1,200	450	1,200	450	165
33,000	34,000	1,200	1,200	450	1,200	650	165
34,000	35,000	1,500	1,500	1,200	1,200	650	450
35,000	36,000	1,500	1,500	1,200	1,200	650	450
36,000	38,000	1,500	1,500	1,200	1,500	1,200	650
38,000	41,000	1,850	1,850	1,850	1,850	1,850	1,200
41,000	44,000	1,850	1,850	1,850	1,850	1,850	1,200

- 8 In paragraph 11(3) (tractive units not satisfying reduced pollution requirements and with a revenue weight exceeding 44,000 kilograms), for “£5,170” substitute “£2,585”.

- 9 In paragraph 11A(3) (tractive units satisfying reduced pollution requirements and with a revenue weight exceeding 44,000 kilograms), for “£4,170” substitute “£2,085”.

- 10 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—

<i>Revenue weight of tractive unit</i>	<i>Rate for tractive unit with two axles</i>	<i>Rate for tractive unit with three or more axles</i>
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*Status: Point in time view as at 27/03/2006.*

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<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>	<b>(8)</b>
<i>Exceeding</i>	<i>Not exceeding</i>	<i>Any no. of semi-trailer axles</i>	<i>2 or more semi-trailer axles</i>	<i>3 or more semi-trailer axles</i>	<i>Any no. of semi-trailer axles</i>	<i>2 or more semi-trailer axles</i>	<i>3 or more semi-trailer axles</i>
<b>kgs</b>	<b>kgs</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>	<b>£</b>
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	25,000	160	160	160	160	160	160
25,000	26,000	210	160	160	160	160	160
26,000	28,000	210	160	160	160	160	160
28,000	31,000	280	280	160	210	160	160
31,000	33,000	700	700	210	700	210	160
33,000	34,000	700	700	210	700	280	160
34,000	35,000	1,000	1,000	700	700	280	210
35,000	36,000	1,000	1,000	700	700	280	210
36,000	38,000	1,000	1,000	700	1,000	700	280
38,000	41,000	1,350	1,350	1,350	1,350	1,350	700
41,000	44,000	1,350	1,350	1,350	1,350	1,350	700

- 11 In paragraph 11C(2)(a) (certain tractive units not satisfying reduced pollution requirements and with a revenue weight exceeding 41,000 kilograms but not exceeding 44,000 kilograms), for “£1,280” substitute “ £650 ”.

## SCHEDULE 3

Section 15.

## EXCISE DUTY: PAYMENTS BY COMMISSIONERS IN CASE OF ERROR OR DELAY

## PART 1

## PAYMENTS

*Duty paid in error*

- 1 (1) This paragraph applies if—  
 (a) the first condition set out below is satisfied, and

*Status: Point in time view as at 27/03/2006.*

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- (b) either the second or the third condition set out below is satisfied.
- (2) The first condition is that, due to an error on the part of the Commissioners, any of the following occurs at any time—
- (a) a person is refused authorisation for the purposes of section 8(1) or 10(1) of the Alcoholic Liquor Duties Act 1979 (c. 4);
  - (b) a person is refused a direction for the purposes of section 11(1) of that Act;
  - (c) a person is refused approval for the purposes of section 9(1) or 14(1) of the Hydrocarbon Oil Duties Act 1979 (c. 5);
  - (d) a person is refused consent for the purposes of section 10(1) of that Act.
- (3) The second condition is that on or after the commencement day a person pays to the Commissioners an amount by way of excise duty which would not have been paid but for the error.
- (4) The third condition is that on or after the commencement day the person refused pays for goods an amount which includes an amount which—
- (a) represents a payment by way of excise duty, and
  - (b) would not have been included but for the error.
- (5) If the second condition is satisfied the Commissioners may pay to the person refused an amount equal to the duty which would not have been paid.
- (6) If the third condition is satisfied the Commissioners may pay to the person refused an amount which appears to them to be equal to the payment by way of excise duty.
- (7) The person refused is the person refused an authorisation, direction, approval or consent.

*Error relating to rebate*

- 2 (1) This paragraph applies if the following two conditions are satisfied.
- (2) The first condition is that a person is entitled to use rebated heavy oil in particular circumstances.
- (3) The second condition is that—
- (a) due to an error on the part of the Commissioners he is unable to use rebated heavy oil in those circumstances,
  - (b) he uses unrebated heavy oil instead in those circumstances, and
  - (c) the use occurs on or after the commencement day.
- (4) The Commissioners may pay to the person an amount equal to the rebate which would have been allowable under section 11 of the Hydrocarbon Oil Duties Act 1979 (c. 5) if—
- (a) the heavy oil used by him in those circumstances had (at the time of that use) been delivered for home use, and
  - (b) the other conditions for allowing rebate had been satisfied at that time.
- (5) Rebated heavy oil is heavy oil on whose delivery for home use a rebate has been allowed under section 11 of the Hydrocarbon Oil Duties Act 1979, and unrebated heavy oil is other heavy oil.

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### Claims

- 3 No payment may be made to a person under this Part of this Schedule unless—
- (a) he makes a claim in such form and manner, and containing such matters, as the Commissioners may prescribe by regulations, and
  - (b) he satisfies such other conditions as the Commissioners may impose by regulations.

## PART 2

### INTEREST

#### Commissioners' delay

- 4 (1) This paragraph applies if—
- (a) a person is entitled to obtain an amount by way of repayment or drawback in respect of excise duty paid to the Commissioners,
  - (b) on or after the commencement day he makes a claim for the repayment or drawback, and
  - (c) the Commissioners fail to authorise it within the allowable period.
- (2) The Commissioners must pay interest to the person on the amount for the applicable period.
- (3) The allowable period is the period of 30 days starting with the day on which the Commissioners receive the claim.
- (4) The applicable period is the period which—
- (a) starts with the day after the allowable period ends, and
  - (b) ends with the day when the Commissioners authorise the repayment or drawback.
- (5) Sub-paragraph (4) is subject to paragraph 6.
- 5 (1) This paragraph applies if—
- (a) a person is entitled to obtain an amount by way of repayment or drawback in respect of excise duty paid to the Commissioners,
  - (b) on or after the commencement day he makes a claim for the repayment or drawback,
  - (c) the Commissioners set off the amount against an assessment,
  - (d) the assessment is withdrawn, and
  - (e) the Commissioners authorise the repayment or drawback.
- (2) The Commissioners must pay interest to the person on the amount for the applicable period.
- (3) The applicable period is the period which—
- (a) starts with the earlier of the days referred to in sub-paragraph (4), and
  - (b) ends with the day when the Commissioners authorise the repayment or drawback.
- (4) The days are—
- (a) the day the amount is set off;

*Status: Point in time view as at 27/03/2006.*

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- (b) the day after the end of the period of 30 days starting with the day on which the Commissioners receive the claim.
- (5) Sub-paragraphs (3) and (4) are subject to paragraph 6.
- 6 (1) In deciding the applicable period for the purposes of paragraphs 4 and 5 any period by which the Commissioners' authorisation of the repayment or drawback is delayed by circumstances beyond their control must be ignored.
- (2) In applying sub-paragraph (1) account must be taken in particular of any period referable to—
  - (a) any failure by any person to provide the Commissioners with information requested by them to enable the existence and amount of the claimant's entitlement to a repayment or drawback to be determined;
  - (b) the making (in connection with the claim for repayment or drawback) of a claim to anything to which the claimant is not entitled.
- (3) In deciding for the purposes of sub-paragraph (2)(a) whether a period of delay is referable to a failure by a person to provide information requested, the period mentioned in sub-paragraph (4) must be taken to be so referable (except so far as may be prescribed by the Commissioners by regulations).
- (4) The period is that which—
  - (a) starts with the day when the Commissioners request the person to provide information they reasonably consider relevant to the matter to be determined, and
  - (b) ends with the earliest day when it would be reasonable for them to conclude that they have received a complete answer to their request or all they need to answer it, or to conclude that it is unnecessary for them to be provided with information in answer to their request.

*Commissioners' error*

- 7 (1) This paragraph applies if—
  - (a) due to an error on the part of the Commissioners a person pays to them an amount by way of excise duty,
  - (b) the person is entitled to obtain repayment of the amount,
  - (c) he makes a claim (at any time) for the repayment and the Commissioners authorise it on or after the commencement day, and
  - (d) he makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the repayment.
- (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which—
  - (a) starts with the day when the payment is received by the Commissioners, and
  - (b) ends with the day when they authorise repayment.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- 8 (1) This paragraph applies if—
  - (a) a person pays to the Commissioners an amount by way of excise duty,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of the duty,
  - (c) due to an error on the part of the Commissioners he fails to claim the amount when he would (apart from the error) have done so,
  - (d) the person makes a claim (at any time) for the repayment, remission, rebate or drawback and the Commissioners authorise it on or after the commencement day, and
  - (e) he makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the repayment, remission, rebate or drawback.
- (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which—
- (a) starts with the day when (apart from the error) the Commissioners might reasonably have been expected to authorise repayment, remission, rebate or drawback, and
  - (b) ends with the day when they authorise it.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- 9 (1) This paragraph applies if—
- (a) a person pays to the Commissioners an amount by way of excise duty,
  - (b) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of the duty,
  - (c) he makes a claim (at any time) for the repayment, remission, rebate or drawback and the Commissioners authorise it,
  - (d) due to an error on the part of the Commissioners their authorisation is delayed,
  - (e) the Commissioners authorise the repayment, remission, rebate or drawback on or after the commencement day,
  - (f) neither paragraph 4 nor paragraph 5 applies in relation to the person, and
  - (g) the person makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the repayment, remission, rebate or drawback.
- (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which—
- (a) starts with the day when (apart from the error) the Commissioners might reasonably have been expected to authorise repayment, remission, rebate or drawback, and
  - (b) ends with the day when they authorise it.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- 10 (1) This paragraph applies if—
- (a) a person makes a claim for a payment under paragraph 1 or 2 of this Schedule and the Commissioners authorise it, and

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) he makes a claim for interest under this paragraph before the end of the period of three years starting with the day when the Commissioners authorise the payment.
- (2) The Commissioners must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which—
  - (a) starts with the day when the second or third condition in paragraph 1 or the second condition in paragraph 2 (as the case may be) is satisfied in relation to that person, and
  - (b) ends with the day when the Commissioners authorise the payment under that paragraph.
- (4) Sub-paragraph (3) is subject to paragraph 11.
- 11 (1) In deciding the applicable period for the purposes of paragraphs 7 to 10 any period by which the Commissioners' authorisation of the repayment, remission, rebate, drawback or payment is delayed by circumstances beyond their control must be ignored.
- (2) In applying sub-paragraph (1) account must be taken in particular of any period referable to—
  - (a) any unreasonable delay in claiming repayment, remission, rebate, drawback or payment;
  - (b) any failure by any person to provide the Commissioners with information requested by them to enable the existence and amount of a claimant's entitlement to repayment, remission, rebate, drawback, payment or interest to be determined;
  - (c) the making (in connection with the claim for repayment, remission, rebate, drawback or payment) of a claim to anything to which the claimant is not entitled.
- (3) In deciding for the purposes of sub-paragraph (2)(b) whether a period of delay is referable to a failure by a person to provide information requested, the period mentioned in sub-paragraph (4) must be taken to be so referable (except so far as may be prescribed by the Commissioners by regulations).
- (4) The period is that which—
  - (a) starts with the day when the Commissioners request the person to provide information they reasonably consider relevant to the matter to be determined, and
  - (b) ends with the earliest day when it would be reasonable for them to conclude that they have received a complete answer to their request or all they need to answer it, or to conclude that it is unnecessary for them to be provided with information in answer to their request.

### *Claims*

- 12 (1) A claim for interest under a relevant paragraph must be made in such form and manner, and contain such matters, as the Commissioners may prescribe by regulations.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (2) If a person makes a claim under a relevant paragraph for interest on an amount, he may not make a claim under another relevant paragraph for interest on that amount.
- (3) The relevant paragraphs are paragraphs 7 to 10.

#### *Rate of interest*

- 13 In the case of interest under this Part of this Schedule, the rate is that applicable under section 197 of the Finance Act 1996 (c. 8) (rates of interest).

### **PART 3**

#### **APPEALS**

- 14 (1) This paragraph applies if—
  - (a) a person (the appellant) appeals to a tribunal under section 16 of the Finance Act 1994 (c. 9) in relation to an assessment to excise duty,
  - (b) the appellant pays, or gives cash security for, the whole or any part of that duty, and
  - (c) the tribunal finds that the whole or any part of the amount paid or secured is not due.
- (2) The Commissioners must repay to the appellant an amount equal to—
  - (a) so much of the duty paid as is found not to be due, or
  - (b) so much of the cash security as relates to the duty found not to be due.
- (3) The Commissioners must pay interest to the appellant on the amount referred to in sub-paragraph (2) for the period which—
  - (a) starts with the day when the duty is paid or the cash security is given, and
  - (b) ends with the day when the Commissioners authorise the repayment.
- (4) The rate of interest is—
  - (a) such rate as the tribunal determines, or
  - (b) if it does not determine a rate, the rate applicable under section 197 of the Finance Act 1996.
- (5) In this paragraph “cash security” means such adequate security as enables the Commissioners to place the amount in question on deposit.

### **PART 4**

#### **GENERAL**

#### *Amendments*

- 15 In section 137A of the Customs and Excise Management Act 1979 (c. 2) (recovery of overpaid excise duty) insert after subsection (5)—
  - “(6) This section does not apply in a case where the Commissioners are—
    - (a) entitled to pay an amount under Part 1 of Schedule 3 to the Finance Act 2001, or

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) required to repay an amount under Part 3 of that Schedule.”.
- 16 In section 16(9) of the Finance Act 1994 (c. 9) (matters which are not ancillary matters) for the words from “paragraph 9(e)” to the end substitute—
- “the following paragraphs of Schedule 5—
- (a) paragraph 3(4);
- (b) paragraph 4(3);
- (c) paragraph 9(e);
- (d) paragraph 9A.”.
- 17 (1) Schedule 5 to the Finance Act 1994 (decisions subject to review and appeal) is amended as follows.
- (2) In paragraph 3 (decisions about alcoholic liquor) insert after sub-paragraph (3)—
- “(4) Any decision which—
- (a) is made under paragraph 1 of Schedule 3 to the Finance Act 2001, and
- (b) relates to the Alcoholic Liquor Duties Act 1979.”.
- (3) In paragraph 4 (decisions about hydrocarbon oil) insert after sub-paragraph (2)—
- “(3) Any decision which—
- (a) is made under paragraph 1 or 2 of Schedule 3 to the Finance Act 2001, and
- (b) relates to the Hydrocarbon Oil Duties Act 1979.”.
- (4) After paragraph 9 insert—
- “The Finance Act 2001**
- 9A Any decision under or for the purposes of Part 2 of Schedule 3 to the Finance Act 2001 (interest).”.
- 18 (1) Section 197(2) of the Finance Act 1996 (c. 8) (setting rates of interest) is amended as follows.
- (2) For paragraph (a) substitute—
- “(a) paragraph 7 of Schedule 6 to the Finance Act 1994 (interest payable to the Commissioners of Customs and Excise in connection with air passenger duty);”.
- (3) After paragraph (h) (which is inserted by section 49(2) of this Act) insert—
- “(i) Parts 2 and 3 of Schedule 3 to the Finance Act 2001 (interest payable on repayments etc.).”.
- 19 (1) Schedule 5 to the Finance Act 1997 (c. 16) (recovery of excess payments) is amended as follows.
- (2) In paragraph 14 (assessment for excessive repayment) at the end of sub-paragraph (3) (b) omit “or” and after sub-paragraph (3)(c) insert—
- “or

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (d) Part 1 of Schedule 3 to the Finance Act 2001 (payments made and rebates disallowed in error).”.
- (3) In paragraph 15 (assessment for overpayments of interest) omit sub-paragraph (2)(a), at the end of sub-paragraph (2)(b) omit “or”, and after sub-paragraph (2)(c) insert—
- “or
- (d) Part 2 of Schedule 3 to the Finance Act 2001 (interest).”.
- (4) In paragraph 19 (review of decisions and appeals) in sub-paragraph (1)(c) for “the relevant interest provision is paragraph 9 of Schedule 6 to the Finance Act 1994” substitute “ Part 1 of Schedule 3 to the Finance Act 2001 or the relevant interest provision is Part 2 of that Schedule ”.
- (5) In paragraph 20 (interpretation of Part 5) in sub-paragraph (2)(a)(ii) for “paragraph 9 of Schedule 6 to the Finance Act 1994” substitute “ Part 2 of Schedule 3 to the Finance Act 2001 ”.
- 20 In Schedule 6 to the Finance Act 1994 (c. 9), paragraphs 9 and 10 (interest in relation to air passenger duty) are omitted.

#### *General*

- 21 (1) This Schedule shall come into force in accordance with provision made by the Commissioners by order.
- (2) A reference in a provision of this Schedule to the commencement day is to such day as the Commissioners appoint by such order for the purposes of that provision.

#### **Subordinate Legislation Made**

**P1** Sch. 3 para. 21(1) power fully exercised: 1.11.2001 appointed by S.I. 2001/3300, art. 2 (with art. 3)

- 22 (1) A power to make an order or regulations under this Schedule is exercisable by statutory instrument.
- (2) An order or regulations under this Schedule—
- (a) may make different provision for different purposes;
- (b) may make incidental, supplemental, saving or transitional provision.
- (3) Regulations under this Schedule are subject to annulment in pursuance of a resolution of either House of Parliament.
- 23 References in this Schedule to the Commissioners are to the Commissioners of Customs and Excise.

## SCHEDULE 4

Section 24.

### AGGREGATES LEVY: REGISTRATION

#### *Notification of registrability etc.*

- 1 <sup>F3</sup>(1) An unregistered person who—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) is required to be registered for the purposes of aggregates levy, or  
 (b) has formed the intention of carrying out taxable activities that are registrable,  
 shall notify the Commissioners of that fact.
- (1A) An unregistered person who—
- (a) would be required to be registered for the purposes of aggregates levy but for an exemption by virtue of regulations under section 24(4) of this Act, or  
 (b) has formed the intention of carrying out taxable activities that would be registrable but for such an exemption,  
 shall, in such cases or circumstances as may be prescribed in the regulations, notify the Commissioners of that fact.
- (1B) For the purposes of sub-paragraphs (1) and (1A) above, taxable activities are registrable if a person carrying them out is, by reason of doing so, required by section 24(2) of this Act to be registered for the purposes of aggregates levy.]
- (2) Subject to sub-paragraphs (5) and (6) below, a person who fails to comply with sub-paragraph (1) [<sup>F4</sup>or (1A)] above shall be liable to a penalty.
- (3) The amount of the penalty shall be—
- (a) the amount equal to 5 per cent. of the relevant levy; or  
 (b) if it is greater or the circumstances are such that there is no relevant levy, £250.
- (4) In sub-paragraph (3) above “relevant levy” means the aggregates levy (if any) to which the person in question is liable in respect of aggregate subjected to commercial exploitation in the period which—
- (a) begins with the date with effect from which he is required to be registered for the purposes of that levy or, as the case may be, would be so required but for an exemption by virtue of regulations under section 24(4) of this Act; and  
 (b) ends with the date on which the Commissioners received notification of, or otherwise first became aware of, the fact that that person was required to be registered or is a person who would be so required but for such an exemption.
- (5) A failure to comply with sub-paragraph (1) [<sup>F4</sup>or 1A] above shall not give rise to any 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.
- (6) Where, by reason of any conduct falling within sub-paragraph (2) above—
- (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 7 of Schedule 6 to this Act (penalty for evasion),  
 that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

#### Textual Amendments

- F3** Sch. 4 para. 1(1)-(1B) substituted for Sch. 4 para. 1(1) (*retrospective* to 1.4.2002) by 2002 c. 23, s. 132(3), Sch. 38 para. 9(2)
- F4** Words in Sch. 4 para. 1(2)(5) inserted (*retrospective* to 1.4.2002) by 2002 c. 23, s. 132(3), Sch. 38 para. 9(3)

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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### *Form of registration*

- 2
- (1) The Commissioners shall register a person who is required to be registered for the purposes of aggregates levy 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*

- 3
- (1) A person who, having become liable to give a notification by virtue of paragraph 1 above, ceases (whether before or after being registered) to have the intention of carrying out taxable activities shall notify the Commissioners of that fact.
  - (2) A person who fails to comply with sub-paragraph (1) above shall be liable to a penalty of £250.

### *Cancellation of registration*

- 4
- (1) If the Commissioners are satisfied that a registered person—
    - (a) has ceased to carry out taxable activities, and
    - (b) does not have the intention of carrying out taxable activities,they may cancel his registration with effect from such time after he last carried out such activities as appears to them to be appropriate.
  - (2) Sub-paragraph (1) above applies whether or not the registered person has notified the Commissioners under paragraph 3 above.
  - (3) Where a registered person is exempted from the requirement to be registered by virtue of regulations under section 24(4), the Commissioners may cancel his registration with effect from the time when he became so exempted or such later time as appears to them to be appropriate.
  - (4) The Commissioners shall be under a duty to exercise the power conferred by sub-paragraph (1) or (3) above with effect from any time if, where the power is exercisable, they are satisfied that the conditions specified in sub-paragraph (5) below are satisfied and were or will be satisfied at that time.
  - (5) Those conditions are—
    - (a) that the person in question—
      - (i) has given a notification under paragraph 3 above; or
      - (ii) is exempted from the requirement to be registered by virtue of regulations under section 24(4) of this Act;
    - (b) that no aggregates levy due from that person, and no amount recoverable as if it were such levy, remains unpaid;

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (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 aggregates levy.
- (6) Where—
- (a) a registered person notifies the Commissioners under paragraph 3 above, 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.
- (7) Where—
- (a) a registered person is exempted from the requirement to be registered by virtue of regulations under section 24(4) of this Act, and
  - (b) the Commissioners are satisfied that he has been so exempted at all times since being registered,
- they shall cancel his registration with effect from the date of his registration.

*Correction of the register etc.*

- 5 (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, and
  - (c) persons who would be so required but for any exemption by virtue of regulations under section 24(4) of this Act,
- 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*

- 6 (1) For the purposes of any provision made by or under section 24 of this Act or 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.
- (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.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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### *Publication of information on the register*

- 7 (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) particulars of registered sites;
  - (c) the fact (where it is the case) that the registered person is a body corporate which is a member of a group;
  - (d) 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.

### *Interpretation of Schedule*

- 8 (1) In this Schedule—
- (a) references to the register are references to the register maintained under section 24 of this Act;
  - (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;
- and “unregistered” shall be construed accordingly.
- (2) For the purposes of this Schedule a person carries out a taxable activity if a quantity of aggregate is subjected to commercial exploitation in the United Kingdom in circumstances in which he is responsible for its being so subjected.

## SCHEDULE 5

Section 27.

### AGGREGATES LEVY: RECOVERY AND INTEREST

#### *Recovery of levy as debt due*

- 1 Aggregates levy shall be recoverable as a debt due to the Crown.

#### *Assessments of amounts of levy due*

- 2 (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 aggregates levy,
  - (b) that any aggregates 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) below,

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

they may assess the amount of the levy due from that person for that period to the best of their judgement and notify that amount to that person.

- (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 Part of this Act;
  - (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 Schedule 4 to this Act.
- (3) Where it appears to the Commissioners that a default falling within sub-paragraph (2) above 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) above shall apply as if the reference to the amount of aggregates levy due included a reference to any aggregates 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 aggregates 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.
- (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 aggregates levy due from him.
- (6) Sub-paragraph (5) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

### *Supplementary assessments*

- 3 (1) If, where an assessment has been notified to any person under paragraph 2 above 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 aggregates levy due from him.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (3) Sub-paragraph (2) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

*Time limits for assessments*

- 4 (1) An assessment under paragraph 2 or 3 above of an amount of aggregates 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) below; and
  - (b) subject to sub-paragraph (3) below, 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) above 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) below, where aggregates 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 1 of Schedule 4 to this Act (failure to notify of registrability etc.), or
  - (c) as a result of conduct falling within paragraph 7(1) of Schedule 6 to this Act (evasion),
- that levy may be assessed under paragraph 2 or 3 above 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 aggregates 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) above—
    - (i) the modification of sub-paragraph (1) above 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.
- (5) Nothing in this paragraph shall prejudice the powers of the Commissioners under paragraph 2(4) above.

*Penalty interest on unpaid levy*

- 5 (1) Where—
- (a) a person makes a return for the purposes of any regulations made under section 25 of this Act (whether or not at the time required by the regulations), and
  - (b) the return shows that an amount of aggregates 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) below.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (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 section 25 of this Act to pay aggregates 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.

*Interest on overdue levy paid before assessment*

- 6 (1) Where—
- (a) the circumstances are such that there was a time when an assessment could have been made under paragraph 2 or 3 above of an amount of levy due from any person, but
  - (b) before the making and notification to that person of any assessment of that amount, the amount was paid,
- the whole of the amount paid shall be taken to have carried 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 section 25 of this Act to pay aggregates levy due from him for the accounting period to which the amount in question relates; and
  - (b) ends with the day before that on which that amount was paid.
- (3) The interest payable by virtue of this paragraph shall be payable at the rate applicable under section 197 of the Finance Act 1996 (c. 8).

*Penalty interest on levy where no return made*

- 7 (1) Where—
- (a) the Commissioners make an assessment under paragraph 2 or 3 above of an amount of aggregates 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 section 25 of this Act 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) below.
- (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 section 25 of this Act to pay aggregates 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.

*Ordinary and penalty interest on under-declared levy*

- 8 (1) Subject to sub-paragraph (4) below, where—
- (a) the Commissioners make an assessment under paragraph 2 or 3 above of an amount of aggregates levy due from any person for any accounting period and notify it to him,

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- (b) the assessment is made after a return for the purposes of any regulations under section 25 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) below.
- (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 section 25 of this Act to pay aggregates 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) above 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 Finance Act 1996 (c. 8); 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 2 or 3 above of an amount of aggregates levy due from any person for any accounting period and notify it to him,
    - (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) above, for the period before the day on which the assessment is notified.

*Penalty interest on unpaid ordinary interest*

- 9
- (1) Subject to sub-paragraph (2) below, where the Commissioners make an assessment under paragraph 12 below of an amount of interest payable at the rate given by paragraph 8(3)(a) above, 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 12 below 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.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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### *Penalty interest*

- 10 (1) Penalty interest under any of paragraphs 5 to 9 above 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 Finance Act 1996 (c. 8) for the purposes of paragraph 8(3)(a) above; and
  - (b) adding 10 percentage points to that rate.
- (3) Where a person is liable under any of paragraphs 5 to 9 above 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) below, 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) above.
- (5) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (4) above, 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 aggregates 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 aggregates 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) above an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

### *Supplemental provisions about interest*

- 11 (1) Interest under any of paragraphs 5 to 9 above shall be paid without any deduction of income tax.
- (2) Sub-paragraph (3) below applies where—
- (a) an amount carries interest under any of paragraphs 5 to 9 above (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 section 32 of, and Schedule 8 to, this Act) adjustments by way of repayment.

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*Assessments to interest*

- 12 (1) Where a person is liable for interest under any of paragraphs 5 to 9 above, 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) above 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 aggregates levy due from him.
- (4) Sub-paragraph (3) above—
- (a) shall not apply so as to require any interest to be payable on interest except—
- (i) in accordance with paragraph 9 above; or
- (ii) in so far as it falls to be compounded in accordance with paragraph 10 above;
- and
- (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (5) Paragraph 4 above shall apply in relation to assessments under this paragraph as if any assessment to interest were an assessment under paragraph 2 above to aggregates levy due for the period which is the relevant accounting period in relation to that interest.
- (6) Subject to sub-paragraph (7) below, 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 2 or 3 above 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) above 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 the levy due for any accounting period, that accounting period; and
- (b) in the case of interest on interest (whether under paragraph 9 above or by virtue of any compounding under paragraph 10 above) 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 aggregates 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 aggregates levy due for such period or periods as the Commissioners may determine to the best of their judgement and notify to the person liable.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

*Further assessments to penalty interest*

- 13 (1) Where an assessment is made under paragraph 12 above to an amount of penalty interest under any of paragraphs 5 to 9 above—
- (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 12 above 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) above, 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.

*Recovery by distress*

- 14 In section 51(5) of the Finance Act 1997 (c. 16) (definition of relevant taxes for the purposes of the power to make provision by regulations for enforcement by distress of the relevant taxes), after paragraph (d) there shall be inserted—
- “(da) aggregates levy;”.

*Walking possession agreements*

- 15 (1) This paragraph applies where—
- (a) in accordance with regulations made by virtue of paragraph 14 above a distress is authorised to be levied on the goods and chattels of a person;
  - (b) that person (“the person in default”) has refused or neglected to pay an amount of aggregates levy due from him or an amount recoverable from him as if it were aggregates levy; and
  - (c) 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) below, 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) (b) above.

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- (4) The person in default shall not be liable to a penalty under sub-paragraph (3) above 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.

*Recovery by diligence*

- 16 In section 52(5) of the Finance Act 1997 (c. 16) (definition of relevant taxes for the purposes of the power to make provision by regulations for enforcement by diligence of the relevant taxes), after paragraph (d) there shall be inserted—  
“(da) aggregates levy;”.

*Preferential debts in England and Wales and Northern Ireland*

- 17 <sup>F5</sup>(1) . . . . .  
<sup>F5</sup>(2) . . . . .  
<sup>F6</sup>(3) . . . . .  
<sup>F6</sup>(4) . . . . .

**Textual Amendments**

- F5** Sch. 5 para. 17(1)(2) 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)
- F6** Sch. 5 para. 17(3)(4) 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)

*Preferred debts in Scotland*

- <sup>F7</sup>18 . . . . .

**Textual Amendments**

- F7** Sch. 5 para. 18 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)

*Interpretation of Schedule etc.*

- 19 (1) In this Schedule “penalty interest” shall be construed in accordance with paragraph 10 above.
- (2) Any notification of an assessment under any provision of this Schedule to a person’s representative shall be treated for the purposes of this Part of this Act as notification to the person in relation to whom the representative acts.
- (3) In 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;

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (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—
- (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).

## SCHEDULE 6

Section 28.

### AGGREGATES LEVY: EVASION, MISDECLARATION AND NEGLECT

#### PART 1

#### CRIMINAL OFFENCES

##### *Evasion*

- 1 (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 aggregates levy with which he is charged; or
  - (b) the fraudulent evasion by any other person of any aggregates levy with which that other person is charged.
- (2) The references in sub-paragraph (1) above to the evasion of aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either a tax credit or a repayment of aggregates levy.
- (3) A person guilty of an offence under this paragraph shall be liable (subject to sub-paragraph (4) below)—
- (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 aggregates 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) above 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 aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.

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- (6) In determining for the purposes of sub-paragraph (4) above how much aggregates levy (in addition to any amount falling within sub-paragraph (5) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayment of aggregates levy to which he was, or would have been, entitled.

### *Misstatements*

- 2 (1) A person is guilty of an offence if, with the requisite intent and for purposes connected with aggregates 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 Part of this Act—
- (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) below)—
- (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) above is a return required under any provision made by or under this Part of this Act, or
  - (b) the information referred to in sub-paragraph (2) above is contained in or otherwise relevant to such a return,
- 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 (if any) by which the return understates any person’s liability to aggregates levy.
- (5) In sub-paragraph (4) above the reference to the amount by which any person’s liability to aggregates 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 aggregates levy were overstated.
- (6) In sub-paragraph (5) above “gross liability” means liability to aggregates levy before any deduction is made in respect of any entitlement to any tax credit or repayments of aggregates levy.

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*Conduct involving evasions or misstatements*

- 3 (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 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) below)—
- (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 aggregates 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) above 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 aggregates 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) above how much aggregates levy (in addition to any amount falling within sub-paragraph (5) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.

*Preparations for evasion*

- 4 (1) Where a person—
- (a) becomes a party to any agreement under or by means of which a quantity of taxable aggregate is or is to be subjected to commercial exploitation in the United Kingdom, 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 aggregates levy chargeable on the aggregate in question will be evaded.
- (2) Subject to sub-paragraph (3) below, 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 aggregates levy which are shown to be amounts that were or were intended to be evaded in respect of the aggregate

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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) above 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 aggregates 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) above how much aggregates levy (in addition to any amount falling within sub-paragraph (4) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.

*Criminal proceedings etc.*

5 Sections 145 to 155 of the Customs and Excise Management Act 1979 (c. 2) (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences and penalties under this Part of this Schedule as they apply in relation to offences and penalties under the customs and excise Acts.

*Arrest*

6 (1) Where an authorised person has reasonable grounds for suspecting that a fraud offence has been committed he may arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(2) In this paragraph—

“authorised person” means any person acting under the authority of the Commissioners; and

“a fraud offence” means an offence under any of paragraphs 1 to 3 above.

**PART 2**

**CIVIL PENALTIES**

*Evasion*

7 (1) Subject to sub-paragraph (5) below, where—

(a) any person engages in any conduct for the purpose of evading aggregates levy, [<sup>F8</sup>and]

<sup>F9</sup>(b) .....

(c) that conduct involves dishonesty (whether or not it is such as to give rise to criminal liability),

that person shall be liable to a penalty <sup>F10</sup>...

[<sup>F11</sup>(1A) The amount of the penalty shall be—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) equal to the amount of the levy evaded, or (as the case may be) intended to be evaded, by the person's conduct if at the time of engaging in that conduct he was or was required to be registered;
  - (b) equal to twice that amount if at that time the person neither was nor was required to be registered.]
- (2) The references in sub-paragraph (1) above to evading aggregates levy include references to obtaining, in circumstances where there is no entitlement to it, either—
- (a) a tax credit; or
  - (b) a repayment of aggregates levy.
- (3) For the purposes of [F12sub-paragraph (1A)] above the amount of levy that was or was 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 aggregates levy,
- which was, or was intended to be, obtained in circumstances where there was no entitlement to it.
- (4) In determining for the purposes of [F12sub-paragraph (1A)] above how much aggregates levy (in addition to any amount falling within sub-paragraph (3) above) was or was intended to be evaded, no account shall be taken of the extent (if any) to which any liability to aggregates levy of any person fell, or would have fallen, to be reduced by the amount of any tax credit or repayments of aggregates levy to which he was, or would have been, entitled.
- (5) Where, by reason of conduct falling within sub-paragraph (1) above, a person is convicted of an offence (whether under this Act or otherwise) that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

#### Textual Amendments

- F8** Word in Sch. 6 para. 7(1)(a) inserted (*retrospective* to 1.5.2002) by 2002 c. 23, s. 133(2)(a)(6)
- F9** Sch. 6 para. 7(1)(b) repealed (*retrospective* to 1.5.2002) by 2002 c. 23, ss. 133(2)(b)(6), 141, Sch. 40 Pt. 4(3)
- F10** Words in Sch. 6 para. 7(1) repealed (*retrospective* to 1.5.2002) by 2002 c. 23, ss. 133(2)(c)(6), 141, Sch. 40 Pt. 4(3)
- F11** Sch. 6 para. 7(1A) inserted (*retrospective* to 1.5.2002) by 2002 c. 23, s. 133(3)(6)
- F12** Words in Sch. 6 para. 7(3)(4) substituted (*retrospective* to 1.5.2002) by 2002 c. 23, s. 133(4)(6)

#### *Liability of directors etc. for civil penalties*

- 8 (1) Where it appears to the Commissioners—
- (a) that a body corporate is liable to a penalty under paragraph 7 above, and
  - (b) that the conduct giving rise to that penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “named officer”),
- the Commissioners may serve a notice under this paragraph on the body corporate and on the named officer.
- (2) A notice under this paragraph shall state—

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) the amount of the penalty referred to in sub-paragraph (1)(a) above (“the basic penalty”); and
  - (b) that the Commissioners propose, in accordance with this paragraph, to recover from the named officer such portion of the basic penalty (which may be the whole of it) as is specified in the notice.
- (3) Where a notice is served under this paragraph, the portion of the basic penalty specified in the notice shall be recoverable from the named officer as if he were personally liable under paragraph 7 above to a penalty which corresponds to that portion.
- (4) Where a notice is served under this paragraph—
  - (a) the amount which may be assessed under Schedule 10 to this Act as the amount due by way of penalty from the body corporate shall be only so much (if any) of the basic penalty as is not assessed on and notified to a named officer; and
  - (b) the body corporate shall be treated as discharged from liability for so much of the basic penalty as is so assessed and notified.
- (5) Subject to the following provisions of this paragraph, the giving of a notice under this paragraph as such shall not be a decision which may be reviewed under section 40 of this Act.
- (6) Where a body corporate is assessed as mentioned in sub-paragraph (4)(a) above, the decisions of the Commissioners that may be reviewed in accordance with section 40 of this Act shall include their decision—
  - (a) as to the liability of the body corporate to a penalty; and
  - (b) as to the amount of the basic penalty that is specified in the assessment;and sections 41 and 42 of this Act shall apply accordingly.
- (7) Where an assessment is made on a named officer by virtue of this paragraph, the decisions which may be reviewed under section 40 of this Act at the request of the named officer shall include—
  - (a) the Commissioners’ decisions in the case of the body corporate as to the matters mentioned in sub-paragraph (6)(a) and (b) above;
  - (b) their decision that the conduct of the body corporate referred to in sub-paragraph (1)(b) above is, in whole or in part, attributable to the dishonesty of the named officer; and
  - (c) their decision as to the portion of the penalty which the Commissioners propose to recover from him;and sections 41 and 42 of this Act shall apply accordingly.
- (8) In this paragraph a “managing officer”, in relation to a body corporate, means—
  - (a) any manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity or as a director.
- (9) Where the affairs of a body corporate are managed by its members, this paragraph shall apply in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

#### *Misdeclaration or neglect*

- 9 (1) Subject to sub-paragraphs (3) to (5) below, where for an accounting period—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) a return is made which understates a person's liability to aggregates levy or overstates his entitlement to any tax credit or repayment of aggregates levy, or
- (b) at the end of the period of 30 days beginning on the date of the making of any assessment which understates a person's liability to aggregates levy, that person has not taken all such steps as are reasonable to draw the understatement to the attention of the Commissioners,

the person concerned shall be liable to a penalty equal to 5 per cent. of the amount of the understatement of liability or (as the case may be) overstatement of entitlement.

(2) Where—

- (a) a return for an accounting period—
  - (i) overstates or understates to any extent a person's liability to aggregates levy, or
  - (ii) understates or overstates to any extent his entitlement to any tax credits or repayments of aggregates levy,

and

- (b) that return is corrected—
  - (i) in such circumstances as may be prescribed by regulations made by the Commissioners, and
  - (ii) in accordance with such conditions as may be so prescribed,

by a return for a later accounting period which understates or overstates, to the corresponding extent, any liability or entitlement for the later period,

it shall be assumed for the purposes of this paragraph that the statement made by each such return is a correct statement for the accounting period to which the return relates.

(3) Conduct falling within sub-paragraph (1) above shall not give rise to liability to a penalty under this paragraph if the person concerned provides the Commissioners with full information with respect to the inaccuracy concerned—

- (a) at a time when he has no reason to believe that enquiries are being made by the Commissioners into his affairs, so far as they relate to aggregates levy; and
- (b) in such form and manner as may be prescribed by regulations made by the Commissioners or specified by them in accordance with any such regulations.

(4) Conduct falling within sub-paragraph (1) above 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 his conduct.

(5) Where, by reason of conduct falling within sub-paragraph (1) above—

- (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 7 above,

that person shall not by reason of that conduct be liable also to a penalty under this paragraph.

*Incorrect records etc evidencing claim for tax credit*

[<sup>F139A</sup>(1) This paragraph applies where—

- (a) a claim is made for a tax credit in such a case as is mentioned in—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (i) section 30(1)(c) of this Act (aggregate used in a prescribed industrial or agricultural process), or
  - (ii) section 30A of this Act (transitional tax credit in Northern Ireland);
  - (b) a record or other document is provided to the Commissioners as evidence for the claim; and
  - (c) the record or document is incorrect.
- (2) The person who provided the document to the Commissioners, and any person who provided it to anyone else with a view to its being used as evidence for a claim for a tax credit, shall be liable to a penalty.
- (3) The amount of the penalty shall be equal to 105 per cent of the difference between—
- (a) the amount of tax credit that would have been due on the claim if the record or document had been correct, and
  - (b) the amount (if any) of tax credit actually due on the claim.
- (4) The providing of a record or other document shall not give rise to a penalty under this paragraph if the person who provided it satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for his having provided it.
- (5) Where by reason of providing a record or other document—
- (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 7 or 9 above,
- that person shall not by reason of the providing of the record or document be liable also to a penalty under this paragraph.]

#### **Textual Amendments**

**F13** Sch. 6 para. 9A inserted (*retrospective* from 1.5.2002 ) by [2002 c. 23](#), 133(5)(6)

### **PART 3**

#### **INTERPRETATION OF SCHEDULE**

- 10 (1) References in this Schedule to obtaining a tax credit are references to bringing an amount into account as a tax credit for the purposes of aggregates 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 Schedule to obtaining a repayment of aggregates 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 aggregates levy to which there is an entitlement.

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## SCHEDULE 7

Section 29.

### AGGREGATES LEVY: INFORMATION AND EVIDENCE ETC

#### *Provision of information*

- 1 (1) Every person involved (in whatever capacity) in subjecting any aggregate to exploitation in the United Kingdom, 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) above 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) below and to paragraph 3(5) of Schedule 10 to this Act (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) above 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 7 of Schedule 6 to this Act (penalty for evasion),
- 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.

#### *Records*

- 2 (1) The Commissioners may by regulations impose obligations to keep records on persons who are or are required to be registered and on persons who would be so required but for an exemption by virtue of regulations under section 24(4) of this Act.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (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) above 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) below, 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) above 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) above—
  - (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 7 of Schedule 6 to this Act (penalty for evasion),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.

*Evidence of records that are required to be preserved*

- 3 (1) Subject to the following provisions of this paragraph, where any obligation to preserve records is discharged in accordance with paragraph 2(4) above, 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.

*Status: Point in time view as at 27/03/2006.*

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- (2) A statement contained in a document produced by a computer shall not by virtue of this paragraph be admissible in evidence—
- <sup>F14</sup>(a) .....
- (b) in civil proceedings in Scotland, except in accordance with sections 5 and 6 of the Civil Evidence (Scotland) Act 1988 (c. 32);
- (c) in criminal proceedings in Scotland, except in accordance with Schedule 8 to the Criminal Procedure (Scotland) Act 1995 (c. 46); or
- (d) in criminal proceedings in Northern Ireland, except in accordance with Part II of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)).

#### **Textual Amendments**

**F14** Sch. 7 para. 3(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))

#### *Production of documents*

- 4 (1) Every person involved (in whatever capacity) in subjecting any aggregate to exploitation in the United Kingdom, or in any connected activities, shall upon demand made by an 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) above, 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) above shall be produced at such time and place as the authorised person may reasonably require.
- (4) Subject to sub-paragraphs (5) and (6) below and to paragraph 3(5) of Schedule 10 to this Act (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) above shall not arise if the person required to produce the document in question satisfies the Commissioners or, on appeal, an appeal tribunal—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (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 7 of Schedule 6 to this Act (penalty for evasion),
- 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.

#### *Powers in relation to documents produced*

- 5
- (1) An authorised person may take copies of, or make extracts from, any document produced under paragraph 4 above.
  - (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 4 above.
  - (3) An authorised person who removes any document under sub-paragraph (2) above 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 4(2) above, the removal of the document under sub-paragraph (2) above shall not be regarded as breaking the lien.
  - (5) Where a document removed by an authorised person under sub-paragraph (2) above 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*

- 6
- For the purpose of exercising any powers under this Part of this Act an authorised person may at any reasonable time enter and inspect premises used in connection with the carrying on of a business.

*Status: Point in time view as at 27/03/2006.*

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### *Entry and search*

- 7 (1) Where—
- (a) a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that a fraud offence which appears to be of a serious nature is being, has been or is about to be committed on any premises or that evidence of the commission of such an offence is to be found there, or
  - (b) in Scotland a justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46)) is satisfied by evidence on oath as mentioned in paragraph (a) above,
- he may issue a warrant in writing authorising any authorised person to enter those premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.
- (2) A person who enters the premises under the authority of the warrant may—
- (a) take with him such other persons as appear to him to be necessary;
  - (b) seize and remove any such documents or other things at all found on the premises as he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature;
  - (c) search, or cause to be searched, any person found on the premises whom he has reasonable cause to believe to be in possession of any documents or other things which may be so required.
- (3) Sub-paragraph (2) above shall not authorise any person to be searched by a member of the opposite sex.
- (4) The powers conferred by a warrant under this paragraph shall not be exercisable—
- (a) by more than such number of authorised persons as may be specified in the warrant;
  - (b) outside such periods of the day as may be so specified; or
  - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.
- (5) An authorised person seeking to exercise the powers conferred by a warrant under this paragraph or, if there is more than one such authorised person, such one of them as is in charge of the search shall provide a copy of the warrant endorsed with his name as follows—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, the copy shall be supplied to the occupier;
  - (b) if at that time the occupier is not present but a person who appears to the authorised person to be in charge of the premises is present, the copy shall be supplied to that person;
  - (c) if neither paragraph (a) nor paragraph (b) above applies, the copy shall be left in a prominent place on the premises.
- (6) In this paragraph “a fraud offence” means an offence under any of paragraphs 1 to 3 of Schedule 6 to this Act.

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*Status: Point in time view as at 27/03/2006.*

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*Order for access to recorded information etc.*

- 8 (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 Criminal Procedure (Scotland) Act 1995 (c. 46)) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with aggregates levy is being, has been or is about to be committed, and
  - (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) above 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 contained in a computer, 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; 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 Schedule.

*Removal of documents etc.*

- 9 (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 7 or 8 above 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) below, if a request for permission to be allowed access to anything which—
- (a) has been removed by an authorised person, and
  - (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.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (4) Subject to sub-paragraph (7) below, 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) below, where anything is photographed or copied under sub-paragraph (4)(b) above, 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) above.
- (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 9*

- 10 (1) Where, on an application made as mentioned in sub-paragraph (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 9 above, 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) above shall not be made except—
- (a) in the case of a failure to comply with any of the requirements imposed by paragraph 9(1) and (2) above—
    - (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.
- (3) In this paragraph “the appropriate judicial authority” means—
- (a) in England and Wales, a magistrates’ court;
  - (b) in Scotland, the sheriff;

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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(c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

(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 Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

#### *Power to take samples*

- 11 (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 aggregate which is intended to be, is being, or has been subjected to exploitation in the United Kingdom, 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 aggregates levy.
- (2) Any sample taken under this paragraph shall be disposed of in such manner as the Commissioners may direct.

#### *Evidence by certificate*

- 12 (1) In any proceedings a certificate of the Commissioners—
- (a) that a person was or was not at any time registered,
  - (b) that any return required by regulations made under section 25 of this Act has not been made or had not been made at any time,
  - (c) that any levy shown as due in a return made in pursuance of regulations made under section 25 of this Act has not been paid, or
  - (d) that any amount shown as due in any assessment made under this Part of this Act has not been paid,
- 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 Part of this Act 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.
- (3) In any proceedings any document purporting to be a certificate under subparagraph (1) or (2) above shall be taken to be such a certificate unless the contrary is shown.

#### *Inducements to provide information*

- 13 (1) This paragraph applies—
- (a) to any criminal proceedings against a person in respect of an offence in connection with or in relation to aggregates 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 that 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—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) a matter falling within sub-paragraph (3) or (4) below 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 aggregates 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 Part of this Act to reduce a penalty.

#### *Disclosure of information*

- 14 (1) Notwithstanding any obligation not to disclose information that would otherwise apply but subject to sub-paragraph (2) below, 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 aggregates levy to any of the following—
- (a) any Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) any Minister, within the meaning of the Northern Ireland Act 1998 (c. 47), or any Northern Ireland department;
  - (d) the National Assembly for Wales;
  - (e) the Environment Agency;
  - (f) the Scottish Environment Protection Agency;
  - (g) a mineral planning authority in England and Wales (within the meaning of the Town and Country Planning Act 1990 (c. 8));
  - (h) a planning authority in Scotland;
  - (i) a district council in Northern Ireland;
  - (j) an authorised officer of any person mentioned in paragraphs (a) to (i) above.
- (2) Information shall not be disclosed under sub-paragraph (1) above 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) above, any person mentioned in sub-paragraph (1)(a) to (j) above 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 aggregates levy.
- (4) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—

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- (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 aggregates 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) above, 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.

#### *Interpretation of Schedule*

15 In this Schedule—

“authorised person” means any person acting under the authority of the Commissioners;

“connected activities”, in relation to the exploitation of aggregate in the United Kingdom, means any activities carried out—

- (a) for purposes connected with the carrying out of any such exploitation or with any transaction involving the carrying out of any such exploitation; or
- (b) for the purposes of, in connection with or in relation to the carrying on of any business involving any such exploitation.

## SCHEDULE 8

Section 32.

### AGGREGATES LEVY: REPAYMENTS AND CREDITS

#### *Reimbursement arrangements*

- 1 (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 32(2) of this Act 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 aggregates 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

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- (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) above, 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—
- (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) above;
  - (b) to comply with any requirements contained in any such arrangements by virtue of sub-paragraph (3)(d) above.
- (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*

- 2 (1) Where, due to an error on the part of the Commissioners, a person—
- (a) has paid to them by way of aggregates 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 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 aggregates 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) above, 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)—

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (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 section 30(3)(f) of this Act; but
  - (c) do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under—
    - (i) paragraph 11(3) of Schedule 5 to this Act; or
    - (ii) paragraph 6(3) of Schedule 10 to this Act.
- (4) The applicable period, in a case falling within sub-paragraph (1)(a) above, 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) above, 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.
- (7) The reference in sub-paragraph (6) above 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 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) above 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—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (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 9 or 10 below 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 Finance Act 1996 (c. 8).

*Assessment for excessive repayment*

- 3 (1) Where—
- (a) any amount has been paid at any time to any person by way of a repayment of aggregates 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 section 30(1)(e) (bad debts),
  - (c) the whole or any part of the credit is withdrawn on account of the payment of the whole or any part of the debt taken as bad,
  - (d) the amount of the repayment exceeded the amount which the Commissioners would have been liable to repay had the withdrawal taken place before the determination of the amount of the repayment,
- the Commissioners may, to the best of their judgement, assess the excess repaid 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 1(4)(a) above, 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) below, 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

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) the Commissioners have power under Schedule 5 to this Act to make an assessment on that person to an amount of aggregates 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) above must separately identify the amount being assessed in respect of repayments of levy.

#### *Assessment for overpayments of interest*

- 4 Where—
- (a) any amount has been paid to any person by way of interest under paragraph 2 above, 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.

#### *Assessments under paragraphs 3 and 4*

- 5 (1) An assessment under paragraph 3 or 4 above 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 3 or 4 above, it shall be recoverable as if it were aggregates levy due from him.
- (3) Sub-paragraph (2) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

#### *Interest on amounts assessed*

- 6 (1) Where an assessment is made under paragraph 3 or 4 above, the whole of the amount assessed shall carry interest, for the period specified in sub-paragraph (2) below, 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 shall carry penalty interest; and
  - (b) so much of that amount as does not carry penalty interest under paragraph (a) above shall carry interest at the rate applicable under section 197 of the Finance Act 1996 (c. 8).
- (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.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (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) above; 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) below, 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) above.
- (8) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (7) above, 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 aggregates 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 aggregates 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) above an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

*Assessments to interest under paragraph 6*

- 7 (1) Where any person is liable to interest under paragraph 6 above 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 aggregates levy due from him.
- (4) Sub-paragraph (3) above 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 6 above—
  - (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—

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) an assessment to interest is made specifying a date for the purposes of sub-paragraph (5)(a) above, 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*

- 8 If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under paragraph 3, 4 or 7 above exceeds the amount which was so assessed, then—
- (a) under the same paragraph as that assessment was made, and
  - (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 Part of this Act*

- 9 (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 aggregates 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 that 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) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, 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) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, 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) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above 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 aggregates 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) above.
- (6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (7) References in sub-paragraph (1) above 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 levy or duty.

*Set-off of or against other taxes and duties*

- 10 (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 aggregates levy; and
  - (b) the Commissioners are under a duty, at the same time, to make any repayment of aggregates levy to that person or to make any other payment to him of any amount or amounts in respect of aggregates levy.
- (2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, 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) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, 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) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above 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) above.
- (6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (7) References in sub-paragraph (1) above 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 levy or duty.

*Restriction on powers to provide for set-off*

- 11 (1) Regulations made under paragraph 9 or 10 above 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—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (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 [<sup>F15</sup>or 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 1 or 8 of the Insolvency Act 1986 (c. 45), or
    - (ii) Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) ,comes into force in relation to that person;
  - (e) a deed of arrangement registered in accordance with—
    - (i) the Deeds of Arrangement Act 1914 (c. 47), or
    - (ii) Chapter I of Part VIII of that Order,takes effect in relation to that person;
  - (f) <sup>F16</sup> .....
  - (g) .....
  - (h) .....
  - (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 Bankruptcy (Scotland) Act 1985 (c. 66)).
- (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<sup>F17</sup>... or award of sequestration [<sup>F18</sup>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) above 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—
    - [<sup>F19</sup>(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

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

(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 [F20Schedule B1 to] the Insolvency Act 1986 (c. 45) or Article 21 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) ;

“administrative receiver” means an administrative receiver within the meaning of section 251 of that Act of 1986 or Article 5(1) of that Order of 1989.

#### Textual Amendments

- F15** Words in Sch. 8 para. 11(2)(a) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(a)** (with art. 6)
- F16** Sch. 8 para. 11(2)(f)(g)(h) repealed (*retrospective to 1.4.2002*) by [2002 c. 23, ss. 132\(3\), 141, Sch. 38 para. 10, Sch. 40 Pt. 4\(3\)](#)
- F17** Words in Sch. 8 para. 11(3)(a) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(b)(i)** (with art. 6)
- F18** Words in Sch. 8 para. 11(3)(a) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(b)(ii)** (with art. 6)
- F19** Sch. 8 para. 11(3)(b)(i) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(c)** (with art. 6)
- F20** Words in Sch. 8 para. 11(5) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(d)** (with art. 6)

#### Supplemental provisions of Schedule

- 12 (1) Any notification of an assessment under any provision of this Schedule to a person’s representative shall be treated for the purposes of this Part of this Act 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 9 and 10 of this Schedule are without prejudice to any power of the Commissioners to provide by tax credit regulations for any amount to be set against another.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

## SCHEDULE 9

Section 35.

### AGGREGATES LEVY: GROUP TREATMENT

#### *Eligibility for group treatment*

- 1 Two or more bodies corporate are eligible to be treated as members of a group for the purposes of this Part of this Act if—
- (a) each of them has an established place of business in the United Kingdom; and
  - (b) they are all under the same control.

#### *Application for group treatment*

- 2 (1) Subject to sub-paragraph (3) below, where an application is made to the Commissioners with respect to two or more bodies corporate and those bodies are all eligible to be treated as members of the same group, then, from the specified time—
- (a) they shall be so treated for the purposes of this Part of this Act; and
  - (b) such one of them as is specified in the application shall be the representative member.
- (2) Subject to sub-paragraph (3) below, where—
- (a) any bodies corporate are treated as members of a group for the purposes of this Part of this Act, and
  - (b) an application is made to the Commissioners for the addition to the group of a body corporate that is eligible to be treated as a member of the group,
- then, from the specified time, that body shall be included among the bodies so treated.
- (3) The Commissioners may refuse an application under sub-paragraph (1) or (2) above if, and only if, it appears to them necessary to do so for the protection of the revenue; and an application that is refused under this sub-paragraph shall be, and be treated as always having been, ineffective.
- (4) Where—
- (a) it appears to the Commissioners that an application has been made for the purposes of this paragraph for a body corporate to be treated as a member of a group, but
  - (b) that body is not eligible to be treated as a member of that group,
- the Commissioners shall give notice to the applicant that the application is ineffective.
- (5) The Commissioners shall not refuse an application under sub-paragraph (3) above after the end of the period of ninety days beginning with the day on which the application is received by the Commissioners.

#### *Modification of group treatment*

- 3 (1) Subject to sub-paragraph (2) below, where any bodies corporate are treated as members of a group for the purposes of this Part of this Act and an application for the purpose is made to the Commissioners, then, from the specified time—
- (a) a body corporate shall be excluded from the bodies so treated;

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) one of those bodies corporate shall be substituted for another body corporate as the representative member; or
  - (c) the bodies corporate shall no longer be treated as members of a group.
- (2) The Commissioners may refuse an application made for the purpose mentioned in sub-paragraph (1)(a) or (c) above if, and only if—
- (a) the case is not one appearing to them to fall within paragraph 4(2)(a) and (b) below; and
  - (b) it appears to them necessary to refuse the application for the protection of the revenue.
- (3) The Commissioners may refuse an application made for the purpose mentioned in sub-paragraph (1)(b) above if, and only if, it appears to them necessary to do so for the protection of the revenue.
- (4) An application that is refused under this paragraph shall be, and be treated as always having been, ineffective.
- (5) The specified time for the purposes of an application under sub-paragraph (1) above shall not be before the beginning of the accounting period which is current when the application is made.

*Termination of group treatment*

- 4 (1) If it appears to the Commissioners necessary to do so for the protection of the revenue, the Commissioners may, by notice given to any body corporate that is treated as a member of a group and to the representative member, terminate that treatment from such time as may be specified in the notice.
- (2) Where—
- (a) a body corporate is treated as a member of a group, and
  - (b) it appears to the Commissioners that it is not eligible to be treated as a member of that group,
- they shall, by notice given to the body corporate and the representative member, terminate that treatment from such time as may be specified in the notice.
- (3) Where—
- (a) a body corporate ceases as from any time to be treated as a member of a group,
  - (b) immediately before that time that body was the representative member,
  - (c) there are two or more other bodies corporate which will continue after that time to be treated as members of the group, and
  - (d) none of those bodies corporate is substituted from that time, or from before that time, as the representative member of the group under paragraph 3(1)(b) above,
- the Commissioners shall, by notice given to such one of the bodies corporate mentioned in paragraph (c) above as they think fit, substitute that body corporate as the representative member as from that time.
- (4) The time specified in a notice under sub-paragraph (1) above shall not be a time before the day on which the notice is given to the representative member.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (5) Subject to sub-paragraph (6) below, the time specified in a notice under sub-paragraph (2) or (3) above may be a time before the giving of the notice.
- (6) In the case of a notice given under sub-paragraph (2) above in respect of a body corporate's having ceased to be eligible to be treated as a member of a group, the time specified in the notice shall not be before the time when it so ceased.

#### *Applications relating to group treatment*

- 5 An application under this Schedule with respect to any bodies corporate must be made by one of those bodies or by the person controlling them.

#### *Notifications relating to group treatment*

- 6 (1) Where—
  - (a) two or more bodies corporate are treated as members of a group for the purposes of this Part of this Act, and
  - (b) any of those bodies ceases to be eligible to be so treated,the body corporate which ceases to be so eligible shall notify the Commissioners of that fact.
- (2) A body corporate which is designated as representative member in relation to any other bodies corporate shall not cease to have an established place of business in the United Kingdom without first notifying the Commissioners of that fact.
- (3) A body corporate which fails to comply with sub-paragraph (1) or (2) above shall be liable to a penalty of £250.

#### *Supplemental regulations about applications and notifications*

- 7 (1) For the purposes of any provision made by or under this Schedule for an application to be made to the Commissioners, regulations made by the Commissioners may make provision—
  - (a) as to the time within which the application is to be made;
  - (b) as to the form and manner in which the application is to be made;
  - (c) as to the information and other particulars to be contained in or provided with any application.
- (2) For those purposes the Commissioners may also by regulations impose obligations requiring a person who has made an application to notify the Commissioners if any information contained in or provided in connection with that application is or becomes inaccurate.
- (3) The power under this paragraph to make regulations as to the time within which any application is to be made shall include power to authorise the Commissioners to extend the time for the making of an application.
- (4) Sub-paragraphs (1) to (3) above shall apply for the purposes of any provision made by or under this Schedule for any matter to be notified to the Commissioners as they apply for the purposes of any provision so made for an application to be made to them; and for this purpose references to the making of the application shall be construed as references to the giving of the notification.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

### *Interpretation of Schedule*

- 8 (1) For the purposes of this Schedule two or more bodies are under the same control if—
- (a) one of them controls each of the others;
  - (b) one person (whether a body corporate or an individual) controls all of them; or
  - (c) two or more individuals carrying on a business in partnership control all of them.
- (2) For the purposes of this Schedule a body corporate shall be taken to control another body corporate if, and only if—
- (a) it is empowered by statute to control that body's activities; or
  - (b) it is that body's holding company within the meaning of section 736 of the Companies Act 1985 (c. 6).
- (3) For the purposes of this Schedule an individual or individuals shall be taken to control a body corporate if, and only if (were he or they a company) he or they would be that body's holding company within the meaning of section 736 of the Companies Act 1985.
- (4) In this Schedule "the specified time", in relation to an application made under paragraph 2(1) or (2) or 3(1) above, means the beginning of such accounting period as may be specified in the application.

## SCHEDULE 10

Section 46.

### AGGREGATES LEVY: ASSESSMENT OF CIVIL PENALTIES AND INTEREST ON THEM

#### *Preliminary*

- 1 (1) In this Schedule "civil penalty" means any penalty liability to which—
- (a) is imposed by or under this Part of this Act; and
  - (b) arises otherwise than in consequence of a person's conviction for a criminal offence.
- (2) In 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 8 of Schedule 6 to this Act; 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 Schedule to a person's representative shall be treated for the purposes of this Part of this Act 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;

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- (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 Bankruptcy (Scotland) Act 1985 (c. 66)); and
  - (b) a trustee acting under a trust deed (within the meaning of that Act).

*Assessments to penalties etc.*

- 2
- (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) above 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) 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 aggregates levy due from him.
  - (5) Sub-paragraph (4) above—
    - (a) shall not apply so as to require any interest to be payable on a penalty otherwise than in accordance with 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) below, 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 Schedule 5 to this Act 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.
  - (7) A notice of a combined assessment under sub-paragraph (6) above must separately identify the penalty being assessed.
  - (8) The power to make an assessment under this paragraph is subject to paragraph 8(4) of Schedule 6 to this Act.

*Further assessments to daily penalties*

- 3
- (1) This paragraph applies where an assessment is made under paragraph 2 above to an amount of a civil penalty to which any person is liable—
    - (a) under paragraph 1(3) of Schedule 7 to this Act (failure to provide information); or
    - (b) under paragraph 4(4) of that Schedule (failure to produce a document).

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- (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) above “daily penalty” means—
- (a) in a case within sub-paragraph (1)(a) above, a penalty imposed by virtue of paragraph 1(3)(b) of Schedule 7 to this Act; and
  - (b) in a case within sub-paragraph (1)(b) above, a penalty imposed by virtue of paragraph 4(4)(b) of that Schedule.
- (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 2 above 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) above, 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*

- 4 (1) Subject to sub-paragraphs (2) and (3) below, an assessment under paragraph 2 above to a civil penalty shall not be made more than three years after the conduct to which the penalty relates.
- (2) Subject to sub-paragraph (3) below, if aggregates 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 1 of Schedule 4 to this Act, or
  - (c) as a result of conduct falling within paragraph 7(1) of Schedule 6 to this Act (evasion),
- an assessment may be made for any civil penalty relating to that conduct as if, in sub-paragraph (1) above, 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—
- (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) above—
    - (i) the modification of sub-paragraph (1) above 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.

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### *Penalty interest on unpaid penalties*

- 5 (1) Subject to sub-paragraph (2) below, where the Commissioners make an assessment under paragraph 2 above 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 2 above 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 Finance Act 1996 (c. 8) for the purposes of paragraph 8(3)(a) of Schedule 5 to this Act; 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) below, 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) above.
- (7) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (6) above, 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 aggregates 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 aggregates levy;
  - (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.
- (8) In the case of interest reduced by the Commissioners under sub-paragraph (5) above, an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

### *Supplemental provisions about interest*

- 6 (1) Interest under paragraph 5 above shall be paid without any deduction of income tax.
- (2) Sub-paragraph (3) below applies where—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) an amount carries interest under paragraph 5 above (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 5 above and shall be treated as never having done so; and
  - (b) all such adjustments as are reasonable shall be made, including (subject to section 32 of, and Schedule 8 to, this Act) adjustments by way of repayment.

*Assessments to penalty interest on unpaid penalties*

- 7 (1) Where a person is liable for interest under paragraph 5 above, 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) above 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 aggregates levy due from him.
- (4) Sub-paragraph (3) above—
- (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 5(3) above); and
  - (b) shall not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (5) Paragraph 4 above shall apply in relation to assessments under this paragraph as if any assessment to interest on a penalty were an assessment under paragraph 2 above to the penalty in question.
- (6) Subject to sub-paragraph (7) below, where a person—
- (a) is assessed under this paragraph to an amount due by way of any interest on a penalty, and
  - (b) is also assessed under any one or more provisions of Schedule 5 to this Act 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) above must separately identify the interest being assessed.

*Further assessments to interest on penalties*

- 8 (1) Where an assessment is made under paragraph 7 above to an amount of penalty interest under paragraph 5 above—
- (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

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under paragraph 7 above 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) above, 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.

**F21** SCHEDULE 11

Section 53.

**Textual Amendments**

**F21** Sch. 11 repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), s. 61, [Sch. 6](#); S.I. 2003/962, art. 2(3)(e), [Sch. 1](#)

SCHEDULE 12

Section 57.

MILEAGE ALLOWANCES

**F22** PART 1

NEW SCHEDULE 12AA TO THE TAXES ACT 1988

**Textual Amendments**

**F22** Sch. 12 Pt. 1 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

**PART 2**

CONSEQUENTIAL AMENDMENTS

*The Taxes Act 1988*

**F23** 1 .....

*Status: Point in time view as at 27/03/2006.*  
**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>2</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>3</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>4</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>5</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>6</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>7</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>8</sub> .....

*Status: Point in time view as at 27/03/2006.*  
**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>9</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F23<sub>10</sub> .....

**Textual Amendments**

**F23** Sch. 12 paras. 1-10 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), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

11 In section 578A(1) of that Act (deductions for expenditure on car hire)—  
(a) after paragraph (a) insert “ or ”; and  
(b) omit paragraph (c) and the word “or” immediately preceding it.

F24<sub>12</sub> .....

**Textual Amendments**

**F24** Sch. 12 paras. 12-16 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F24<sub>13</sub> .....

**Textual Amendments**

**F24** Sch. 12 paras. 12-16 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F24<sub>14</sub> .....

**Textual Amendments**

**F24** Sch. 12 paras. 12-16 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

F24<sub>15</sub> .....

*Status: Point in time view as at 27/03/2006.*  
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**Textual Amendments**

**F24** Sch. 12 paras. 12-16 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

*Finance Act 2000 (c. 17)*

**F24**<sub>16</sub> .....

**Textual Amendments**

**F24** Sch. 12 paras. 12-16 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F25** SCHEDULE 13

Section 61.

**Textual Amendments**

**F25** Sch. 13 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

**F26** SCHEDULE 14

Section 62.

**Textual Amendments**

**F26** 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 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with Sch. 7)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

## SCHEDULE 15

Section 63.

### ENTERPRISE INVESTMENT SCHEME: AMENDMENTS

#### PART 1

#### INCOME TAX RELIEF

##### *Introductory*

- 1 Chapter 3 of Part 7 of the Taxes Act 1988 is amended in accordance with this Part.

##### *Oil activities*

- 2 In section 289 (eligibility for income tax relief)—
- (a) in subsection (1C) (meaning of “the active company”) for “, research and development or oil exploration” substitute “or research and development”,
  - (b) in subsection (2)—
    - (i) at the end of paragraph (a) insert “ or ”, and
    - (ii) omit paragraph (c) (which relates to the treatment of oil exploration as a qualifying business activity), and
  - (c) omit subsections (4) and (5) (which make provision supplemental to section 289(2)(c)).
- 3 In section 289A (form of relief), in subsection (7) (which specifies conditions to be satisfied before a claim for relief is allowed)—
- (a) after paragraph (a) insert “ and ”, and
  - (b) omit paragraph (c) (condition to be satisfied in a case involving oil exploration).
- 4 In section 293 (qualifying company), in subsection (3B)(b) omit “and oil exploration”.
- 5 In section 297 (qualifying trades) omit—
- (a) subsection (2)(d) (oil extraction activities not to amount to substantial part of the trade); and
  - (b) subsection (9) (oil extraction activities treated as qualifying trade for purposes of section 289(2)(c)).

##### *Requirement as to the money raised*

- 6 In section 289 (eligibility for relief)—
- (a) in subsection (1) (conditions of eligibility for income tax relief), for paragraph (c) (requirement that all of the money raised is employed for purposes of qualifying business activity within prescribed period) substitute—
    - “(c) at least 80% of the money raised by the issue mentioned in paragraph (b) above is employed wholly for the purpose of the activity mentioned in that paragraph not later than the time mentioned in subsection (3) below, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

(d) all of the money so raised is employed wholly for that purpose not later than 12 months after that time.”,

and

(b) in subsection (3) for “condition in subsection (1)(c) above does” substitute “conditions in subsection (1)(c) and (d) above do”.

7 In section 307 (withdrawal of relief)—

(a) in subsection (1A) for “section 289(1)(b), (ba) or (c)” substitute “section 289(1)(b), (ba), (c) or (d)”, and

(b) in subsection (6)(aa) for “section 289(1)(c)” substitute “section 289(1)(c) or (d)”.

8 In section 310 (information), in subsection (2) for “289(1)(ba) or (c)” substitute “289(1)(ba), (c) or (d)”.

#### *Repayment supplements*

9 (1) In section 289A (form of relief), omit subsection (9) (modification of provisions relating to repayment supplements where effect given to claim for relief by repayment of tax).

(2) The amendment made by this paragraph has effect in relation to repayments of tax on or after 7th March 2001.

#### *Designated period*

10 In section 291 (individuals qualifying for relief), for subsection (1)(b) (requirement that individual is not connected with the issuing company at any time in the designated period) substitute—

“(b) subject to section 291A(4), he is not at any time in the period—

(i) beginning two years before the issue of the shares, and

(ii) ending immediately before the termination date relating to those shares,

connected with the company (whether before or after its incorporation).”.

11 In section 291A (connected persons: directors), in subsection (1)(a) for “the designated period” substitute “the period mentioned in section 291(1)(b)”.

#### *Unquoted company requirement*

12 (1) In section 293 (qualifying companies), after subsection (1) insert—

“(1A) At the beginning of the relevant period, the company must be—

(a) an unquoted company, and

(b) a company to which subsection (1B) below does not apply.

(1B) This subsection applies to a company—

(a) if arrangements are in existence for it to cease to be an unquoted company; or

(b) if—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (i) arrangements are in existence for it 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 section 304A (certain exchanges resulting in acquisition of share capital by new company) applies, and
    - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.”.
  - (2) In subsection (2) of that section (requirement that, throughout the relevant period, the company is an unquoted company etc.) omit “be an unquoted company and”.
- 13 In section 312 (interpretation), in subsection (1E) (unquoted company status not lost by reason of subsequent designation, by order, of stock exchange or means of dealing)—
  - (a) after “are issued” insert “ (“the relevant time”) ”, and
  - (b) for the words “listed” to the end substitute—
    - “(a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 841, or
    - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (1B) above,

if the order was made after the relevant time. ”.

#### *Royalties and licence fees*

- 14 (1) In relation to shares issued on or after 6th April 2000, section 293 (qualifying companies) has effect, and shall be deemed always to have had effect, with the following amendment.
- (2) In subsection (3C) for “the requirements mentioned in paragraphs (a) and (b) of section 297(4) or (5) are” substitute “ the requirement mentioned in section 297(4) is ”.

#### *Value received by individual etc.*

- 15 (1) In section 300 (value received from company etc.), in subsection (1) after “value” insert “ (other than insignificant value) ”.
- (2) In that subsection for “designated period” substitute “ period of restriction ”.
- (3) After subsection (1A) of that section insert—

“(1AA) This section is subject to section 300A.”.
- (4) After subsection (1B) of that section insert—

“(1BA) Where—

  - (a) an individual subscribes for two or more issues of eligible shares in a company, being issues comprising shares in respect of which the individual obtains relief, and
  - (b) the individual receives any value from the company at any time in the periods of restriction relating to the shares comprised in two or more of those issues,

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this section has effect in relation to the shares comprised in each of the issues referred to in paragraph (b) above as if the amount of the value received were reduced by multiplying it by the fraction specified in subsection (1BB) below.

(1BB) The fraction is—

$$\frac{A}{B}$$

where—

A is the amount subscribed by the individual for the eligible shares comprised in the issue in question, and

B is the aggregate of that amount and the corresponding amount or amounts for eligible shares comprised in the other issue or issues.

(1BC) Where—

- (a) an individual who subscribes for eligible shares in a company receives value (“the relevant receipt”) from the company during the period of restriction,
- (b) the individual has received from the 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 paragraphs (a) and (b) above is not an amount of insignificant value,

the individual shall be treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to the aggregate amount.

For this purpose a receipt does not fall within paragraph (b) above if it has previously been aggregated under this subsection.”.

(5) In subsection (1C) of that section for the words from “References” to “include references” substitute “ Any reference in subsection (1), (1BA) or (1BC) above to the receipt of value (however expressed) from a company includes a reference ”.

(6) In subsections (4)(a) and (5) of that section for “receivable” substitute “ received ”.

16 After section 300 insert—

**“300A Receipt of replacement value**

(1) Where—

- (a) any relief attributable to any eligible shares comprised in an issue of shares subscribed for by an individual (“the individual”) would, in the absence of this section, be reduced or withdrawn under

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section 300 by reason of a receipt of value within subsection (2) or (5) of that section (“the original value”),

- (b) the original supplier receives value (“the replacement value”) from the original recipient by virtue of a qualifying receipt, and
- (c) the amount of the replacement value is not less than the amount of the original value,

the receipt of the original value shall be disregarded for the purposes of section 300.

This is subject to subsections (7) and (8) below.

- (2) For the purposes of this section—
  - “the original recipient” means the person who receives the original value, and
  - “the original supplier” means the person from whom that value was received.
- (3) Where the amount of the original value is, by virtue of subsection (1BA) of section 300, treated as reduced for the purposes of that section as it applies in relation to the eligible shares in question, the reference in subsection (1) (c) above to the amount of the original value shall be read as a reference to the amount of that value disregarding the reduction.
- (4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) above if it arises—
  - (a) by reason of the original recipient doing one or more of the following—
    - (i) making a payment to the original supplier, other than a payment which falls within paragraph (c) below or to which subsection (5) below applies;
    - (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;
  - (b) where the receipt of the original value was within section 300(2) (d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or
  - (c) where the receipt of the original value was within section 300(5), by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a consideration the amount or value of which is not less than the amount of the original value.
- (5) This subsection applies to—
  - (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, is an associate of, or connected with, that

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- 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 person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time);
- (c) any payment for the acquisition of an asset which does not exceed its market value;
- (d) any payment, as rent for any property occupied by—
- (i) the original recipient, or
- (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time),
- of an amount not exceeding a reasonable and commercial rent for the property;
- (e) any payment in discharge of an ordinary trade debt; and
- (f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii) above.
- (6) For the purposes of this section, the amount of the replacement value is—
- (a) in a case within paragraph (a) of subsection (4) above, 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,
- (b) in a case within subsection (4)(b) above, the same as the amount of the original value, and
- (c) in a case within subsection (4)(c) above, the amount or value of the consideration received by the original supplier,
- and section 300(4) and (5) shall apply for the purposes of determining the amount of the original value.
- (7) The receipt of the replacement value by the original supplier shall be disregarded for the purposes of this section, as it applies in relation to the eligible shares, to the extent to which that receipt has previously been set (under this section) against any receipts of value which are, in consequence, disregarded for the purposes of section 300 as that section applies in relation to those shares or any other shares subscribed for by the individual.
- (8) The receipt of the replacement value by the original supplier (“the event”) shall be disregarded for the purposes of this section if—
- (a) the event occurs before the start of the period of restriction, or

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) in a case where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
- (c) where an appeal has been brought by the individual against an assessment to withdraw or reduce any relief attributable to the eligible 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 this section requires the replacement value to be received after the original value.

- (9) Subsection (10) below applies where—
  - (a) the receipt of the replacement value by the original supplier is a qualifying receipt (for the purposes of subsection (1) above) in consequence of which any receipts of value are disregarded for the purposes of section 300 as that section applies in relation to the shares in question or any other shares subscribed for by the individual in question, and
  - (b) the event which gives rise to the receipt is (or includes) a subscription for shares by—
    - (i) the individual, or
    - (ii) any person who, at any time in the period of restriction, is an associate of his, whether or not he is such an associate at the material time.
- (10) Where this subsection applies, the person who subscribes for the shares as mentioned in subsection (9)(b) above shall not—
  - (a) be eligible for any relief under this Chapter in relation to those shares or any other shares in the same issue, or
  - (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 (enterprise investment scheme: reinvestment).
- (11) In this section—
  - (a) any reference to a payment to a person (however expressed) includes a reference to a payment made to him indirectly or to his order or for his benefit, and
  - (b) references to “the period of restriction” are to the period of restriction relating to the shares mentioned in subsection (1)(a) above.”.

17 In section 301 (provisions supplementary to section 300), in subsections (4A) and (5) for “section 300” substitute “ sections 300 and 300A ”.

18 After that section insert—

**“301A Receipts of insignificant value: supplementary provision**

- (1) In this section and section 300 references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

This is subject to subsection (3) below.

- (2) For the purposes of this section and section 300 “an amount of insignificant value” means an amount of value which—
- (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the amount subscribed by the individual in question for the eligible shares in question.
- (3) For the purposes of section 300, if, at any time in the period—
- (a) beginning one year before the eligible shares in question are issued, and
  - (b) expiring at the end of the issue date,
- arrangements are in existence which provide for the individual in question to receive or to be entitled to receive, at any time in the period of restriction relating to those shares, any value from the company that issued those shares, no amount of value received by the individual shall be treated as a receipt of insignificant value.
- (4) For the purposes of this section—
- (a) references to the individual include references to any person who, at any time in the period of restriction relating to the shares in question, is an associate of his (whether or not he is such an associate at the material time), and
  - (b) the reference in subsection (3) above to the company includes a reference to any person who, at any time in the period of restriction relating to the shares in question, is connected with the company (whether or not that person is so connected at the material time).
- (5) For the purposes of this section, an individual who acquires any eligible shares on such a transfer as is mentioned in section 304 shall be treated as if he subscribed for those shares.”.

#### *Repayment of share capital*

- 19 (1) In section 303 (repayment of share capital), in subsection (1) for “designated period” substitute “ period of restriction ”.
- (2) In subsection (1AA) of that section for “section 303A” substitute “ sections 303AA and 303A ”.
- (3) In subsection (1B) of that section (receipts of value which do not result in the withdrawal or reduction of income tax relief)—
- (a) in paragraph (c) after “relief” insert “ attributable to shares held by that person ”, and
  - (b) after paragraph (c) insert—
- “or it would have the effect mentioned in paragraph (a), (b) or (c) above were it not a receipt of insignificant value for the purposes of section 300 above, paragraph 13 of Schedule 5B to the 1992 Act or paragraph 47 of the Finance Act 2000, as the case may be”.

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- (4) In subsection (1C) of that section, in paragraph (a) for “receivable” substitute “received”.
- (5) In subsection (2A) of that section, for paragraph (b) substitute—
- “(b) if the shares were issued on or after 6th April 2000 but before 7th March 2001, the period beginning two years before the issue of the shares and ending immediately before the termination date relating to those shares,
  - (c) in any other case, the period of restriction for the issue.”.
- (6) Omit subsections (3) to (7) of that section (determination of whether a person is connected with the issuing company in case where member of company receives value from it).
- (7) In subsection (9A) of that section after “this section” insert “ and section 303AA ”.
- 20 After section 303 insert—

**“303AA Insignificant repayments disregarded for purposes of s.303(1)**

- (1) Any repayment shall be disregarded for the purposes of section 303(1) (repayments etc. which cause withdrawal or reduction of 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 issued share capital of the company in question (or, as the case may be, subsidiary in question) immediately after the event occurs.
- This is subject to subsection (4) below.
- (2) For the purposes of this section “repayment” means a repayment, redemption, repurchase or payment mentioned in section 303(1) (repayments etc. which cause withdrawal or reduction of relief).
- (3) For the purposes of subsection (1) above it shall be assumed that the target shares are cancelled at the time the repayment is made.
- (4) Where an individual subscribes for eligible shares in a company, subsection (1) above does not apply to prevent section 303(1) having effect in relation to those shares if, at a relevant time, arrangements are in existence that provide—
- (a) for a repayment by the company or any subsidiary of the 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 those shares.
- (5) For the purposes of subsection (4) above “a relevant time” means any time in the period—
- (a) beginning one year before the eligible shares were issued, and
  - (b) expiring at the end of the issue date.”.

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- 21 In section 303A (restriction on withdrawal or reduction of relief under section 303)
- (a) for subsection (2) substitute—
- “(2) For the purposes of this section “repayment” has the meaning given in section 303AA(2) above.”,
- (b) omit subsection (8) (repayments treated, for the purposes of the corporate venturing scheme, as causing insignificant changes to share capital to be disregarded), and
- (c) in subsection (9)(a) for “that Schedule” substitute “ Schedule 15 to the Finance Act 2000 (corporate venturing scheme) ”.

### *Claims*

- 22 (1) In section 306(1) (timing of claim for relief), for paragraph (a) substitute—
- “(a) not earlier than the time the requirement in section 289A(6) is first satisfied; and”.
- (2) The amendment made by this paragraph has effect in relation to shares issued on or after 6th April 2001.

### *Information*

- 23 (1) In section 310 (information), in subsection (1) (claimant required to give notice of events by reason of which relief falls to be withdrawn or reduced), after “300,” insert “ or would fall to be withdrawn under section 300 were it not for the application of section 300A, ”.
- (2) In subsection (2) of that section (company etc. required to give notice of events by reason of which relief falls to be withdrawn or reduced), after “303” insert “ , or would fall to be withdrawn under section 300 were it not for the application of section 300A, ”.
- (3) After that subsection insert—
- “(2A) Where—
- (a) a person is required to give notice under subsection (1) or (2) above of an event by reason of which any relief in respect of any shares in a company—
- (i) falls to be withdrawn under section 300, or
- (ii) would fall to be so withdrawn were it not for the application of section 300A, and
- (b) that person has knowledge of the 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 the replacement value (or expected receipt).
- In this subsection “the replacement value”, “the original recipient”, “the original supplier” and “qualifying receipt” shall be construed in accordance with section 300A.”.
- (4) In subsection (4) of that section, after “believe” insert “ (a) ” and for “the inspector may” (where it first occurs) substitute—

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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“, or

- (b) that a person has given or received value (within the meaning of section 300(2) or (5)) which, but for the fact that the amount given or received was an amount of insignificant value (within the meaning of section 301A(2)), would have triggered a requirement to give a notice under subsection (1) or (2) above, or
- (c) that a person has made or received any repayment (within the meaning of section 303AA(2)) which, but for the fact that it falls to be disregarded for the purposes of section 303(1) by virtue of section 303AA(1), would have triggered a requirement to give a notice under subsection (2) above,

the inspector may ”.

- (5) The amendments made by this paragraph have effect in relation to events occurring on or after 7th March 2001.

### *Interpretation*

24 In section 312 (interpretation), in subsection (1), after the definition of “ordinary shares” insert—

““the period of restriction”, in relation to any eligible shares issued by a company, means the period—

- (a) beginning one year before the shares are issued, and
- (b) ending immediately before the termination date relating to the shares;”.

## **PART 2**

### **POSTPONEMENT OF CHARGEABLE GAIN ON REINVESTMENT**

#### *Introductory*

25 Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) is amended in accordance with this Part.

#### *Requirement as to the money raised*

26 In paragraph 1 (eligibility for relief), in sub-paragraph (2) (qualifying investment)—

(a) for paragraph (g) substitute—

- “(g) at least 80% of the money raised by the issue is employed wholly for the purpose of that activity not later than the time mentioned in section 289(3) of the Taxes Act, and
- (h) all of the money so raised is employed wholly for that purpose not later than 12 months after that time;”;

and

- (b) in the full-out words at the end for “condition in paragraph (g) above does” substitute “ conditions in paragraphs (g) and (h) above do ”.

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- 27 (1) In paragraph 1A (failure of conditions of application), in sub-paragraph (4)—
- (a) after “(2)(g)” insert “ or (h) ”; and
  - (b) in paragraph (a) for “section 289(3) of the Taxes Act” substitute “ sub-paragraph (4A) below ”.
- (2) After that sub-paragraph insert—
- “(4A) The time referred to in sub-paragraph (4) above is—
- (a) in a case relating to the condition in sub-paragraph (2)(g) of paragraph 1 above, the time mentioned in section 289(3) of the Taxes Act, and
  - (b) in a case relating to the condition in sub-paragraph (2)(h) of that paragraph, the time 12 months after that time.”.
- 28 In paragraph 16 (information), after sub-paragraph (4) insert—
- “(4A) Sub-paragraph (4) above shall apply in relation to the condition in paragraph 1(2)(h) above as it applies in relation to the condition in paragraph 1(2)(g) above, except that the reference to the time mentioned in section 289(3) of the Taxes Act shall be read as a reference to the time 12 months after that time.”.

*Designated period*

- 29 In paragraph 3(1) (chargeable events) in both paragraph (c) and paragraph (d) for “within the designated period” substitute “ before the termination date relating to those shares ”.

*Value received by investor*

- 30 (1) In paragraph 13 (value received by investor) in sub-paragraph (1) after “any value” insert “ (other than insignificant value) ”.
- (2) In that sub-paragraph for “designated period” substitute “ period of restriction ”.
- (3) After that sub-paragraph insert—
- “(1A) This paragraph is subject to paragraph 13B below.
- (1B) Where—
- (a) the individual who subscribes for the shares receives value (“the relevant receipt”) from the company during the period of restriction,
  - (b) the individual has received from the 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 paragraphs (a) and (b) above is not an amount of insignificant value,
- the individual shall be treated for the purposes of this Schedule as if the relevant receipt had been a receipt of an amount of value equal to the aggregate amount.
- For this purpose a receipt does not fall within paragraph (b) above if it has previously been aggregated under this sub-paragraph.”.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (4) Omit sub-paragraph (4) of that paragraph (certain payments etc. received on a winding up or dissolution treated as receipts of value).
- (5) In sub-paragraph (10) of that paragraph (interpretation of provisions applying to paragraph 13) after “this paragraph” insert “ and paragraph 13A(1) below ”.
- (6) After sub-paragraph (11) of that paragraph insert—
  - “(12) In paragraphs 13A to 13C below (except paragraph 13C(4))—
    - (a) references to “the shares” shall be construed in accordance with sub-paragraph (1) above, and
    - (b) references to “the period of restriction” shall be construed as references to the period of restriction relating to the shares.”.

31 After paragraph 13 insert—

**“Provision supplemental to paragraph 13**

13A(1) For the purposes of paragraph 13 above, the value received by the individual in question is—

- (a) in a case within sub-paragraph (2)(a), (b) or (c) of that paragraph, the amount received by the individual or, if greater, the market value of the share capital, securities or debt in question;
  - (b) in a case within sub-paragraph (2)(d) of that paragraph, the amount of the liability;
  - (c) in a case within sub-paragraph (2)(e) of that paragraph, the amount of the loan or advance reduced by the amount of any repayment made before the issue of the shares;
  - (d) in a case within sub-paragraph (2)(f) of that paragraph, the cost to the company of providing the benefit or facility less any consideration given for it by the individual;
  - (e) in a case within sub-paragraph (2)(g) or (h) of that paragraph, the difference between the market value of the asset and the consideration (if any) given for it;
  - (f) in a case within sub-paragraph (2)(i) of that paragraph, the amount of the payment;
  - (g) in a case within sub-paragraph (5) of that paragraph, the amount received by the individual or, if greater, the market value of the share capital or securities in question.
- (2) In this paragraph and paragraph 13 above references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

This is subject to sub-paragraph (4) below.

- (3) For the purposes of this paragraph and paragraph 13 above “an amount of insignificant value” means an amount of value which—
- (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the total amount of expenditure on the shares which is set under this Schedule against a corresponding total amount of the whole or any part of any chargeable gains.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (4) For the purposes of paragraph 13 above, if, at any time in the period—
- (a) beginning one year before the shares are issued, and
  - (b) expiring at the end of the issue date,
- arrangements are in existence which provide for the individual who subscribes for the shares to receive or to be entitled to receive, at any time in the period of restriction, any value from the company that issued the shares, no amount of value received by the individual shall be treated as a receipt of insignificant value.
- (5) In sub-paragraph (4) above—
- (a) any reference to the individual includes a reference to any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time), and
  - (b) the reference to the company includes a reference to any person who, at any time in the period of restriction, is connected with the company (whether or not that person is so connected at the material time).

### **Receipt of replacement value**

13B (1) Where—

- (a) by reason of a receipt of value within sub-paragraph (2) (other than paragraph (b)) or sub-paragraph (5) of paragraph 13 above (“the original value”), the shares would, in the absence of this paragraph, be treated as never having been eligible shares or as ceasing to be eligible shares on the date when the value is received,
- (b) the original supplier receives value (“the replacement value”) from the original recipient by reason of a qualifying receipt, and
- (c) the amount of the replacement value is not less than the amount of the original value,

the receipt of the original value shall be disregarded for the purposes of paragraph 13 above.

- (2) This paragraph is subject to paragraph 13C below.
- (3) For the purposes of this paragraph and paragraph 13C below—
- “the original recipient” means the person who receives the original value, and
- “the original supplier” means the person from whom that value was received.
- (4) A receipt of the replacement value is a qualifying receipt for the purposes of sub-paragraph (1) above if it arises—
- (a) by reason of the original recipient doing one or more of the following—
    - (i) making a payment to the original supplier, other than a payment which falls within paragraph (c) below or to which sub-paragraph (5) below applies;
    - (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;

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (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;
  - (b) where the receipt of the original value was within paragraph 13(2)(d) above, by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or
  - (c) where the receipt of the original value was within paragraph 13(5) above, by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a consideration the amount or value of which is not less than the amount of the original value.
- (5) This sub-paragraph applies to—
- (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, is an associate of, or connected with, that supplier (whether or not that person 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 person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time);
  - (c) any payment for the acquisition of an asset which does not exceed its market value;
  - (d) any payment, as rent for any property occupied by—
    - (i) the original recipient, or
    - (ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time),of an amount not exceeding a reasonable and commercial rent for the property;
  - (e) any payment in discharge of an ordinary trade debt (within the meaning of paragraph 13(11) above); and
  - (f) any payment for shares in or securities of any company in circumstances that do not fall within sub-paragraph (4)(a)(ii) above.
- (6) For the purposes of this paragraph, the amount of the replacement value is—
- (a) in a case within paragraph (a) of sub-paragraph (4) above, 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 within sub-paragraph (ii) or (iii) of that paragraph and the amount or value of the consideration (if any) received for it,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) in a case within sub-paragraph (4)(b) above, the same as the amount of the original value, and
  - (c) in a case within sub-paragraph (4)(c) above, the amount or value of the consideration received by the original supplier,
- and paragraph 13A(1) above applies for the purposes of determining the amount of the original value.
- (7) In this paragraph any reference to a payment to a person (however expressed) includes a reference to a payment made to him indirectly or to his order or for his benefit.

### **Provision supplemental to paragraph 13B**

13C(1) The receipt of the replacement value by the original supplier shall be disregarded for the purposes of paragraph 13B above, as it applies in relation to the shares, to the extent to which that receipt has previously been set (under that paragraph) against any receipts of value which are, in consequence, disregarded for the purposes of paragraph 13 above as that paragraph applies in relation to those shares or any other shares subscribed for by the individual in question (“the individual”).

- (2) The receipt of the replacement value by the original supplier (“the event”) shall also be disregarded for the purposes of paragraph 13B above if—
- (a) the event occurs before the start of the period of restriction, or
  - (b) in a case where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or
  - (c) where an appeal has been brought by the individual against an assessment made by virtue of paragraph 3(1)(e) above by reason of that receipt, the event occurs more than 60 days after the appeal has been finally determined.

But nothing in paragraph 13B above or this paragraph requires the replacement value to be received after the original value.

- (3) Sub-paragraph (4) below applies where—
- (a) the receipt of the replacement value by the original supplier is a qualifying receipt for the purposes of paragraph 13B(1) above, and
  - (b) the event which gives rise to the receipt is (or includes) a subscription for shares by—
    - (i) the individual, or
    - (ii) any person who, at any time in the period of restriction, is an associate of the individual, whether or not he is such an associate at the material time.
- (4) Where this sub-paragraph applies, the person who subscribes for the shares shall not—
- (a) be eligible for any relief under Chapter 3 of Part 7 of the Taxes Act (enterprise investment scheme: income tax relief) in relation to those shares or any other shares in the same issue, or
  - (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 this Schedule.

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- (5) In this paragraph “the original value” and “the replacement value” shall be construed in accordance with paragraph 13B above.”.

*Value received by persons other than the investor*

- 32 (1) In paragraph 14 (value received by persons other than the investor), in sub-paragraph (1)—
- (a) for “designated period” substitute “ period of restriction ”, and
  - (b) for “paragraph 14A” substitute “ paragraphs 14AA and 14A ”.
- (2) In sub-paragraph (3) of that paragraph (repayments etc. excluded from the effects of paragraph 13(1))—
- (a) in paragraph (c) after “relief” insert “ attributable to shares held by that person ”, and
  - (b) after paragraph (c) insert—
- “or it would have the effect mentioned in paragraph (a), (b) or (c) above were it not a receipt of insignificant value for the purposes of paragraph 13 above, section 300 of the Taxes Act or paragraph 47 of Schedule 15 to the Finance Act 2000, as the case may be”.
- (3) In sub-paragraph (7) of that paragraph (meaning of “subsidiary” in paragraph 14) after “this paragraph” insert “ and paragraph 14AA below ”.

*Certain receipts to be disregarded*

- 33 After paragraph 14 insert—

**“Insignificant repayments disregarded for purposes of paragraph 14**

14A(1) Any repayment shall be disregarded for the purposes of paragraph 14 above 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 issued share capital of the company in question (or, as the case may be, subsidiary in question) immediately after the event occurs.

This is subject to sub-paragraph (4) below.

- (2) For the purposes of this paragraph “repayment” means a repayment, redemption, repurchase or payment mentioned in paragraph 14(1) above.
- (3) For the purposes of sub-paragraph (1) above it shall be assumed that the target shares are cancelled at the time the repayment is made.
- (4) Where an individual subscribes for eligible shares in a company, sub-paragraph (1) above does not apply to prevent paragraph 14(2) above having effect in relation to the shares if, at a relevant time, arrangements are in existence that provide—

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- (a) for a repayment by the company or any subsidiary of the 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.
- (5) For the purposes of sub-paragraph (4) above “a relevant time” means any time in the period—
- (a) beginning one year before the eligible shares were issued, and
- (b) expiring at the end of the issue date.”
- 34 In paragraph 14A (certain receipts to be disregarded for purposes of paragraph 14)
- 
- (a) for sub-paragraph (2) substitute—
- “(2) For the purposes of this paragraph “repayment” has the meaning given in paragraph 14AA(2) above.”,
- (b) omit sub-paragraph (7) (repayments treated, for the purposes of the corporate venturing scheme, as causing insignificant changes to share capital to be disregarded), and
- (c) in sub-paragraph (8)(a) for “that Schedule” substitute “ Schedule 15 to the Finance Act 2000 (corporate venturing scheme) ”.

### *Information*

- 35 (1) In paragraph 16 (information), in sub-paragraph (1)(a) for “in the designated period” substitute “ before the termination date relating to those shares ”.
- (2) After sub-paragraph (2) of that paragraph insert—
- “(2A) In determining, for the purposes of sub-paragraph (1) or (2) above, whether a chargeable event falling within paragraph 3(1)(e) above has occurred by virtue of paragraph 13(1)(b) above, the effect of paragraph 13B above shall be disregarded.”.
- (3) After sub-paragraph (3) of that paragraph insert—
- “(3A) Where—
- (a) a person is required to give a notice under sub-paragraph (1) or (2) above in respect of a chargeable event which occurs by virtue of paragraph 13(1)(b) above or would occur by virtue of that paragraph but for the operation of paragraph 13B above, and
- (b) that person has knowledge of the 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 the replacement value (or expected receipt).
- In this sub-paragraph “the replacement value”, “the original recipient”, “the original supplier” and “qualifying receipt” shall be construed in accordance with paragraph 13B above.”.
- (4) In sub-paragraph (5) of that paragraph, for “If” to “particular case,” substitute—

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“If the inspector has reason to believe—

- (a) that a person has not given a notice which he is required to give—
    - (i) under sub-paragraph (1) or (2) above in respect of any chargeable event, or
    - (ii) under sub-paragraph (4) above in respect of any particular case, or
  - (b) that a person has given or received value (within the meaning of paragraph 13(2) or (5) above) which, but for the fact that the amount given or received was an amount of insignificant value (within the meaning of paragraph 13A(3) above), would have triggered a requirement to give a notice under sub-paragraph (1) or (2) above, or
  - (c) that a person has made or received any repayment (within the meaning of paragraph 14AA(2) above) which, but for the fact that it falls to be disregarded for the purposes of paragraph 14 above by virtue of paragraph 14AA(1) above, would have triggered a requirement to give a notice under sub-paragraph (2) above,”.
- (5) The amendments made by this paragraph have effect in relation to events occurring on or after 7th March 2001.

*Trustees: anti-avoidance*

- 36 In paragraph 18 (trustees: anti-avoidance)—
- (a) in sub-paragraph (1) after “13” insert “ to 13C ”, and
  - (b) in sub-paragraph (2)—
    - (i) in paragraph (a) for “paragraph 13 above applies” substitute “ sub-paragraph (1) of paragraph 13 above applies, or that sub-paragraph would apply were it not for the fact that the amount of value is an amount of insignificant value for the purposes of that sub-paragraph ”, and
    - (ii) after that paragraph insert—
      - “(ab) in a case where paragraph 13(1) above would apply were it not for the operation of paragraph 13B above, the time when the original value (within the meaning of paragraph 13B above) in question is received;”.

*Interpretation*

- 37 In paragraph 19 (interpretation), in sub-paragraph (1)—
- (a) after the definition of “ordinary shares” insert—
    - ““the period of restriction”, in relation to any shares, means the period—
    - (a) beginning one year before the shares are issued, and
    - (b) ending immediately before the termination date relating to the shares;”,
  - (b) in the definition of “qualifying company” after “Act” insert “ (except that for the purposes of this Schedule the reference in section 293(1B)(b)(i) of

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that Act to section 304A of that Act shall be read as a reference to paragraph 8 above)”, and

(c) at the end insert—

““termination date”, in relation to any shares, means the date found by applying the definition of “termination date” in section 312(1) of the Taxes Act by reference to the company that issued the shares and by reference to the shares.”.

### PART 3

#### MISCELLANEOUS AND GENERAL

##### *Loss relief*

- 38 (1) Section 576 of the Taxes Act 1988 (supplementary provisions relating to relief for losses on shares in trading companies) is amended as follows.
- (2) In subsection (4) (definition of “qualifying trading company”) omit the words from “at all times” to “and which”.
- (3) In subsection (4A) (meaning of “eligible trading company” for purposes of subsection (4))—
- (a) after paragraph (a) insert—
- “(ab) the reference in subsection (1A) of section 293 to the beginning of the relevant period were a reference to the time at which the shares in respect of which relief is claimed under section 573 or 574 were issued;”,
- (b) in paragraph (b) for the words from “and the condition” to the end substitute “and after paragraph (a) of that subsection there were inserted— and
- (b) the company continues, during the winding up, to be a trading company within the meaning of section 576(5).;”,
- and
- (c) in paragraph (d) after “293” insert “ (except subsection (1A)) ”.
- (4) The amendment made by sub-paragraph (3)(b) has effect in relation to shares issued on or after 6th April 2001.
- (5) The other amendments made by this paragraph have effect—
- (a) in relation to shares issued on or after 7th March 2001, and
- (b) in relation to shares issued after 5th April 1998 but before 7th March 2001, in respect of any part of the relevant period which falls on or after 7th March 2001.
- (6) For the purposes of sub-paragraph (5)(b) “relevant period” has the meaning given in section 576(5) of the Taxes Act 1988.

##### *Penalties in connection with returns etc.*

- 39 (1) In section 98 of the Taxes Management Act 1970 (c. 9), in the second column of the Table, in the entry for section 310(1), (2) and (3) of the Taxes Act 1988 after “(2)” insert “ , (2A) ”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (2) This paragraph has effect in relation to shares issued on or after 6th April 2001, for claims for relief under Chapter 3 of Part 7 of the Taxes Act 1988 made for the year 2000-01 or any later year of assessment.

#### *Commencement*

- 40 (1) Except where provision is made to the contrary, the amendments made by this Schedule have effect in accordance with the following provisions of this paragraph.
- (2) The amendments made by paragraphs 2 to 8, 10 to 14, 24, 26 to 29 and 37 have effect—
- (a) in relation to shares issued on or after 7th March 2001, and
  - (b) in respect of the application of Chapter 3 of Part 7 of the Taxes Act 1988 and Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) on or after 7th March 2001 in relation to shares—
    - (i) that were issued after 31st December 1993 but before 7th March 2001, and
    - (ii) to which income tax relief or deferral relief was attributable immediately before 7th March 2001.
- (3) The amendments made by paragraphs 15 to 21, 30 to 34 and 36 have effect—
- (a) in relation to shares issued on or after 7th March 2001, and
  - (b) in relation to shares issued before that date, in respect of the application of the provisions mentioned in sub-paragraph (2)(b) in relation to—
    - (i) value received (within the meaning of section 300 of the Taxes Act 1988 or paragraph 13 of Schedule 5B to the Taxation of Chargeable Gains Act 1992), and
    - (ii) repayments made,  
on or after that date.
- (4) For the purposes of this paragraph—
- “deferral relief” has the same meaning as in Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12) (enterprise investment scheme: reinvestment);
  - “income tax relief” means relief under Chapter 3 of Part 7 of the Taxes Act 1988 (enterprise investment scheme); and
  - “repayment” means a repayment, redemption, repurchase or payment mentioned in section 303(1) of the Taxes Act 1988 or paragraph 14(1) of Schedule 5B to the Taxation of Chargeable Gains Act 1992.

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## SCHEDULE 16

Section 64.

## VENTURE CAPITAL

## PART 1

## VENTURE CAPITAL TRUSTS

*Meaning of “qualifying holdings”*

- 1 (1) In Schedule 28B to the Taxes Act 1988 (which specifies the requirements to be met by “qualifying holdings”), in paragraph 3 (requirements as to company’s business), in sub-paragraph (8)(a) for “the requirements mentioned in paragraphs (a) and (b) of paragraph 4(5) or (6) below are” substitute “ the requirement mentioned in paragraph 4(5) below is ”.
- (2) The amendment made by this paragraph has effect, and shall be deemed always to have had effect, for the purpose of determining whether shares or securities issued on or after 6th April 2000 are, for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts), to be regarded as comprised in a company’s qualifying holdings.
- 2 (1) In paragraph 6 of that Schedule (requirement as to money raised by investment), for sub-paragraphs (1) and (2) (employment of money wholly for purposes of trade) substitute—
  - “(1) The requirements of this paragraph are that either—
    - (a) at least 80% of the money raised by the issue of the relevant holding must—
      - (i) have been employed wholly for the purposes of the trade by reference to which the requirements of paragraph 3(3) above are satisfied; or
      - (ii) be money which the relevant company or a relevant qualifying subsidiary of that company is intending to employ wholly for the purposes of that trade; or
    - (b) all of the money so raised must have been employed as mentioned in paragraph (a)(i) above.
  - (2) For the purposes of this Schedule—
    - (a) the requirements of sub-paragraph (1) above shall not be capable of being satisfied by virtue of paragraph (a)(ii) of that sub-paragraph at any time after 12 months have expired from the trading time, and
    - (b) the requirements of that sub-paragraph shall not be capable of being satisfied by virtue of paragraph (a)(i) of that sub-paragraph at any time after 24 months have expired from the trading time.
- (2AA) In sub-paragraph (2) above, “the trading time” means whichever is applicable of the following—
  - (a) in a case where the requirements of sub-paragraph (3) of paragraph 3 above were satisfied in relation to the time when the

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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relevant holding was issued by virtue of paragraph (a) of that sub-paragraph, that time; and

- (b) in a case where they were satisfied in relation to that time by virtue of paragraph (b) of that sub-paragraph, the time when the relevant company or, as the case may be, the subsidiary in question began to carry on the intended trade.”.

- (2) The amendment made by this paragraph has effect for the purpose of determining whether shares or securities held by the trust company (within the meaning of Schedule 28B to the Taxes Act 1988) on or after 7th March 2001 are, for the purposes of that Schedule, to be regarded as comprised in that company’s qualifying holdings.

#### *Income tax relief: repayment supplements*

- 3 (1) In Schedule 15B to the Taxes Act 1988 (relief from income tax), omit paragraph 1(7) (modification of provisions relating to repayment supplements where effect given to claim for relief by repayment of tax).
- (2) The amendment made by this paragraph has effect in relation to repayments of tax on or after 7th March 2001.

## **PART 2**

### **CORPORATE VENTURING SCHEME**

#### *Introductory*

- 4 Schedule 15 to the Finance Act 2000 (c. 17) (corporate venturing scheme) is amended in accordance with this Part.

#### *Money raised by issue of shares*

- 5 (1) In paragraph 36 (requirement that money raised is employed for purposes of a relevant trade), for sub-paragraph (1) substitute—

“(1) At least 80% 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).

(1A) All of the money so raised must have been so employed not later than 12 months after that time.

(1B) The time referred to in sub-paragraph (1) is—

- (a) the end of the period of 12 months beginning with the issue of the shares, or
- (b) where the relevant trade was not being carried on at the time the shares were issued, the end of the period of 12 months beginning when the issuing company or a subsidiary begins to carry on the relevant trade.

(1C) Sub-paragraphs (1) and (1A) are subject to sub-paragraph (5).”.

- (2) In sub-paragraph (5) of that paragraph—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) in paragraph (a) for “any of the money mentioned in sub-paragraph (1)” substitute “ any of the money raised by the issuance of the relevant issue of shares ”, and
  - (b) for “the requirement of sub-paragraph (1)” substitute “ the requirement of sub-paragraph (1) does not apply and the requirement of sub-paragraph (1A) ”.
- (3) The amendments made by this paragraph have effect—
- (a) in relation to shares issued on or after 7th March 2001, and
  - (b) in respect of the application of Schedule 15 to the Finance Act 2000 (c. 17) (corporate venturing scheme) on or after 7th March 2001 in relation to shares—
    - (i) that were issued after 31st March 2000 but before 7th March 2001, and
    - (ii) to which investment relief (within the meaning of that Schedule) was attributable immediately before 7th March 2001.

#### *Receipt of replacement value*

- 6 (1) In paragraph 54 (receipt of replacement value), at the beginning of sub-paragraph (1) (c) insert “ the amount of ”.
- (2) After sub-paragraph (2) of that paragraph insert—
- “(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) In sub-paragraph (3) of that paragraph (qualifying receipts), for paragraphs (a) to (c) substitute—
- “(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;
    - (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.”.
- (4) After that sub-paragraph insert—
- “(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

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (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).”.
- (5) For sub-paragraph (4) of that paragraph (calculation of amounts of original and replacement value) substitute—
  - “(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.”.
- (6) The amendment made by sub-paragraph (1) shall be deemed always to have had effect.
- (7) Subject to that, the amendments made by this paragraph have effect—
  - (a) in relation to shares issued on or after 7th March 2001, and
  - (b) in relation to shares issued after 31st March 2000 but before 7th March 2001, in respect of value received (within the meaning of paragraph 49 of Schedule 15 to the Finance Act 2000 (c. 17)) on or after 7th March 2001.

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- 7 (1) In paragraph 55 (provision supplementary to paragraph 54), after sub-paragraph (4) insert—

“(5) In this paragraph “the original value” and “the replacement value” shall be construed in accordance with paragraph 54.”.

- (2) The amendment made by this paragraph shall be deemed always to have had effect.

*Value received by other persons*

- 8 (1) In paragraph 56 (reduction or withdrawal of investment relief as a result of value received by certain persons), in sub-paragraph (3) (receipts of value which do not result in the withdrawal or reduction of relief), after paragraph (c) insert—

“or it would have the effect mentioned in paragraph (a), (b) or (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 or paragraph 13 of Schedule 5B to the 1992 Act, as the case may be”.

- (2) The amendment made by this paragraph has effect—

- (a) in relation to shares issued on or after 7th March 2001, and  
 (b) in respect of shares issued after 31st March 2000 but before 7th March 2001, in relation to any repayment (within the meaning of paragraph 57(2) of Schedule 15 to the Finance Act 2000) made on or after 7th March 2001.

*Insignificant repayments disregarded*

- 9 (1) In paragraph 57 (repayments etc. of insignificant amounts disregarded for the purposes of paragraph 56), in sub-paragraph (1) after “remaining” insert “ issued ”.

- (2) In sub-paragraph (3) of that paragraph for “payment” substitute “ repayment ”.

- (3) The amendment made by sub-paragraph (1) has effect—

- (a) in relation to shares issued on or after 7th March 2001, and  
 (b) in respect of shares issued after 31st March 2000 but before 7th March 2001, in relation to repayments (within the meaning of paragraph 57(2) of Schedule 15 to the Finance Act 2000) made on or after 7th March 2001.

- (4) The amendment made by sub-paragraph (2) shall be deemed always to have had effect.

SCHEDULE 17

Section 65.

CAPITAL ALLOWANCES: ENERGY-SAVING PLANT AND MACHINERY

- 1 In section 39 of the Capital Allowances Act 2001 (c. 2) (first-year allowances available for certain types of expenditure only), at the end add—

“, or

section 45A

expenditure on energy-saving plant or machinery.”.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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2 After section 45 of that Act insert—

**“45A Expenditure on energy-saving plant or machinery**

- (1) Expenditure is first-year qualifying expenditure if—
  - (a) it is expenditure on energy-saving plant or machinery that is unused and not second-hand,
  - (b) it is incurred on or after 1st April 2001, and
  - (c) it is not excluded by section 46 (general exclusions).
- (2) Energy-saving plant or machinery means plant or machinery in relation to which the following conditions are met—
  - (a) when the expenditure is incurred, or
  - (b) when the contract for the provision of the plant or machinery is entered into.
- (3) The conditions are that the plant or machinery—
  - (a) is of a description specified by Treasury order, and
  - (b) meets the energy-saving criteria specified by Treasury order for plant or machinery of that description.
- (4) Any such order may make provision by reference to any technology list, or product list, issued by the Secretary of State (whether before or after the coming into force of this section).

**45B Certification of energy-saving plant and machinery**

- (1) The Treasury may by order provide that, in such cases as may be specified in the order, no section 45A allowance may be made unless a relevant certificate of energy efficiency is in force.

A “section 45A allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45A.
- (2) A certificate of energy efficiency is one certifying that—
  - (a) particular plant or machinery, or
  - (b) plant or machinery constructed to a particular design,meets the energy-saving criteria specified in relation to that description of plant or machinery by order under section 45A.
- (3) A relevant certificate of energy efficiency means one issued—
  - (a) by the Secretary of State or a person authorised by the Secretary of State;
  - (b) in the case of plant or machinery used or for use in Scotland, by the Scottish Ministers or a person authorised by them;
  - (c) in the case of plant or machinery used or for use in Wales, by the National Assembly for Wales or a person authorised by it;
  - (d) in the case of plant or machinery used or for use in Northern Ireland, by the Department of Enterprise, Trade and Investment in Northern Ireland or a person authorised by it.
- (4) If a certificate of energy efficiency is revoked—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) the certificate is to be treated for the purposes of this section as if it had never been issued, and
  - (b) all such assessments and adjustments of assessments are to be made as are necessary as a result of the revocation.
- (5) If a person who has made a tax return becomes aware that, as a result of the revocation of a certificate of energy efficiency after the return was made, the return has become incorrect, he must give notice to the Inland Revenue specifying how the return needs to be amended.
- (6) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the tax return had become incorrect because of the revocation of the certificate.

#### **45C Energy-saving components of plant or machinery**

- (1) This section applies for the purpose of apportioning expenditure incurred on plant or machinery if one or more components of the plant or machinery (but not all of it) is of a description specified by Treasury order under section 45A(3).
- (2) If—
- (a) only one of the components is of such a description, and
  - (b) an amount is specified by the order in respect of that component,
- the part of the expenditure that is section 45A expenditure must not exceed that amount.
- (3) If—
- (a) more than one of the components are of such a description, and
  - (b) an amount is specified by the order in respect of each of those components,
- the part of the expenditure that is section 45A expenditure must not exceed the total of those amounts.
- (4) If the expenditure is treated under this Act as incurred in instalments, the proportion of each instalment that is section 45A expenditure is the same as the proportion of the whole of the expenditure that is section 45A expenditure.
- (5) If this section applies, the expenditure is not apportioned under section 562(3) (apportionment where property sold with other property).
- (6) In this section “section 45A expenditure” means expenditure that is first-year qualifying expenditure under section 45A.”

3 In section 46(1) of that Act (cases in which expenditure is not first-year qualifying expenditure), at the end add—

“, or

section 45A (expenditure on energy-saving plant or machinery).”.

4 In section 52(3) of that Act (amount of first-year allowances), in the Table, at the end add—

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“Expenditure qualifying under section 45A (expenditure on energy-saving plant or machinery) 100%”

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- 5 In the second column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information etc.), in the entry relating to requirements imposed by provisions of the Capital Allowances Act 2001 (c. 2) , after “43(5) and (6),” insert “ 45B(5) and (6),”.
- 6 (1) For the purposes of section 45A(2) of the Capital Allowances Act 2001 (c. 2), if—
- (a) expenditure on plant or machinery is incurred, or a contract for the provision of plant or machinery is entered into, before the first order is made under section 45A(3) of that Act; and
  - (b) if that order had been made before the relevant time, the conditions in section 45A(3) of that Act would have been met,
- those conditions shall be treated as if they were met at the relevant time.
- (2) In sub-paragraph (1) “the relevant time” means the time when the expenditure was incurred or (as the case may be) the contract was entered into.

## SCHEDULE 18

Section 66.

### CAPITAL ALLOWANCES: FIXTURES PROVIDED IN CONNECTION WITH ENERGY MANAGEMENT SERVICES

- 1 In section 172(3) of the Capital Allowances Act 2001 (c. 2) (scope of Chapter 14 of Part 2)—
- (a) for “195” substitute “ 195B ”; and
  - (b) for “192” substitute “ 192A ”.
- 2 After section 175 of that Act insert—

#### “175A Meaning of “energy services agreement”

- (1) In this Chapter “energy services agreement” means an agreement entered into by an energy services provider (“the energy services provider”) and another person (“the client”) that makes provision, with a view to saving energy or using energy more efficiently, for—
- (a) the design of plant or machinery, or one or more systems incorporating plant or machinery,
  - (b) obtaining and installing the plant or machinery,
  - (c) the operation of the plant or machinery,
  - (d) the maintenance of the plant or machinery, and
  - (e) the amount of any payments in respect of the operation of the plant or machinery to be linked (wholly or in part) to energy savings or increases in energy efficiency resulting from the provision or operation of the plant or machinery.

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- (2) In this Chapter “energy services provider” means a person carrying on a qualifying activity consisting wholly or mainly in the provision of energy management services.”.
- 3 In section 176(4) of that Act (treatment of fixture where expenditure incurred by person with interest in relevant land), for “section 177(4)” substitute “ sections 177(4) and 180A(4) ”.
- 4 After section 180 of that Act insert—

**“180A Energy services providers**

- (1) If—
- (a) an energy services agreement is entered into,
  - (b) the energy services provider incurs capital expenditure under the agreement on the provision of plant or machinery,
  - (c) the plant or machinery becomes a fixture,
  - (d) at the time the plant or machinery becomes a fixture—
    - (i) the client has an interest in the relevant land, and
    - (ii) the energy services provider does not,
  - (e) the plant or machinery—
    - (i) is not provided for leasing, and
    - (ii) is not provided for use in a dwelling-house,
  - (f) the operation of the plant or machinery is carried out wholly or substantially by the energy services provider or a person connected with him,
  - (g) the energy services provider and the client are not connected persons, and
  - (h) they elect that this section should apply,
- the energy services provider is to be treated, on and after the time at which he incurs the expenditure, as the owner of the fixture as a result of incurring the expenditure.
- (2) But if the client would not have been entitled to a section 176 allowance in respect of the expenditure if he had incurred it, subsection (1) does not apply unless the plant or machinery belongs to a class of plant or machinery specified by Treasury order.
- (3) In subsection (2) a “section 176 allowance” means an allowance to which a person is entitled as a result of section 176.
- (4) If an election is made under this section, the client is not to be treated under section 176 as the owner of the fixture.
- (5) An election under this section must be made by notice to the Inland Revenue—
- (a) for income tax purposes, on or before the normal time limit for amending a tax return for the tax year in which the relevant chargeable period ends;
  - (b) for corporation tax purposes, no later than 2 years after the end of the relevant chargeable period.

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(6) The “relevant chargeable period” means the chargeable period in which the capital expenditure was incurred.”.

5 In section 181(4) of that Act (purchaser of land giving consideration for fixture), for “section 182” substitute “ sections 182 and 182A ”.

6 After section 182 of that Act insert—

**“182A Purchaser of land discharging obligations of client under energy services agreement**

(1) If—

- (a) after any plant or machinery has become a fixture, a person (“the purchaser”) acquires an interest in the relevant land,
- (b) that interest was in existence before the purchaser’s acquisition of it,
- (c) before that acquisition, the plant or machinery was provided under an energy services agreement, and
- (d) in connection with that acquisition, the purchaser pays a capital sum to discharge the obligations of the client under the energy services agreement,

the purchaser is to be treated, on and after the time of the acquisition, as the owner of the fixture as a result of incurring expenditure, consisting of that capital sum, on the provision of the fixture.

(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.

(3) Section 181(3) (test for whether person has a prior right) applies for the purposes of subsection (2).”.

7 (1) Section 188 of that Act (cessation of ownership when person ceases to have qualifying interest) is amended as follows.

(2) In subsection (1), after paragraph (c) insert—

“(ca) section 182A (purchaser of land discharging obligations of client under energy services agreement),”.

(3) In subsection (3)(a), for “or 182” substitute “ , 182 or 182A ”.

8 After section 192 of that Act insert—

**“192A Cessation of ownership of energy services provider**

(1) This section applies if an energy services provider is treated under section 180A as the owner of a fixture.

(2) If—

- (a) the energy services provider at any time assigns his rights under the energy services agreement, or
- (b) the financial obligations of the client in respect of the fixture under an energy services agreement are at any time discharged (on the payment of a capital sum or otherwise),

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the energy services provider is to be treated as ceasing to be the owner of the fixture at that time (or, as the case may be, the earliest of those times).

- (3) The reference in subsection (2)(b) to the client is, in a case where the financial obligations of the client have become vested in another person (by assignment, operation of law or otherwise), a reference to the person in whom the obligations are vested when the capital sum is paid.”

9 After section 195 of that Act insert—

**“195A Acquisition of ownership by assignee of energy services provider**

- (1) If section 192A(2)(a) applies (cessation of ownership of energy services provider as a result of assignment), the assignee is to be treated, on and after the assignment—
- (a) as having incurred expenditure, consisting of the consideration given by him for the assignment, on the provision of the fixture, and
  - (b) as being the owner of the fixture.
- (2) For the purposes of section 192A (and subsection (1) and section 195B) the assignee is to be treated as being an energy services provider who owns the fixture under section 180A.

**195B Acquisition of ownership by client**

- (1) If section 192A(2)(b) applies (discharge of obligations of client) because the client has paid a capital sum, the client is to be treated—
- (a) as having incurred expenditure, consisting of the capital sum, on the provision of the fixture, and
  - (b) as being, on and after the time of payment, the owner of the fixture.
- (2) Section 192A(3) (assignee of client) applies in relation to subsection (1).”

10 (1) Section 196 of that Act (disposal values in relation to fixtures) is amended as follows.

(2) In subsection (1), in the Table, after item 8 insert—

“8A. Cessation of ownership of the fixture because section 192A(2)(a) (assignment of rights) applies.	The consideration given by the assignee for the assignment.
8B. Cessation of ownership of the fixture because section 192A(2)(b) (discharge of client’s obligations) applies on the payment of a capital sum.	The capital sum paid to discharge the financial obligations of the client.”

(3) After subsection (4) insert—

“(4A) Section 192A(3) (assignee of client) applies in relation to item 8B of the Table.”

(4) In subsection (5), for “192” substitute “ 192A ”.

11 In section 203(2)(b) of that Act (reasons for amendment of returns), after “182(2)” insert “ , 182A(2) ”.

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## SCHEDULE 19

Section 67.

### CAPITAL ALLOWANCES: CONVERSION OF PARTS OF BUSINESS PREMISES INTO FLATS

#### PART 1

#### NEW PART 4A OF THE CAPITAL ALLOWANCES ACT 2001

After Part 4 of the Capital Allowances Act 2001 (c. 2) insert—

#### “PART 4A

#### FLAT CONVERSION ALLOWANCES

#### CHAPTER 1

#### INTRODUCTION

#### Flat conversion allowances

- 393A) Allowances are available under this Part if a person incurs qualifying expenditure in respect of a flat.
- (2) Allowances under this Part are made to the person who—
- (a) incurred the expenditure, and
  - (b) has the relevant interest in the flat.
- (3) In this Part “flat” means a dwelling which—
- (a) is a separate set of premises (whether or not on the same floor),
  - (b) forms part of a building, and
  - (c) is divided horizontally from another part of the building.
- (4) In this Part “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling.

#### CHAPTER 2

#### QUALIFYING EXPENDITURE

#### Meaning of “qualifying expenditure”

- 393B) In this Part “qualifying expenditure” means capital expenditure incurred on, or in connection with—
- (a) the conversion of part of a qualifying building into a qualifying flat,
  - (b) the renovation of a flat in a qualifying building if the flat is, or will be, a qualifying flat, or
  - (c) repairs to a qualifying building, to the extent that the repairs are incidental to expenditure within paragraph (a) or (b).

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- (2) Expenditure within subsection (1)(a) or (b) is not qualifying expenditure unless the part of the building, or the flat, in respect of which the expenditure is incurred—
- (a) was unused, or
  - (b) was used only for storage,
- throughout the period of one year ending immediately before the date on which the conversion or renovation work began.
- (3) Expenditure is not qualifying expenditure if it is incurred on or in connection with—
- (a) the acquisition of land or rights in or over land,
  - (b) the extension of a qualifying building (except to the extent required for the purpose of providing a means of getting to or from a qualifying flat),
  - (c) the development of land adjoining or adjacent to a qualifying building, or
  - (d) the provision of furnishings or chattels.
- (4) For the purposes of this section, expenditure incurred on repairs to a building is to be treated as capital expenditure if it is not expenditure that would be allowed to be deducted in calculating the profits of a Schedule A business for tax purposes.
- (5) Treasury regulations may make further provision as to expenditure which is, or is not, qualifying expenditure.

### CHAPTER 3

#### QUALIFYING BUILDINGS AND QUALIFYING FLATS

##### Meaning of “qualifying building”

- 393(1) In this Part “qualifying building” means a building in respect of which the following requirements are met—
- (a) all or most of the ground floor of the building must be authorised for business use,
  - (b) it must appear that, when the building was constructed, the storeys above the ground floor were for use primarily as one or more dwellings,
  - (c) the building must not have more than 4 storeys above the ground floor, and
  - (d) the construction of the building must have been completed before 1st January 1980.
- (2) In subsection (1)(a) “authorised for business use” means—
- (a) in the case of a building in England or Wales, authorised for use within class A1, A2, A3, B1 or D1(a) specified in the Schedule to the Town and Country Planning (Use Classes) Order 1987;
  - (b) in the case of a building in Scotland—
    - (i) authorised for use within class 1, 2, 3 or 4 specified in the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997,
    - (ii) authorised for a use specified in Article 3(5)(j) of that Order, or
    - (iii) authorised for use for the provision of medical or health services other than from premises attached to the residence of the consultant or practitioner;
  - (c) in the case of a building in Northern Ireland—

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- (i) authorised for use within class 1, 2, 3, 4 or 15(a) specified in the Schedule to the Planning (Use Classes) Order (Northern Ireland) 1989, or
  - (ii) authorised for a use specified in Article 3(5)(b), (c) or (h) of that Order.
- (3) The attic storey does not count for the purposes of subsection (1)(c) unless it is or has been in use as a dwelling or part of a dwelling.
- (4) The requirement in subsection (1)(d) is met even if the building has been extended on or after 1st January 1980, provided any extension was completed on or before 31st December 2000.
- (5) Treasury regulations may make further provision as to the circumstances in which a building is, or is not, a qualifying building.

### Meaning of “qualifying flat”

393D) In this Part “qualifying flat” means a flat in respect of which the following requirements are met—

- (a) the flat must be in a qualifying building,
  - (b) the flat must be suitable for letting as a dwelling,
  - (c) the flat must be held for the purpose of short-term letting,
  - (d) it must be possible to gain access to the flat without using the part of the ground floor of the building that is authorised for business use (as defined in section 393C(2)),
  - (e) the flat must not have more than 4 rooms,
  - (f) the flat must not be a high value flat,
  - (g) the flat must not be (or have been) created or renovated as part of a scheme involving the creation or renovation of one or more high value flats, and
  - (h) the flat must not be let to a person connected with the person who incurred the expenditure on its conversion or renovation.
- (2) In subsection (1)(c) “short-term letting” means letting as a dwelling on a lease for a term (or, in Scotland, period) of not more than 5 years.
- (3) For the purposes of subsection (1)(e), the following are ignored in determining the number of rooms in a flat—
- (a) any kitchen or bathroom, and
  - (b) any closet, cloakroom or hallway not exceeding 5 square metres in area.
- (4) For the purposes of this Part, if a flat is a qualifying flat immediately before a period when it is temporarily unsuitable for letting as a dwelling, it is to be treated as being a qualifying flat during that period.
- (5) Treasury regulations may make further provision as to the circumstances in which a flat is, or is not, a qualifying flat.

### High value flats

393E) For the purposes of section 393D(1) a flat is a high value flat if the notional rent exceeds the relevant limit set out in the Table in subsection (5).

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- (2) The “notional rent” means the rent that could reasonably be expected for the flat on the relevant date, on the assumption that, on that date—
- (a) the conversion or renovation has been completed,
  - (b) the flat is let furnished,
  - (c) the lease does not require the tenant to pay a premium or make any other payments to the landlord or a person connected with the landlord,
  - (d) the tenant is not connected with the person incurring the expenditure on the conversion or renovation of the flat, and
  - (e) in the case of a flat in England or Wales or Scotland, the flat is let on a shorthold tenancy.
- (3) The “relevant date” means the date on which expenditure on—
- (a) the conversion of part of the building into the flat, or
  - (b) (as the case may be) the renovation of the flat,
- is first incurred.
- (4) “Shorthold tenancy” means—
- (a) in the case of a flat in England or Wales, an assured shorthold tenancy;
  - (b) in the case of a flat in Scotland, a short assured tenancy.
- (5) The limit for the notional rent is as shown in the Table—

TABLE: NOTIONAL RENT LIMITS

Number of rooms in flat	Flats in Greater London	Flats elsewhere
1 or 2 rooms	£350 per week	£150 per week
3 rooms	£425 per week	£225 per week
4 rooms	£480 per week	£300 per week

- (6) Treasury regulations may make provision amending the notional rent limits in the Table in subsection (5).
- (7) Section 393D(3) (determination of number of rooms in flat) applies for the purposes of this section.

## CHAPTER 4

### THE RELEVANT INTEREST IN THE FLAT

#### General rule as to what is the relevant interest

- 393F(1) The relevant interest in a flat in relation to any qualifying expenditure is the interest in the flat to which the person who incurred the expenditure was entitled when it was incurred.
- (2) Subsection (1) is subject to the following provisions of this Chapter and to section 393V (provisions applying on termination of lease).
- (3) If—
- (a) the person who incurred the qualifying expenditure was entitled to more than one interest in the flat when the expenditure was incurred, and

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- (b) one of those interests was reversionary on all the others,  
the reversionary interest is the relevant interest in the flat.
- (4) An interest does not cease to be the relevant interest merely because of the creation of a lease or other interest to which that interest is subject.
- (5) If—
  - (a) the relevant interest is a leasehold interest, and
  - (b) that interest is extinguished on the person entitled to it acquiring the interest which is reversionary on it,  
the interest into which the leasehold interest merges becomes the relevant interest when the leasehold interest is extinguished.

### **Interest acquired on completion of conversion**

- 393G For the purposes of determining the relevant interest in a flat, a person who—
- (a) incurs expenditure on the conversion of part of a building into the flat, and
  - (b) is entitled to an interest in the flat on or as a result of the completion of the conversion,
- is treated as having had that interest when the expenditure was incurred.

## **CHAPTER 5**

### **INITIAL ALLOWANCES**

#### **Initial allowances**

- 393H) A person who has incurred qualifying expenditure in respect of a flat is entitled to an initial allowance in respect of the expenditure.
- (2) The amount of the initial allowance is 100% of the qualifying expenditure.
  - (3) A person claiming an initial allowance under this section may require the allowance to be reduced to a specified amount.
  - (4) The initial allowance is made for the chargeable period in which the qualifying expenditure is incurred.

#### **Flat not qualifying flat or relevant interest sold before flat first let**

- 393I) No initial allowance is to be made under section 393H if, at the relevant time, the flat is not a qualifying flat.
- (2) An initial allowance which has been made in respect of a flat which is to be a qualifying flat is to be withdrawn if—
    - (a) the flat is not a qualifying flat at the relevant time, or
    - (b) the person to whom the allowance was made has sold the relevant interest in the flat before the relevant time.
  - (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to this section.

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- (4) In this section “the relevant time” means the time when the flat is first suitable for letting as a dwelling.

## CHAPTER 6

### WRITING-DOWN ALLOWANCES

#### Entitlement to writing-down allowances

- 393J) A person is entitled to a writing-down allowance for a chargeable period if he has incurred qualifying expenditure in respect of a flat and, at the end of the chargeable period—
- (a) the person is entitled to the relevant interest in the flat,
  - (b) the person has not granted a long lease of the flat out of the relevant interest in consideration of the payment of a capital sum, and
  - (c) the flat is a qualifying flat.
- (2) In subsection (1)(b) “long lease” means a lease the duration of which exceeds 50 years.
- (3) Whether the duration of a lease exceeds 50 years is to be determined—
- (a) in accordance with section 38(1) to (4) and (6) of ICTA, and
  - (b) without regard to section 393V(3) (new lease granted as a result of the exercise of an option treated as continuation of old lease).
- (4) A person claiming a writing-down allowance may require the allowance to be reduced to a specified amount.

#### Amount of allowance

- 393K) The writing-down allowance for a chargeable period is 25% of the qualifying expenditure.
- (2) The allowance is proportionately increased or reduced if the chargeable period is more or less than a year.
  - (3) The amount of the writing-down allowance for a chargeable period is limited to the residue of qualifying expenditure.
  - (4) For this purpose the residue is ascertained immediately before writing off the writing-down allowance at the end of the chargeable period.

#### Meaning of “the residue of qualifying expenditure”

- 393L The residue of qualifying expenditure is the qualifying expenditure that has not yet been written off in accordance with Chapter 8.

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## CHAPTER 7

### BALANCING ADJUSTMENTS

#### When balancing adjustments are made

393M) A balancing adjustment is made if—

- (a) qualifying expenditure has been incurred in respect of a flat, and
  - (b) a balancing event occurs.
- (2) A balancing adjustment is either a balancing allowance or a balancing charge and is made for the chargeable period in which the balancing event occurs.
- (3) A balancing allowance or balancing charge is made to or on the person who incurred the qualifying expenditure.
- (4) No balancing adjustment is made if the balancing event occurs more than 7 years after the time when the flat was first suitable for letting as a dwelling.
- (5) If more than one balancing event occurs, a balancing adjustment is made only on the first of them.

#### Balancing events

393N) The following are balancing events for the purposes of this Part—

- (a) the relevant interest in the flat is sold;
  - (b) a long lease of the flat is granted out of the relevant interest in consideration of the payment of a capital sum;
  - (c) if the relevant interest is a lease, the lease ends otherwise than on the person entitled to it acquiring the interest reversionary on it;
  - (d) the person who incurred the qualifying expenditure dies;
  - (e) the flat is demolished or destroyed;
  - (f) the flat ceases to be a qualifying flat (without being demolished or destroyed).
- (2) Section 393J(2) and (3) (meaning of “long lease”) apply for the purposes of subsection (1)(b).

#### Proceeds from balancing events

393O) References in this Part to the proceeds from a balancing event are to the amounts received or receivable in connection with the event, as shown in the Table—

TABLE: BALANCING EVENTS AND PROCEEDS

<i>1. Balancing event</i>	<i>2. Proceeds from event</i>
1. The sale of the relevant interest.	The net proceeds of the sale.
2. The grant of a long lease out of the relevant interest.	If the capital sum paid in consideration of the grant is less than the commercial premium, the commercial premium.  In any other case, the capital sum paid in consideration of the grant.

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3. The coming to an end of a lease, where a person entitled to the lease and a person entitled to any superior interest are connected persons.	The market value of the relevant interest in the flat at the time of the event.
4. The death of the person who incurred the qualifying expenditure.	The residue of qualifying expenditure immediately before the death.
5. The demolition or destruction of the flat.	The net amount received for the remains of the flat, together with—  (a) any insurance money received in respect of the demolition or destruction, and  (b) any other compensation of any description so received, so far as it consists of capital sums.
6. The flat ceases to be a qualifying flat.	The market value of the relevant interest in the flat at the time of the event.

(2) The amounts referred to in column 2 of the Table are those received or receivable by the person who incurred the qualifying expenditure.

(3) In Item 2 of the Table “the commercial premium” means the premium that would have been given if the transaction had been at arm’s length.

### Calculation of balancing adjustments

393(1) A balancing allowance is made if—

- (a) there are no proceeds from the balancing event, or
- (b) the proceeds from the balancing event are less than the residue of qualifying expenditure immediately before the event.

(2) The amount of the balancing allowance is the amount of—

- (a) the residue (if there are no proceeds);
- (b) the difference (if the proceeds are less than the residue).

(3) A balancing charge is made if the proceeds from the balancing event are more than the residue, if any, of qualifying expenditure immediately before the event.

(4) The amount of the balancing charge is the amount of—

- (a) the difference, or
- (b) the proceeds (if the residue is nil).

(5) The amount of a balancing charge made on a person must not exceed the total amount of—

- (a) any initial allowances made to the person in respect of the expenditure, and
- (b) any writing-down allowances made to the person in respect of the expenditure for chargeable periods ending on or before the date of the balancing event giving rise to the balancing adjustment.

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## CHAPTER 8

### WRITING OFF QUALIFYING EXPENDITURE

#### Introduction

393Q For the purposes of this Part qualifying expenditure is written off to the extent and at the times specified in this Chapter.

#### Writing off initial allowances and writing-down allowances

- 393R(1) If an initial allowance is made in respect of the qualifying expenditure, the amount of the allowance is written off at the time when the flat is first suitable for letting as a dwelling.
- (2) If a writing-down allowance is made in respect of the qualifying expenditure, the amount of the allowance is written off at the end of the chargeable period for which the allowance is made.
- (3) If a balancing event occurs at the end of the chargeable period referred to in subsection (2), the amount written off under that subsection is to be taken into account in calculating the residue of qualifying expenditure immediately before the event to determine what balancing adjustment (if any) is to be made.

#### Treatment of demolition costs

- 393S(1) This section applies if—
- (a) a qualifying flat is demolished, and
  - (b) the person who incurred the qualifying expenditure incurs the cost of the demolition.
- (2) The net cost of the demolition is added to the residue of qualifying expenditure immediately before the demolition.
- (3) “The net cost of the demolition” means the amount, if any, by which the cost of the demolition exceeds any money received for the remains of the flat.
- (4) If this section applies, neither the cost of the demolition nor the net cost of the demolition is treated for the purposes of any Part of this Act as expenditure on any other property replacing the flat demolished.

## CHAPTER 9

### SUPPLEMENTARY PROVISIONS

#### Giving effect to allowances and charges

- 393T(1) This section applies if a person is entitled or liable under this Part to an allowance or charge for a chargeable period.
- (2) If the person’s interest in the flat is an asset of a Schedule A business carried on by him at any time in that period, the allowance or charge is to be given effect in calculating the profits of that business for that period, by treating—
- (a) the allowance as an expense of that business, and

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- (b) the charge as a receipt of that business.
- (3) If the person's interest in the flat is not an asset of a Schedule A business carried on by him at any time in that period, the allowance or charge is to be given effect by treating him as if he had been carrying on a Schedule A business in that period and as if—
  - (a) the allowance were an expense of that business, and
  - (b) the charge were a receipt of that business.

### **Apportionment of sums partly referable to non-qualifying assets**

- 393(U) If the sum paid for the sale of the relevant interest in a flat is attributable—
- (a) partly to assets representing expenditure for which an allowance can be made under this Part, and
  - (b) partly to assets representing other expenditure,
- only so much of the sum as on a just and reasonable apportionment is attributable to the assets referred to in paragraph (a) is to be taken into account for the purposes of this Part.
- (2) Subsection (1) applies to other proceeds from a balancing event in respect of a flat as it applies to a sum given for the sale of the relevant interest in the flat.
  - (3) Subsection (1) does not affect any other provision of this Act requiring an apportionment of the proceeds of a balancing event.

### **Provisions applying on termination of lease**

- 393(V) This section applies for the purposes of this Part if a lease is terminated.
- (2) If, with the consent of the lessor, the lessee of a flat remains in possession of the flat after the termination without a new lease being granted to him the lease is treated as continuing so long as the lessee remains in possession.
  - (3) If on the termination a new lease is granted to the lessee as a result of the exercise of an option available to him under the terms of the first lease, the second lease is treated as a continuation of the first.
  - (4) If on the termination the lessor pays a sum to the lessee in respect of a flat comprised in the lease, the lease is treated as if it had come to an end by surrender in consideration of the payment.
  - (5) If on the termination—
    - (a) another lease is granted to a different lessee, and
    - (b) in connection with the transaction that lessee pays a sum to the person who was the lessee under the first lease,
 the two leases are to be treated as if they were the same lease which had been assigned by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

### **Meaning of “lease” etc.**

- 393(W) In this Part “lease” includes—
- (a) an agreement for a lease if the term to be covered by the lease has begun, and
  - (b) any tenancy,

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but does not include a mortgage (and “lessee”, “lessor” and “leasehold interest” are to be read accordingly).

- (2) In the application of this Part to Scotland—
- (a) “leasehold interest” (or “leasehold estate”) means the interest of a tenant in property subject to a lease, and
  - (b) any reference to an interest which is reversionary on a leasehold interest or on a lease is to be read as a reference to the interest of the landlord in the property subject to the leasehold interest or lease.”

## PART 2

### CONSEQUENTIAL AMENDMENTS

- 1 In section 1(2) of the Capital Allowances Act 2001 (c. 2) (capital allowances provided for by Act), after paragraph (c) insert—
- “(ca) Part 4A (flat conversion allowances);”.
- 2 In section 2(3) of that Act (provisions about giving effect to allowances and charges), after the entry in the list for sections 391 and 392 of that Act insert—
- “section 393T (flat conversion allowances);”.
- 3 In section 537(1) of that Act (general conditions for making contribution allowances under Parts 2 to 5), and in the section heading and the cross-heading preceding that section, for “Parts 2 to 5” substitute “ Parts 2 to 4 and 5 ”.
- 4 In section 542(1) of that Act (effect of transfers of C’s trade or relevant activity), for “Parts 3 to 5” substitute “ Parts 3, 4 and 5 ”.
- 5 In section 567(1) of that Act (Parts of Act for purposes of which provisions about sales not at market value apply), after “4,” insert “ 4A, ”.
- 6 In section 570(1) of that Act (elections under section 569: supplementary), after “Part 4” insert “ or 4A ”.
- 7 In section 573(1) of that Act (transfers treated as sales), after “4” insert “ , 4A ”.
- 8 (1) Part 2 of Schedule 1 to that Act (list of defined expressions) is amended as follows.
- (2) Insert the following entries in the appropriate places—

---

“balancing adjustment (in Part 4A)	section 393M”
“balancing event (in Part 4A)	section 393N”
“dwelling (in Part 4A)	section 393A(4)”
“flat (in Part 4A)	section 393A(3)”
“lease and related expressions (in Part 4A)	section 393W”
“proceeds from a balancing event (in Part 4A)	section 393O”
“qualifying building (in Part 4A)	section 393C”
“qualifying flat (in Part 4A)	section 393D”

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“relevant interest (in Part 4A)	Chapter 4 of Part 4A”
“residue of qualifying expenditure (in Part 4A)	section 393L”

- (3) In the entry for “sale, transfers under Parts 3, 4 and 10 treated as”, after “4” insert “, 4A ”.

## SCHEDULE 20

Section 68.

### CAPITAL ALLOWANCES: OFFSHORE OIL INFRASTRUCTURE

#### PART 1

#### CHARGEABLE PERIODS ENDING BEFORE 1ST OR 6TH APRIL 2001

*Writing-down allowances: infrastructure from UK or non-UK oil fields*

- 1 In Chapter 7 of Part 2 of the Capital Allowances Act 1990 (c. 1) (machinery and plant: miscellaneous expenditure), after section 62 insert—

**“62AA Reuse etc. of offshore oil infrastructure**

- (1) This section applies where—
  - (a) a person carrying on a trade of oil extraction incurs decommissioning expenditure, and
  - (b) the machinery or plant concerned—
    - (i) has been brought into use for the purposes of the trade, and
    - (ii) is, or was when last in use for those purposes, offshore infrastructure.
- (2) In this section—
 

“decommissioning expenditure” has the meaning given by section 62AB;

“offshore infrastructure” has the meaning given by section 62AC.
- (3) The person’s qualifying expenditure for the chargeable period in which the decommissioning expenditure is incurred is treated for the purposes of sections 24 and 25 as increased by the amount of the decommissioning expenditure.
- (4) Subsection (3) above is subject to subsections (5) and (6) below and section 62A(4A).
- (5) Subsection (3) above does not apply to decommissioning expenditure on UK infrastructure unless it is incurred in connection with measures taken, wholly or substantially, in order to comply with—
  - (a) an abandonment programme within the meaning given by section 29 of the Petroleum Act 1998 (c. 17), or
  - (b) any condition to which the approval of such a programme is subject.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (6) Subsection (3) above does not apply to expenditure in respect of which an allowance or deduction could be made apart from that subsection in taxing, or computing, the person's income for any purpose of income tax or corporation tax.
- (7) For the purposes of subsection (5) above, decommissioning expenditure is "on UK infrastructure" if the machinery or plant concerned—
  - (a) is offshore infrastructure within section 62AC(1)(a) or (c), or
  - (b) is not offshore infrastructure but was offshore infrastructure within section 62AC(1)(a) or (c) when last in use for the purposes of the trade.

#### **62AB Meaning of "decommissioning expenditure" in section 62AA**

- (1) In section 62AA "decommissioning expenditure" means expenditure in connection with—
  - (a) preserving machinery or plant pending its reuse or demolition,
  - (b) preparing machinery or plant for reuse,
  - (c) arranging for the reuse of machinery or plant, or
  - (d) demolishing machinery or plant.
- (2) It is immaterial for the purposes of subsection (1)(a) above whether the machinery or plant is reused, is demolished or is partly reused and partly demolished.
- (3) It is immaterial for the purposes of subsection (1)(b) and (c) above whether the machinery or plant is in fact reused.

#### **62AC Meaning of "offshore infrastructure" in section 62AA**

- (1) In section 62AA "offshore infrastructure" means—
  - (a) an offshore installation within the meaning given by section 44 of the Petroleum Act 1998 or a part of such an installation, or
  - (b) something that would be, or would be a part of, an offshore installation within that meaning if in subsection (3) of that section "relevant waters" meant waters in a foreign sector of the continental shelf and other foreign tidal waters, or
  - (c) a pipeline within the meaning of section 26 of that Act, or a part of such a pipeline, that is in, under or over waters in—
    - (i) the territorial sea adjacent to the United Kingdom, or
    - (ii) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29), or
  - (d) a pipeline within the meaning of section 26 of the Petroleum Act 1998 (c. 17), or a part of such a pipeline, that is in, under or over waters in a foreign sector of the continental shelf.
- (2) In subsection (1)(b) and (d) above—

"foreign sector of the continental shelf" means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

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“foreign tidal waters” means tidal waters in an area within which rights are exercisable with respect to the bed and subsoil of the body of water in question and their natural resources by a country or territory outside the United Kingdom.”.

*Ring fence trades: special allowance for pre-cessation abandonment expenditure*

- 2 (1) Section 62A of the Capital Allowances Act 1990 (c. 1) (special allowance for costs of demolition of offshore machinery or plant) is amended as follows.
- (2) In subsection (1) (section applies to expenditure that would otherwise fall within section 62(1)(b)), after “section 62(1)(b)” insert “ or 62AA(3) ”.
- (3) In subsection (1)(c)—
- (a) for “the demolition of” substitute “ decommissioning ”; and
  - (b) after “which is or forms part of” insert “ , or when last in use for the purposes of the trade was or formed part of, ”.
- (4) In subsection (3)(a), for “demolition” (in both places) substitute “ decommissioning ”.
- (5) After subsection (3) insert—
- “(3A) In this section “decommissioning”, in relation to any machinery or plant, means—
- (a) demolishing the machinery or plant,
  - (b) preserving the machinery or plant pending its reuse or demolition,
  - (c) preparing the machinery or plant for reuse, or
  - (d) arranging for the reuse of the machinery or plant.
- (3B) For the purposes of this section—
- (a) in determining whether expenditure is incurred on preserving machinery or plant pending its reuse or demolition, it is immaterial whether the machinery or plant is reused, is demolished or is partly reused and partly demolished; and
  - (b) in determining whether expenditure is incurred on preparing machinery or plant for reuse, or on arranging for the reuse of machinery or plant, it is immaterial whether the machinery or plant is in fact reused.”.

(6) For subsection (4) (entitlement to special allowance) substitute—

“(4) If the person incurring any abandonment expenditure so elects, for the chargeable period in which that expenditure is incurred there shall be made to that person an allowance equal to so much of the abandonment expenditure to which the election relates as is incurred in that period.

(4A) If a person makes such an election, neither of sections 62(1)(b) and 62AA(3) applies.

(4B) If machinery or plant is demolished, the total of any allowances under subsection (4) above in respect of expenditure on the decommissioning of the machinery or plant is reduced by the amount of any moneys received for the remains of the machinery or plant.

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(4C) Effect is given to subsection (4B) above by setting the amount (until wholly utilised)—

first, against any allowance under subsection (4) above for the chargeable period in which the amount is received (as previously reduced in giving effect to subsection (4B));

second, against allowances under that subsection for earlier chargeable periods (as so reduced and taking later such periods before earlier ones); and

third, against allowances under that subsection for later chargeable periods (as so reduced and taking earlier such periods before later ones).”.

(7) In subsection (5)(a) (election must specify amounts received for remains), for “subsection (4)(a)” substitute “ subsection (4B) ”.

(8) In the sidenote, for “demolition” substitute “ decommissioning ”.

*Ring fence trades: allowances for post-cessation expenditure*

- 3
- (1) Section 62B of the Capital Allowances Act 1990 (c. 1) (abandonment expenditure incurred within 3 years of ceasing ring fence trade) is amended as follows.
  - (2) In subsection (1)(b) (section applies where expenditure incurred within 3 years of ceasing trade), for “the demolition of” substitute “ decommissioning ”.
  - (3) In subsection (1)(c) (section applies where expenditure would have been abandonment expenditure under section 62A if incurred earlier), for “demolition” substitute “ decommissioning ”.
  - (4) In subsection (2) (expenditure net of receipts for remains is eligible for allowances), for “the machinery or plant referred to in that paragraph” substitute “ any of the machinery or plant referred to in that paragraph on whose demolition any of the post-cessation expenditure was incurred ”.

*Commencement of Part 1*

- 4
- (1) The amendments made by this Part of this Schedule apply to expenditure that is incurred—
    - (a) on or after 7th August 2000, and
    - (b) in a relevant chargeable period.
  - (2) The amendments made by paragraph 1 also apply to expenditure incurred before 7th August 2000 if the expenditure—
    - (a) is incurred in a relevant chargeable period, and
    - (b) is within sub-paragraph (3) or (4).
  - (3) Expenditure is within this sub-paragraph if—
    - (a) it is decommissioning expenditure on UK infrastructure, and
    - (b) it is incurred in connection with an abandonment programme approved on or after 7th August 2000.
  - (4) Expenditure is within this sub-paragraph if—
    - (a) it is decommissioning expenditure,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) it is not decommissioning expenditure on UK infrastructure, and
  - (c) it is incurred in connection with a decommissioning activity that takes place on or after 7th August 2000.
- (5) The amendments made by paragraphs 2 and 3 also apply to expenditure incurred before 7th August 2000 if the expenditure—
- (a) is incurred in a relevant chargeable period, and
  - (b) is incurred in connection with an abandonment programme approved on or after 7th August 2000.
- (6) In sub-paragraphs (3) and (4), “decommissioning expenditure” and “decommissioning expenditure on UK infrastructure” have the same meaning as in the section 62AA inserted by paragraph 1.
- (7) In sub-paragraph (4)(c) “decommissioning activity” means an activity mentioned in any of paragraphs (a) to (d) of the section 62AB(1) inserted by paragraph 1.
- (8) In this paragraph “relevant chargeable period” means—
- (a) for income tax purposes, a chargeable period ending before 6th April 2001, and
  - (b) for corporation tax purposes, a chargeable period ending before 1st April 2001.

## PART 2

### CHARGEABLE PERIODS ENDING ON OR AFTER 1ST OR 6TH APRIL 2001

*Writing-down allowances: infrastructure from UK or non-UK oil fields*

- 5 (1) In Chapter 13 of Part 2 of the Capital Allowances Act 2001 (c. 2) (plant and machinery allowances: provisions affecting mining and oil industries), after section 161 insert—

*“ Expenditure connected with reuse etc. of offshore oil infrastructure*

#### **161A Meaning of “offshore infrastructure”**

- (1) In sections 161C and 161D “offshore infrastructure” means—
- (a) an offshore installation within the meaning given by section 44 of the Petroleum Act 1998 (c. 17) or a part of such an installation, or
  - (b) something that would be, or would be a part of, an offshore installation within that meaning if in subsection (3) of that section “relevant waters” meant waters in a foreign sector of the continental shelf and other foreign tidal waters, or
  - (c) a pipeline within the meaning of section 26 of that Act, or a part of such a pipeline, that is in, under or over waters in—
    - (i) the territorial sea adjacent to the United Kingdom, or
    - (ii) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29), or

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (d) a pipeline within the meaning of section 26 of the Petroleum Act 1998 (c. 17), or a part of such a pipeline, that is in, under or over waters in a foreign sector of the continental shelf.

- (2) In subsection (1)(b) and (d)—

“foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

“foreign tidal waters” means tidal waters in an area within which rights are exercisable with respect to the bed and subsoil of the body of water in question and their natural resources by a country or territory outside the United Kingdom.

### **161B Meaning of “decommissioning expenditure”**

- (1) In sections 161C and 161D “decommissioning expenditure” means expenditure in connection with—
- (a) preserving plant or machinery pending its reuse or demolition,
  - (b) preparing plant or machinery for reuse, or
  - (c) arranging for the reuse of plant or machinery.
- (2) It is immaterial for the purposes of subsection (1)(a) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.
- (3) It is immaterial for the purposes of subsection (1)(b) and (c) whether the plant or machinery is in fact reused.

### **161C Expenditure related to reuse etc. qualifies for writing-down allowances**

- (1) This section applies where—
- (a) a person carrying on a trade of oil extraction incurs decommissioning expenditure, and
  - (b) the plant or machinery concerned—
    - (i) has been brought into use for the purposes of the trade, and
    - (ii) is, or was when last in use for those purposes, offshore infrastructure.
- (2) The decommissioning expenditure is allocated to the appropriate pool for the chargeable period in which it is incurred.
- (3) Subsection (2) is subject to sections 161D and 164(4).
- (4) In subsection (2) “the appropriate pool” means the pool to which the expenditure on the plant or machinery concerned has been or would be allocated in accordance with this Part.

### **161D Exceptions to section 161C(2)**

- (1) Subsection (2) of section 161C does not apply to decommissioning expenditure on UK infrastructure unless it is incurred in connection with measures taken, wholly or substantially, in order to comply with—

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- (a) an abandonment programme within the meaning given by section 29 of the Petroleum Act 1998 (c. 17), or
  - (b) any condition to which the approval of such a programme is subject.
- (2) Subsection (2) of section 161C does not apply to expenditure in respect of which an allowance or deduction could be made apart from that subsection in taxing, or computing, the person's income for any tax purpose.
- (3) For the purposes of subsection (1), decommissioning expenditure is "on UK infrastructure" if the plant or machinery concerned—
- (a) is offshore infrastructure within section 161A(1)(a) or (c), or
  - (b) is not offshore infrastructure but was offshore infrastructure within section 161A(1)(a) or (c) when last in use for the purposes of the trade."
- (2) In section 57(2) of the Capital Allowances Act 2001 (c. 2) (available qualifying expenditure in pool includes amounts allocated to pool under specified provisions), before the entry for section 165(3) insert—
- "section 161C(2) (decommissioning expenditure incurred by person carrying on trade of oil extraction);".

*Ring fence trades: meaning of "abandonment expenditure"*

- 6 (1) Section 163 of the Capital Allowances Act 2001 (c. 2) (meaning of "abandonment expenditure") is amended as follows.
- (2) In subsection (2)(b), for "the demolition of" substitute "decommissioning".
- (3) In subsection (2)(b)(ii), at the end insert "or which, when last in use for the purposes of a ring-fence trade, was, or formed part of, such an installation or pipeline."
- (4) In subsection (3), for "demolition" substitute "decommissioning".
- (5) After subsection (4) insert—
- "(4A) In this section "decommissioning", in relation to any plant or machinery, means—
- (a) demolishing the plant or machinery,
  - (b) preserving the plant or machinery pending its reuse or demolition,
  - (c) preparing the plant or machinery for reuse, or
  - (d) arranging for the reuse of the plant or machinery.
- (4B) In determining whether expenditure is incurred on preserving plant or machinery pending its reuse or demolition, it is immaterial whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.
- (4C) In determining whether expenditure is incurred on preparing plant or machinery for reuse, or on arranging for the reuse of plant or machinery, it is immaterial whether the plant or machinery is in fact reused."

*Ring fence trades: special allowance for pre-cessation expenditure*

- 7 (1) Section 164 of the Capital Allowances Act 2001 (c. 2) (abandonment expenditure incurred before cessation of ring fence trade) is amended as follows.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (2) In subsection (1) (person carrying on ring-fence trade may elect for special allowance if he incurs abandonment expenditure), after “incurs abandonment expenditure,” insert “ and the plant or machinery concerned has been brought into use for the purposes of that trade, ”
- (3) For paragraph (b) of subsection (3) (election must specify amounts received for remains of demolished plant or machinery) substitute—
  - “(b) where the plant or machinery concerned has been or is to be demolished, any amounts received for its remains.”.
- (4) In subsection (4)(a) (entitlement to special allowance), the words “, of an amount equal to the net abandonment cost,” are omitted.
- (5) For paragraph (b) of subsection (4) (section 26(3) does not apply where election made) substitute—
  - “(b) neither of sections 26(3) and 161C(2) (net cost of demolition where plant or machinery not replaced, or cost of preparing for reuse, added to existing pool) applies.”.
- (6) For subsection (5) (meaning of “net abandonment cost”) substitute—
  - “(5) The amount of the special allowance for a chargeable period is equal to so much of the abandonment expenditure to which the election relates as is incurred in that period.
  - (6) If plant or machinery is demolished, the total of any special allowances in respect of expenditure on decommissioning the plant or machinery is reduced by any amount received for the remains of the plant or machinery.  
Here “decommissioning” has the meaning given by section 163(4A).
- (7) Effect is given to subsection (6) by setting the amount (until wholly utilised)  
—
  - first, against any special allowance for the chargeable period in which the amount is received (as previously reduced in giving effect to subsection (6));
  - second, against special allowances for earlier chargeable periods (as so reduced and taking later such periods before earlier ones); and
  - third, against special allowances for later chargeable periods (as so reduced and taking earlier such periods before later ones).”

*Ring fence trades: allowances for post-cessation expenditure*

- 8 (1) Section 165 of the Capital Allowances Act 2001 (c. 2) (abandonment expenditure incurred within 3 years of ceasing ring fence trade) is amended as follows.
- (2) In subsection (1)(b) (section applies where abandonment expenditure incurred within 3 years of ceasing trade), the words “on the demolition of plant or machinery” are omitted.
- (3) In subsection (3)(b) (amounts received for remains of plant or machinery are not taxable income), before “any amount received” insert “ where any of the abandonment expenditure was incurred on the demolition of plant or machinery, ”.

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- (4) In subsection (4), in the definition of “the relevant abandonment cost”, for “the plant or machinery” substitute “ any plant or machinery on whose demolition any of the abandonment expenditure was incurred ”.

*Commencement of Part 2*

- 9 (1) The amendments made by this Part of this Schedule (but see sub-paragraph (9)) apply to expenditure that is incurred—
- (a) on or after 7th August 2000, and
  - (b) in a relevant chargeable period.
- (2) The amendments made by paragraph 5 also apply to expenditure incurred before 7th August 2000 if the expenditure—
- (a) is incurred in a relevant chargeable period, and
  - (b) is within sub-paragraph (3) or (4).
- (3) Expenditure is within this sub-paragraph if—
- (a) it is decommissioning expenditure on UK infrastructure, and
  - (b) it is incurred in connection with an abandonment programme approved on or after 7th August 2000.
- (4) Expenditure is within this sub-paragraph if—
- (a) it is decommissioning expenditure,
  - (b) it is not decommissioning expenditure on UK infrastructure, and
  - (c) it is incurred in connection with a decommissioning activity that takes place on or after 7th August 2000.
- (5) The amendments made by paragraphs 6 to 8 (but see sub-paragraph (9)) also apply to expenditure incurred before 7th August 2000 if the expenditure—
- (a) is incurred in a relevant chargeable period, and
  - (b) is incurred in connection with an abandonment programme approved on or after 7th August 2000.
- (6) In sub-paragraphs (3) and (4), “decommissioning expenditure” and “decommissioning expenditure on UK infrastructure” have the same meaning as in the sections 161C and 161D inserted by paragraph 5.
- (7) In sub-paragraph (4)(c) “decommissioning activity” means an activity mentioned in any of paragraphs (a) to (c) of the section 161B(1) inserted by paragraph 5.
- (8) In this paragraph “relevant chargeable period” means—
- (a) for income tax purposes, a chargeable period ending on or after 6th April 2001, and
  - (b) for corporation tax purposes, a chargeable period ending on or after 1st April 2001.
- (9) Sub-paragraphs (1) to (8) do not apply to the amendments made by paragraphs 7(2) and 8(2).

Those amendments shall be deemed always to have had effect.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

SCHEDULE 21

Section 69.

CAPITAL ALLOWANCES: MINOR AMENDMENTS

*Thermal insulation of industrial buildings*

- 1 In section 28(2) of the Capital Allowances Act 2001 (c. 2) (expenditure on thermal insulation of industrial buildings), after “ordinary Schedule A business” insert “ or an overseas property business ”.

*Fixtures: purchasers of land and incoming lessees*

- 2 (1) In section 181 of that Act (purchaser of land giving consideration for fixture), for subsection (2) substitute—

“(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.”.

- (2) In section 181(3) of that Act—

- (a) for “subsection (2)(b), the person holding the other interest” substitute “ subsection (2), a person ”; and  
(b) for “subsection (2)(a)” substitute “ subsection (2) ”.

- (3) In section 182 of that Act (purchaser of land discharging obligations of equipment lessee), for subsections (2) and (3) substitute—

“(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time of the acquisition, a person has a prior right in relation to the fixture.

(3) Section 181(3) (test for whether person has a prior right) applies for the purposes of subsection (2).”.

- (4) In section 184 of that Act (incoming lessee where lessor not entitled to allowances), for subsections (2) and (3) substitute—

“(2) Subsection (1) does not apply, and is to be treated as never having applied, if, immediately after the time when the lease is granted, a person has a prior right in relation to the fixture.

(3) Section 181(3) (test for whether person has a prior right) applies for the purposes of subsection (2).”.

*Meaning of “sale and finance leaseback”*

- 3 In section 221(1) of that Act (meaning of “sale and finance leaseback”), in paragraph (b)(iii), for “any person” substitute “ S or by a person (other than B) who is connected with S ”.

*Effect of partnership changes*

- 4 <sup>F27</sup>(1) .....

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

(2) In section 558 of that Act (effect of partnership changes for the purpose of other allowances), in subsection (1), for paragraph (c) substitute—

“(c) the change does not result in the relevant activity being treated as permanently discontinued under section 113(1) or 337(1) of ICTA (changes in persons carrying on a trade etc. and effect of company ceasing to trade etc.).”

#### Textual Amendments

**F27** Sch. 21 para. 4(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

#### Enterprise zones

5 In section 298(3) of that Act (meaning of “enterprise zone”), after “Secretary of State” insert “, the Scottish Ministers or the National Assembly for Wales, ”.

#### Highway concessions

6 (1) In section 341(4) of that Act (meaning of “highway concession”), for “the Secretary of State or from the Department for Regional Development in Northern Ireland” substitute “ the relevant authority ”.

(2) After that subsection add—

“(5) In subsection (4) “the relevant authority” means—

- (a) the Secretary of State,
- (b) the Scottish Ministers,
- (c) the National Assembly for Wales, or
- (d) the Department for Regional Development in Northern Ireland.”.

## SCHEDULE 22

Section 70.

### REMEDIATION OF CONTAMINATED LAND

#### PART 1

#### DEDUCTION FOR CAPITAL EXPENDITURE

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

**C1** Sch. 22 Pt. I applied (11.5.2001) by [1988 c. 1, s. 21A\(5\)](#) (as inserted (11.5.2001) by [2001 c. 9, s. 70, Sch. 23 para. 1](#))

#### Deduction for capital expenditure

1 (1) This paragraph applies if—

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- (a) land in the United Kingdom is, or has been, acquired by a company for the purposes of a trade carried on by the company,
  - (b) at the time of acquisition all or part of the land is or was in a contaminated state (see paragraph 3), and
  - (c) the company incurs capital expenditure which is qualifying land remediation expenditure in respect of the land (see paragraph 2).
- (2) For the purposes of corporation tax such capital expenditure as is qualifying land remediation expenditure shall (if the company so elects) be allowed as a deduction in computing the profits of the trade for the accounting period in which that expenditure is incurred.
- (3) For the purposes of sub-paragraph (2) any capital expenditure incurred for the purposes of a trade by a company about to carry it on shall be treated as if it had been incurred by that company on the first day on which it does carry it on and in the course of doing so.
- (4) Sub-paragraph (2) shall not apply to so much of the qualifying land remediation expenditure as—
- (a) represents expenditure which has been allowed as a deduction in computing the profits arising from the trade for any accounting period preceding the period in which the expenditure is incurred, or
  - (b) represents capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.
- (5) A company is not entitled to a deduction under this paragraph in respect of expenditure on land all or part of which is in a contaminated state, if the land is in that state wholly or partly as a result of any thing done or omitted to be done at any time by the company or a person with a relevant connection to the company.
- (6) An election under this paragraph must specify the accounting period in respect of which it is made.
- (7) The election must be made by notice in writing to the Inland Revenue.
- (8) The notice must be given before the end of the period of two years beginning with the end of the company's accounting period to which the election relates.

#### *Qualifying land remediation expenditure*

- 2 (1) For the purposes of this Schedule “qualifying land remediation expenditure” of a company means expenditure of the company that meets the conditions in sub-paragraphs (2) to (6).
- (2) The first condition is that it is expenditure on land all or part of which is in a contaminated state (see paragraph 3).
- (3) The second condition is that the expenditure is expenditure on relevant land remediation directly undertaken by the company or on its behalf (see paragraph 4).
- (4) The third condition is that the expenditure is incurred—
- (a) on employee costs (see paragraph 5), or
  - (b) on materials (see paragraph 6),
- or is qualifying expenditure on sub-contracted land remediation (see paragraphs 9 to 11).

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- (5) The fourth condition is that the expenditure would not have been incurred had the land not been in a contaminated state (see paragraph 7).
- (6) The fifth condition is that the expenditure is not subsidised (see paragraph 8).

#### *Land in a contaminated state*

- 3 (1) For the purposes of this Schedule land is in a contaminated state if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—
- (a) harm is being caused or there is a possibility of harm being caused; or
  - (b) pollution of controlled waters is being, or is likely to be, caused.
- (2) For the purposes of this Schedule, a nuclear site is not land in a contaminated state.
- (3) In this paragraph a “nuclear site” means—
- (a) any site in respect of which a nuclear site licence is for the time being in force, or
  - (b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end;
- and “nuclear site licence”, “licensee” and “period of responsibility” have the same meaning as in the Nuclear Installations Act 1965 (c. 57).

#### *Relevant land remediation*

- 4 (1) For the purposes of this Schedule relevant land remediation, in relation to land acquired by a company, means—
- (a) activities falling within sub-paragraph (2), and
  - (b) if there are such activities, preparatory activity falling within sub-paragraph (4) which satisfies the condition in sub-paragraph (5).
- (2) The activities referred to in sub-paragraph (1)(a) are the doing of any works, the carrying out of any operations or the taking of any steps in relation to—
- (a) the land in question,
  - (b) any controlled waters affected by that land, or
  - (c) any land adjoining or adjacent to that land,
- for the purpose described in sub-paragraph (3).
- (3) The purpose referred to in sub-paragraph (2) is that of—
- (a) preventing or minimising, or remedying or mitigating the effects of, any harm, or any pollution of controlled waters, by reason of which the land is in a contaminated state; or
  - (b) restoring the land or waters to their former state.
- (4) The preparatory activity referred to in sub-paragraph (1)(b) is the doing of anything for the purpose of assessing the condition of—
- (a) the land in question,
  - (b) any controlled waters affected by that land, or
  - (c) any land adjoining or adjacent to that land.

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- (5) Preparatory activity satisfies the condition referred to in sub-paragraph (1)(b) if it is activity connected to such activities falling within sub-paragraph (2) as are undertaken by the company (whether directly or on its behalf).
- (6) For the purposes of this paragraph, controlled waters are “affected by” land in a contaminated state if, and only if, the land in question is in such a condition, by reason of substances in, on or under the land, that pollution of those waters is being, or is likely to be, caused.

### *Employee costs*

- 5 (1) For the purposes of this Schedule the employee costs of a company are—
- <sup>F28</sup>(a) the emoluments paid by the company to directors or employees of the company, including all salaries, wages, perquisites and profits whatsoever other than benefits in kind;
  - (b) the secondary Class 1 national insurance contributions paid by the company; and
  - (c) the contributions paid by the company to any pension fund (within the meaning of section 231A(4) of the Taxes Act 1988) operated for the benefit of directors or employees of the company.

<sup>F29</sup>(1A) . . . . .

- (2) The employee costs of a company attributable to relevant land remediation are those paid to, or in respect of, directors or employees directly and actively engaged in that relevant land remediation.
- (3) In the case of a director or employee partly engaged directly and actively in relevant land remediation the following rules apply—
  - (a) if the time he spends so engaged is less than 20% of his total working time, none of the employee costs relating to him are treated as attributable to relevant land remediation;
  - (b) if the time he spends so engaged is more than 80% of his total working time, the whole of the employee costs relating to him are treated as attributable to relevant land remediation;
  - (c) in any other case, an appropriate proportion of the employee costs relating to him are treated as attributable to relevant land remediation.
- (4) For the purpose of sub-paragraphs (2) and (3) persons who provide services, such as secretarial or administrative services, in support of activities carried on by others, are not, by virtue of providing those services, to be treated as themselves directly and actively engaged in those activities.

#### **Textual Amendments**

- F28** Sch. 22 para. 5(1)(a) substituted (with effect in accordance with Sch. 17 para. 7(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 17 para. 7(2)(a)
- F29** Sch. 22 para. 5(1A) repealed (with effect in accordance with Sch. 17 para. 7(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 17 para. 7(2)(b), Sch. 42 Pt. 2(12)

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#### *Expenditure on materials*

- 6 For the purposes of this Schedule expenditure on materials is attributable to relevant land remediation if the materials are employed directly in that relevant land remediation.

#### *Expenditure incurred because of contamination*

- 7 (1) Without prejudice to the generality of paragraph 2(5), this paragraph has effect for the purpose of determining whether expenditure would or would not have been incurred had not all or part of the land been in a contaminated state.
- (2) If expenditure on the land is increased by reason only that the land is in a contaminated state, the amount by which such expenditure is increased shall be considered to be expenditure satisfying the condition in paragraph 2(5).
- (3) If any works are done, operations are carried out or steps are taken mainly for the purpose described in paragraph 4(3), expenditure on such works, operations or steps shall be taken to satisfy the condition in paragraph 2(5).

#### *Subsidised expenditure*

- 8 (1) For the purposes of this Schedule a company's expenditure is treated as subsidised to the extent that—
- (a) a grant or subsidy is obtained in respect of the expenditure; or
  - (b) it is otherwise met directly or indirectly by any person other than the company.
- (2) For the purposes of this Schedule a grant, subsidy or payment that is not allocated to particular expenditure shall be allocated to expenditure of the recipient in such manner as is just and reasonable.

#### *Qualifying expenditure on sub-contracted land remediation*

- 9 (1) The provisions of paragraphs 10 and 11 have effect for determining the amount of the qualifying expenditure of a company ("the company") on sub-contracted land remediation.
- (2) For the purposes of this Schedule the company incurs expenditure on sub-contracted land remediation if it makes a payment (a "sub-contractor payment") to another person ("the sub-contractor") in respect of relevant land remediation contracted out by the company to that person.

#### *Treatment of expenditure where company and sub-contractor are connected persons*

- 10 (1) Where—
- (a) the company and the sub-contractor are connected persons, and
  - (b) in accordance with [F30 generally accepted accounting practice]—
    - (i) the whole of the sub-contractor payment has been brought into account in determining the sub-contractor's profit or loss for a relevant period, and
    - (ii) all of the sub-contractor's relevant expenditure has been so brought into account,

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the whole of the payment (up to the amount of the sub-contractor's relevant expenditure) is qualifying expenditure on sub-contracted land remediation.

- (2) In sub-paragraph (1)—
- (a) references to the “relevant expenditure” of the sub-contractor are to expenditure that—
- (i) is incurred by the sub-contractor in carrying on, on behalf of the company, the activities to which the sub-contractor payment relates,
  - (ii) is not of a capital nature,
  - (iii) is incurred on employee costs or materials, and
  - (iv) is not subsidised;
- (b) a “relevant period” means a period—
- (i) for which accounts are drawn up for the sub-contractor, and
  - (ii) that ends not more than twelve months after the end of the company's period of account in which the sub-contractor payment is, in accordance with [<sup>F30</sup>generally accepted accounting practice], brought into account in determining the company's profit or loss.
- (3) Paragraph 5 (employee costs) and paragraph 8 (subsidised expenditure) apply for the purposes of determining whether the sub-contractor's expenditure meets the requirements of sub-paragraph (2)(a)(iii) and (iv).

For this purpose the references in those paragraphs to a company shall be read as references to the sub-contractor.

- (4) Any apportionment of expenditure of the company or the sub-contractor necessary for the purposes of this paragraph shall be made on a just and reasonable basis.

#### Textual Amendments

- F30** Words in Sch. 22 para. 10(1)(b) substituted (24.7.2002) by 2002 c. 23, s. 103(4)(h)  
Words in Sch. 22 para. 10(2)(b)(ii) substituted (24.7.2002) by 2002 c. 23, s. 103(4)(h)

#### *Treatment of sub-contractor payment in other cases*

- 11 Where—
- (a) the company makes a sub-contractor payment, and
  - (b) paragraph 10 (treatment of expenditure where company and sub-contractor are connected) does not apply,
- the whole of the amount of the sub-contractor payment is treated as qualifying expenditure on sub-contracted land remediation.

## PART 2

### ENTITLEMENT TO LAND REMEDIATION RELIEF

#### *Entitlement to relief*

- 12 (1) This paragraph applies if—

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- (a) land in the United Kingdom is, or has been, acquired by a company for the purposes of a Schedule A business or a trade carried on by the company,
  - (b) at the time of acquisition all or part of the land is or was in a contaminated state, and
  - (c) the company incurs qualifying land remediation expenditure in respect of the land.
- (2) A company is entitled to land remediation relief for an accounting period if the company's qualifying land remediation expenditure is deductible in that period.
- (3) The company's qualifying land remediation expenditure is deductible in that period if it is allowable as a deduction in computing for tax purposes the profits for that period of a Schedule A business or a trade carried on by the company.
- (4) A company is not entitled to land remediation relief in respect of expenditure on land all or part of which is in a contaminated state, if the land is in that state wholly or partly as a result of any thing done or omitted to be done at any time by the company or a person with a relevant connection to the company.

### PART 3

#### MANNER OF GIVING EFFECT TO RELIEF

##### *Deduction in computing profits of Schedule A business or trade*

- 13       Where—
- (a) a company is entitled to land remediation relief for an accounting period,
  - (b) it is carrying on a Schedule A business or a trade in that period, and
  - (c) it has qualifying land remediation expenditure that is allowable as a deduction in computing for tax purposes the profits of the Schedule A business or the trade for that period,
- it may (on making a claim) treat that qualifying land remediation expenditure as if it were an amount equal to 150% of the actual amount.

##### *Entitlement to land remediation tax credit*

- 14       (1) A company may claim a land remediation tax credit if in an accounting period it has a "qualifying land remediation loss".
- (2) A company has a "qualifying land remediation loss" for this purpose if in an accounting period—
- (a) paragraph 13 applies, and
  - (b) the company incurs a Schedule A loss or a trading loss in that period in the Schedule A business or the trade referred to in paragraph 13(b).
- (3) The amount of the qualifying land remediation loss is equal to the lesser of—
- (a) 150% of the related qualifying land remediation expenditure, and
  - (b) so much of the company's Schedule A loss or trading loss as is unrelieved.
- (4) For this purpose the amount of a Schedule A loss or trading loss that is "unrelieved" is the amount of that loss reduced by the amount of—

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- (a) any relief that was or could have been obtained by the company making a claim under section 392A(1) or 393A(1)(a) of the Taxes Act 1988 to set the loss against profits of whatever description of the same accounting period,
  - (b) any other relief obtained by the company in respect of the loss, including relief under section 393A(1)(b) of that Act (losses set against profits of an earlier accounting period), and
  - (c) any loss surrendered under section 403(1) of that Act (surrender of relief to group or consortium members).
- (5) No account shall be taken for this purpose of—
- (a) any Schedule A losses or trading losses brought forward from an earlier accounting period under section 392A(2) or 393(1) of the Taxes Act 1988, or
  - (b) any trading losses carried back from a later accounting period under section 393A(1)(b) of that Act.
- (6) Sub-paragraphs (7) to (9) apply for the purpose of determining the amount of a Schedule A loss that is “unrelieved” in an accounting period in a case where the Schedule A loss is a loss treated under section 432AB(3) of the Taxes Act 1988 [<sup>F31</sup>for the purposes of section 76 of that Act as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section].
- (7) If in that accounting period no amount falls to be carried forward to a succeeding accounting period under [<sup>F32</sup>section 76(12) or (13)] of the Taxes Act 1988 (carrying forward [<sup>F33</sup>unrelieved expenses] and charges on income where such expenses and charges exceed amount of profits from which deductible), no amount of the Schedule A loss is unrelieved.
- (8) If in that accounting period an amount falls to be carried forward to a succeeding accounting period under [<sup>F34</sup>section 76(12) or (13)] of that Act, the amount of the Schedule A loss that is unrelieved is equal to the lesser of—
- (a) the amount of the Schedule A loss, and
  - (b) [<sup>F35</sup>the total amount] which so falls to be carried forward.
- <sup>F36</sup>(9) In determining for the purposes of sub-paragraph (7) and (8) above whether there is an amount which falls to be carried forward under subsection (12) or (13) of section 76 of Taxes Act 1988, there shall be disregarded any amounts brought forward from an earlier accounting period and treated for the purposes of that section as expenses payable which fall to be brought into account for that period in question—
- (a) in accordance with Step 6 in subsection (7) of that section, by virtue of a previous application of subsection (12) or (13) of that section, or
  - (b) in accordance with Step 3 in subsection (7) of that section, by virtue of paragraph 4(4) of Schedule 11 to the Finance Act 1996 (loan relationships deficit carried forward and so brought into account).]
- (10) If—
- (a) the company is an insurance company, and
  - (b) it is treated under section 432AA of the Taxes Act 1988 as carrying on more than one Schedule A business,
- references in this paragraph to a Schedule A loss shall be construed in accordance with section 432AB(4) or (6) of that Act (aggregation of losses where an insurance

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company is treated under section 432AA as having more than one Schedule A business).

#### Textual Amendments

- F31** Words in Sch. 22 para. 14(6) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 58(2)**
- F32** Words in Sch. 22 para. 14(7) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 58(3)(a)**
- F33** Words in Sch. 22 para. 14(7) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 58(3)(b)**
- F34** Words in Sch. 22 para. 14(8) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 58(4)(a)**
- F35** Words in Sch. 22 para. 14(8)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 58(4)(b)**
- F36** Sch. 22 para. 14(9) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 58(5)**

#### *Amount of land remediation tax credit*

- 15 (1) The amount of the land remediation tax credit to which a company is entitled for an accounting period is an amount equal to 16% of the amount of the qualifying land remediation loss for the period.
- (2) The Treasury may by order substitute for the percentage for the time being specified in sub-paragraph (1) such other percentage as they think fit.
- (3) An order under sub-paragraph (2) may make such incidental, supplemental, consequential or transitional provision as the Treasury think fit.

#### *Payment in respect of land remediation tax credit*

- 16 (1) Where—
- (a) the company is entitled to a land remediation tax credit for an accounting period, and
  - (b) makes a claim,
- the Inland Revenue shall pay to the company the amount of the credit.
- (2) An amount payable in respect of—
- (a) a land remediation tax credit, or
  - (b) interest on a land remediation tax credit under section 826 of the Taxes Act 1988,
- may be applied in discharging any liability of the company's to pay corporation tax, and to the extent that it is so applied the Inland Revenue's obligation under sub-paragraph (1) is discharged.

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- (3) Where the company's company tax return for the accounting period is enquired into by the Inland Revenue, no payment in respect of a land remediation tax credit for that period need be made before the Inland Revenue's enquiries are completed (see paragraph 32 of Schedule 18 to the Finance Act 1998 (c. 36)).

In those circumstances the Inland Revenue may make a payment on a provisional basis of such amount as they think fit.

- (4) No payment need be made in respect of a land remediation tax credit for an accounting period before the company has paid to the Inland Revenue any amount that it is required to pay for payment periods ending in that accounting period—
- (a) under the PAYE regulations, or
  - (b) in respect of Class 1 national insurance contributions.

- (5) In this paragraph—

F37

.....  
“payment period” means a period which ends on the 5th day of a month and for which the company is liable to account for income tax and national insurance contributions to the Inland Revenue.

#### Textual Amendments

F37 Words in Sch. 22 para. 16(5) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))

#### *Restriction on losses carried forward*

- 17 (1) For the purposes of section 392A of the Taxes Act 1988 (relief of Schedule A losses against future Schedule A losses), a company's Schedule A loss for a period in which it claims a land remediation tax credit is treated as reduced by the amount of the loss surrendered.
- (2) For the purposes of section 393 of the Taxes Act 1988 (relief of trading losses against future trading profits), a company's trading loss for a period for which it claims a land remediation tax credit is treated as reduced by the amount of the loss surrendered.
- (3) Sub-paragraph (4) applies if in an accounting period—
- (a) a company's Schedule A loss is a loss treated under section 432AB(3) of the Taxes Act 1988 [F38 for the purposes of section 76 of that Act as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section],
  - (b) an amount falls to be carried forward to a succeeding accounting period under [F39 section 76(12) or (13)] of that Act (carrying forward [F40 unrelieved expenses] and charges on income where such expenses and charges exceed amount of profits from which deductible), and
  - (c) the company claims a land remediation tax credit for the accounting period.
- (4) Where this sub-paragraph applies, [F41 the total amount which] falls to be carried forward to a succeeding accounting period under [F42 section 76(12) or (13)] of the Taxes Act 1988 is treated as reduced by the amount of the loss surrendered.
- (5) For the purposes of this paragraph the amount of the loss surrendered is—

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- (a) where the maximum amount of land remediation tax credit was claimed, the whole of the qualifying land remediation loss for that period;
- (b) where less than the maximum amount was claimed, a corresponding proportion of the qualifying land remediation loss for that period.

The “maximum amount” here means the amount specified in paragraph 15(1).

#### Textual Amendments

- F38** Words in Sch. 22 para. 17(3)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 59(2)(a)**
- F39** Words in Sch. 22 para. 17(3)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 59(2)(b)(i)**
- F40** Words in Sch. 22 para. 17(3)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 59(2)(b)(ii)**
- F41** Words in Sch. 22 para. 17(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 59(3)(a)**
- F42** Words in Sch. 22 para. 17(4) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 59(3)(b)**

#### *Tax credit not income*

- 18 A payment in respect of a land remediation tax credit is not income of the company for any tax purpose.

#### *Certain qualifying land remediation expenditure excluded for purposes of capital gains*

- 19 If in an accounting period—
  - (a) a company has a qualifying land remediation loss, and
  - (b) by virtue of that qualifying land remediation loss, a payment is made to the company in respect of a land remediation tax credit,
 the related qualifying land remediation expenditure shall be treated as if it were expenditure excluded for the purposes of capital gains tax under section 39 of the Taxation of Chargeable Gains Act 1992 (c. 12).

## PART 4

### SPECIAL PROVISION FOR LIFE ASSURANCE BUSINESS

#### *Limitation on relief*

- 20 Where for any accounting period the profits arising to an insurance company from its life assurance business, or from any category of its life assurance business, fall to be computed in accordance with the provisions of the Taxes Act 1988 applicable to

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Case I of Schedule D, no deduction for capital expenditure under paragraph 1 and no land remediation relief under paragraph 12 shall be allowable.

*Provision in respect of “I minus E” basis*

- 21 Paragraphs 22 to 28 apply where for any accounting period the profits arising to an insurance company from its life assurance business fall to be computed otherwise than in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.

*Entitlement to relief: “I minus E” basis*

- 22 (1) Sub-paragraph (2) applies if—
- (a) land in the United Kingdom is a management asset of a company,
  - (b) at the time of acquisition by the company all or part of the land is or was in a contaminated state, and
  - (c) in any accounting period, the company incurs qualifying expenditure in respect of the land.
- (2) Where this sub-paragraph applies, the company is entitled to relief for that accounting period in respect of its qualifying expenditure.
- (3) For the purposes of this paragraph, the amount of a company’s qualifying expenditure in an accounting period is the amount of its qualifying land remediation expenditure in that period [<sup>F43</sup>reduced by the amount (if any) which by virtue of paragraph (a) of Step 1 in section 76(7) of the Taxes Act 1988 is not to be brought into account at that Step as expenses payable for that period].
- (4) A company is not entitled to relief under this paragraph in respect of expenditure on land all or part of which is in a contaminated state, if the land is in that state wholly or partly as a result of any thing done or omitted to be done at any time by the company or a person with a relevant connection to the company.
- (5) For the purposes of this paragraph, land is a management asset of a company if it is—
- (a) an asset provided for use or used for the management of life assurance business carried on by the company, or
  - (b) an asset in respect of which expenditure is being incurred with a view to such use by the company.

**Textual Amendments**

- F43** Words in Sch. 22 para. 22(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), [Sch. para. 60\(2\)](#)

*[<sup>F44</sup>Giving effect to relief: enhanced expenses payable]*

- 23 (1) If a company is entitled to relief under paragraph 22 for an accounting period in respect of its qualifying expenditure, sub-paragraph (2) shall apply for the purposes of section 76 of the Taxes Act 1988 (computing profits of company carrying on life assurance business: [<sup>F45</sup>deduction in respect of expenses payable]).

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (2) Where this sub-paragraph applies, the company may (on making a claim) treat an amount equal to 150% of the actual amount of the qualifying expenditure (as determined in accordance with paragraph 22(3)) [<sup>F46</sup>as expenses payable which fall to be brought into account for that period at Step 1 in section 76(7) of the Taxes Act 1988].

#### Textual Amendments

- F44** Sch. 22 para. 23 heading substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 61(4)**
- F45** Words in Sch. 22 para. 23(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 61(2)**
- F46** Words in Sch. 22 para. 23(2) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 61(3)**

#### *Entitlement to life assurance company tax credit*

- 24 (1) A company may claim a life assurance company tax credit under this paragraph if in an accounting period it has a “qualifying loss”.
- (2) A company has a “qualifying loss” for this purpose if in an accounting period—
- the company is entitled to relief under paragraph 22, and
  - an amount falls to be carried forward to a succeeding accounting period under [<sup>F47</sup>section 76(12) or (13)] of the Taxes Act 1988 (carrying forward [<sup>F48</sup>unrelieved expenses] and charges on income where such expenses and charges exceed amount of profits from which deductible).
- [<sup>F49</sup>(3) In determining for the purposes of sub-paragraph (2)(b) whether there is an amount which falls to be carried forward under subsection (12) or (13) of section 76 of the Taxes Act 1988, there shall be disregarded any amounts brought forward from an earlier accounting period and treated for the purposes of that section as expenses payable which fall to be brought into account for the period in question—
- in accordance with Step 7 in subsection (7) of that section, by virtue of a previous application of subsection (12) or (13) of that section, or
  - in accordance with Step 3 in subsection (7) of that section, by virtue of paragraph 4(4) of Schedule 11 to the Finance Act 1996 (loan relationships deficit carried forward and so brought into account).]
- (4) The amount of the qualifying loss is equal to the lesser of—
- 150% of the related qualifying expenditure, and
  - such amount as is determined in accordance with sub-paragraph (3) to be an amount which falls to be carried forward as described in sub-paragraph (2) (b).

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

#### Textual Amendments

- F47** Words in Sch. 22 para. 24(2)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 62(2)(a)**
- F48** Words in Sch. 22 para. 24(2)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 62(2)(b)**
- F49** Sch. 22 para. 24(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 62(3)**

#### *Amount of life assurance company tax credit*

- 25 (1) The amount of the life assurance company tax credit to which a company is entitled for an accounting period is equal to 16% of the amount of the qualifying loss for the period.
- (2) The Treasury may by order substitute for the percentage for the time being specified in sub-paragraph (1) such other percentage as they think fit.
- (3) An order under sub-paragraph (2) may make such incidental, supplemental, consequential or transitional provision as the Treasury think fit.

#### *Payment in respect of life assurance company tax credit, etc*

- 26 Paragraph 16 (payment) and paragraph 18 (tax credit not to be treated as income) shall have effect in relation to life assurance company tax credits with the substitution for each reference to a land remediation tax credit of a reference to a life assurance company tax credit.

#### *[<sup>F50</sup>Restriction on carrying forward expenses payable]*

- 27 [<sup>F51</sup>(1) For the purposes of section 76 of the Taxes Act 1988, the total amount which may—
- (a) be carried forward under subsection (12) or (13) of that section from an accounting period in which the company claims a life assurance company tax credit, and
  - (b) be brought into account for the next accounting period in accordance with Step 7 in subsection (7) of that section,
- is treated as reduced by the amount of the expenses payable surrendered.]
- (2) For the purposes of sub-paragraph (1) the amount of the [<sup>F52</sup>expenses payable] surrendered is—
- (a) where the maximum amount of life assurance company tax credit was claimed, the whole of the qualifying loss for that period;
  - (b) where less than the maximum amount was claimed, a corresponding proportion of the qualifying loss for that period.

The “maximum amount” here means the amount specified in paragraph 25(1).

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

### Textual Amendments

- F50** Sch. 22 para. 27 heading substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 63(4)**
- F51** Sch. 22 para. 27(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 63(2)**
- F52** Words in Sch. 22 para. 27(2) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 63(3)**

### *Certain qualifying expenditure excluded for purposes of capital gains*

- 28 If in an accounting period—
- (a) a company has a qualifying loss, and
  - (b) by virtue of that qualifying loss, a payment is made to the company in respect of a life assurance company tax credit,
- the related qualifying expenditure shall be treated as if it were expenditure excluded for the purposes of capital gains tax under section 39 of the Taxation of Chargeable Gains Act 1992 (c. 12).

## PART 5

### SUPPLEMENTARY PROVISIONS

### *Artificially inflated claims for deduction, relief or tax credit*

- 29 (1) To the extent that a transaction is attributable to arrangements entered into wholly or mainly for a disqualifying purpose, it shall be disregarded in determining for an accounting period the amount of—
- (a) any deduction for capital expenditure which is allowed under paragraph 1,
  - (b) any land remediation relief to which a company is entitled under paragraph 12,
  - (c) any land remediation tax credit to which a company is entitled under paragraph 14,
  - (d) any relief to which a company carrying on life assurance business is entitled under paragraph 22, and
  - (e) any life assurance company tax credit to which such a company is entitled under paragraph 24.
- (2) Arrangements are entered into wholly or mainly for a “disqualifying purpose” if their main object, or one of their main objects, is to enable a company to obtain—
- (a) a deduction for capital expenditure which would not otherwise be allowed or of a greater amount than that which would otherwise be allowed;
  - (b) land remediation relief to which the company would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled;

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- (c) a land remediation tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled;
- (d) relief under paragraph 22 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled; or
- (e) a life assurance company tax credit to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled.

(3) In this paragraph “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

#### *Funding of tax credits*

- 30 Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) (gross revenues to be paid to Exchequer) shall be construed as allowing the Commissioners of Inland Revenue to deduct payments for or in respect of—
- (a) land remediation tax credits, and
  - (b) life assurance company tax credits,
- before causing the gross revenues of their department to be paid to the accounts mentioned in that section.

#### *Interpretation*

- 31 (1) In this Schedule—
- “harm” means—
    - (a) harm to the health of living organisms,
    - (b) interference with the ecological systems of which any living organisms form part,
    - (c) offence to the senses of human beings, or
    - (d) damage to property;
  - “the Inland Revenue” means any officer of the Board;
  - “insurance company” has the same meaning as it has in Chapter 1 of Part 12 of the Taxes Act 1988;
  - “land” means any estate, interest or rights in or over land;
  - “life assurance business” has the same meaning as it has in Chapter 1 of Part 12 of the Taxes Act 1988;
  - “national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);
  - “pollution of controlled waters” means the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter;
  - “qualifying loss” has the meaning given in paragraph 24;
  - “qualifying land remediation loss” has the meaning given in paragraph 14;
  - “Schedule A loss” has the meaning given by section 392A of the Taxes Act 1988; and
  - “substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

(2) In this Schedule “controlled waters”—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) in relation to England and Wales, has the same meaning as in Part 3 of the Water Resources Act 1991 (c. 57);
  - (b) in relation to Scotland, has the same meaning as in section 30A of the Control of Pollution Act 1974 (c. 40);
  - (c) in relation to Northern Ireland, means water in waterways and underground strata (as defined in Article 2(2) of the Water (Northern Ireland) Order 1999 (S.I. 1999/662 (N.I. 6)) ).
- (3) For the purposes of this Schedule, a person has a relevant connection to a company in a case where the company’s land is in a contaminated state wholly or partly as a result of any thing done or omitted to be done by the person if—
- (a) he is or was connected to the company when any such thing is or was done, or omitted to be done, by him,
  - (b) he is or was connected to the company at the time when the land in question is or was acquired by the company, or
  - (c) he is or was connected to the company at any time when relevant land remediation is or was undertaken by the company (whether directly or on its behalf).
- (4) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

*Transitional provisions*

- 32 (1) This Schedule does not apply to expenditure incurred before the day on which this Act is passed.
- (2) For this purpose no account shall be taken of section 401 of the Taxes Act 1988 (earlier expenditure treated as incurred when Schedule A business or trading begins).

SCHEDULE 23

Section 70.

LAND REMEDIATION: CONSEQUENTIAL AMENDMENTS

*Computation under Schedule A*

1 In section 21A of the Taxes Act 1988 (profits of Schedule A business computed in same way as for Case I of Schedule D trade), after subsection (4) (rules in Chapter 5 of Part 4 of the Taxes Act 1988 relating to trade within Case I of Schedule D not applying to Schedule A business) insert—

“(5) Part 1 of Schedule 22 to the Finance Act 2001 (deduction for capital expenditure on remediation of contaminated land) applies in accordance with subsection (1), and the other Parts of that Schedule (further provision as to relief for remediation of contaminated land) have effect in relation to a Schedule A business in accordance with their provisions.”.

*Computation of profits of insurance companies*

F53<sub>2</sub> .....

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

### Textual Amendments

**F53** Sch. 23 para. 2 repealed (with effect in accordance with s. 42 of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(3)

### Interest

- 3 (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 (d) insert—
- “; or
- (e) a payment of land remediation tax credit or life assurance company tax credit falls to be made to a company under Schedule 22 to the Finance Act 2001 in respect of an accounting period.”.
- (3) After subsection (3A) (material date for payments of R&D tax credits) insert—
- “(3B) In relation to a payment of land remediation tax credit or life assurance company tax credit falling within subsection (1)(e) 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 land remediation tax credit or the life assurance company 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 land remediation tax credit or the life assurance company 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 Finance Act 1998.”.
- (4) In subsection (8A) (recovery of overpaid interest)—
- (a) in paragraph (a), after “subsection (1)(a) or (d)” insert “ or (e) ”, and
- (b) in paragraph (b)(ii), after “R&D tax credit” insert “ , land remediation tax credit or life assurance company tax credit ”.
- (5) In subsection (8BA) (cases where there is change in amount of tax credit)—
- (a) after “amount of the R&D tax credit” insert “ , the land remediation tax credit or the life assurance company tax credit ”, and
- (b) after “amount of R&D tax credit” insert “ , land remediation tax credit or life assurance company tax credit ”.

### Claim must be made in tax return

- 4 In Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns, assessments and related matters), in paragraph 10 (other claims and elections to be included in return), after sub-paragraph (2) insert—
- “(2A) A claim to which Part 9B of this Schedule applies (claims for land remediation tax credit and life assurance company tax credit) can only be made by being included in a company tax return (see paragraph 83H).”.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

*Recovery of excessive tax credit*

- 5 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 (ba) insert—
    - “(bb) land remediation tax credit or life assurance company tax credit under Schedule 22 to the Finance Act 2001,”;
  - (b) in that sub-paragraph, in paragraph (c) (interest paid under section 826 of the Taxes Act 1988) for “that Act” substitute “the Taxes Act 1988”;
  - (c) in sub-paragraph (5) (connection of assessment for excessive payment to an accounting period), before “or” at the end of paragraph (ab) insert—
    - “(ac) an amount of land remediation tax credit or life assurance company tax credit paid to a company for an accounting period,”;
- and
- (d) at the end of that sub-paragraph after “(ab)” insert “, (ac)”.

*Claims relating to remediation of contaminated land*

- 6 After Part 9A of that Schedule (claims for R&D tax credits) insert—

**“PART 9B**

CLAIMS RELATING TO REMEDIATION OF CONTAMINATED LAND

***Introduction***

- 83G This Part of this Schedule applies to claims for—
- (a) land remediation tax credits under paragraph 14 of Schedule 22 to the Finance Act 2001 (“land remediation tax credits”), and
  - (b) life assurance company tax credits under paragraph 24 of that Schedule (“life assurance company tax credits”).

***Claim to be included in company tax return***

- 83H (1) A claim for a land remediation tax credit or a life assurance company 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***

- 83I A claim for a land remediation tax credit or a life assurance company tax credit must specify the amount of the tax credit claimed, which must be an amount quantified at the time the claim is made.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

***Amendment or withdrawal of claim***

- 83J A claim for a land remediation tax credit or a life assurance company tax credit may be amended or withdrawn by the claimant company only by amending its company tax return.

***Time limit for claims***

- 83K (1) A claim for a land remediation tax credit or a life assurance company 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***

- 83L (1) The company is liable to a penalty where it—
- (a) fraudulently or negligently makes a claim for a land remediation tax credit or a life assurance company tax credit and that claim is incorrect, or
  - (b) discovers that such a claim made by it (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay.
- (2) The penalty is an amount not exceeding the excess land remediation tax credit or excess life assurance company tax credit claimed, that is, the difference between—
- (a) the amount of the land remediation tax credit or the life assurance company tax credit claimed by the company for the accounting period to which the claim relates, and
  - (b) the amount of the land remediation tax credit or the life assurance company tax credit to which the company is entitled for that period.”.

SCHEDULE 24

Section 71.

CREATIVE ARTISTS: RELIEF FOR FLUCTUATING PROFITS

<sup>F54</sup>PART 1

NEW SCHEDULE 4A TO THE TAXES ACT 1988

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

### Textual Amendments

**F54** Sch. 24 Pt. 1 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

## PART 2

### CONSEQUENTIAL AMENDMENTS

- 2 (1) In section 46C(3) of the Taxes Management Act 1970 (c. 9) (jurisdiction of Special Commissioners over certain claims) for paragraph (d) substitute—  
“(d) sections 527 and 536 (reliefs in respect of royalties);”.
- (2) This paragraph applies in relation to claims made in respect of payments actually receivable on or after 6th April 2001.
- 3 (1) In Schedule 1B to that Act (claims for relief involving two or more years), in paragraph 1 (preliminary definitions) for sub-paragraphs (2) and (3) substitute—  
“(2) For the purposes of this Schedule, two or more claims made by the same person are associated with each other if each of them is any of the following—  
(a) a claim to which this Schedule applies, or  
(b) a claim to which Schedule 4A to the principal Act applies (creative artists: relief for fluctuating profits),  
and the same year of assessment is the earlier year in relation to each of those claims.  
(3) In sub-paragraph (2) above, any reference to claims includes—  
(a) in the case of a claim to which this Schedule applies, a reference to amendments and revocations to which paragraph 4 below applies;  
(b) in the case of a claim to which Schedule 4A to the principal Act applies, a reference to amendments and revocations to which paragraph 9 of that Schedule applies.”.
- (2) This paragraph applies for the year 2000-01 and subsequent years of assessment.
- 4 (1) In section 537 of the Taxes Act 1988 (application of sections 534, 535 and 536 for public lending right as for copyright)—  
(a) for “Sections 534, 535 and 536” substitute “Section 536”, and  
(b) for “they have” substitute “it has”.
- (2) This paragraph applies in relation to payments actually receivable on or after 6th April 2001.

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*Status: Point in time view as at 27/03/2006.*  
*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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## SCHEDULE 25

Section 76.

### LIMITED LIABILITY PARTNERSHIPS: INVESTMENT LLPS AND PROPERTY INVESTMENT LLPS

#### *Meaning of “investment LLP” and “property investment LLP”*

- 1 (1) In Part 19 of the Taxes Act 1988 (supplementary provisions), after section 842A insert—

#### **“842B Meaning of “investment LLP” and “property investment LLP”**

- (1) In this Act—
- (a) an “investment LLP” means a limited liability partnership whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom; and
  - (b) a “property investment LLP” means a limited liability partnership whose business consists wholly or mainly in the making of investments in land and the principal part of whose income is derived therefrom.
- (2) Whether a limited liability partnership is an investment LLP or a property investment LLP is determined for each period of account of the partnership.
- A “period of account” means any period for which accounts of the partnership are drawn up.”
- (2) In section 832(1) of that Act (interpretation of the Tax Acts), at the appropriate place insert—
- ““investment LLP” and “property investment LLP” have the meaning given by section 842B;”.
- (3) In section 288(1) of the Taxation of Chargeable Gains Act 1992 (c. 12) (interpretation), at the appropriate place insert—
- ““property investment LLP” has the meaning given by section 842B of the Taxes Act;”.

#### *Pension funds, &c.: exclusion of exemptions from tax in case of income from property investment LLPS*

- 2 In Chapter 6 of Part 14 of the Taxes Act 1988 (pension schemes, &c.: miscellaneous provisions), after section 659D insert—

#### **“659E Treatment of income from property investment LLPS**

- (1) The exemptions specified below do not apply to income derived from investments, deposits or other property held as a member of a property investment LLP.
- (2) The exemptions are those provided by—
- section 592(2) (exempt approved schemes),
  - section 608(2)(a) (former approved superannuation funds),

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- section 613(4) (Parliamentary pension funds),  
 section 614(3) (certain colonial, &c. pension funds),  
 section 614(4) (the Overseas Service Pension Fund),  
 section 614(5) (other pension funds for overseas employees),  
 section 620(6) (retirement annuity trust schemes), and  
 section 643(2) (approved personal pension schemes).
- (3) The income to which subsection (1) above applies includes relevant stock lending fees, in relation to any investments, to which any of the provisions listed in subsection (2) above would apply by virtue of section 129B.
- (4) Section 659A (treatment of futures and options) applies for the purposes of subsection (1) above.”.

*Pension funds, &c.: exclusion of exemption from trusts rate in case of income from property investment LLPs*

- 3 (1) Section 686 of the Taxes Act 1988 (accumulation and discretionary trusts: special rates of tax) is amended as follows.
- (2) In subsection (2)(c) (income excluded from trusts rate or Schedule F trusts rate), before the words “income from investments, deposits or other property” (which relate to income of certain pension funds or schemes) insert “ , subject to section (6A) below, ”.
- (3) After subsection (6) insert—
- “(6A) The exemptions provided for by subsection (2)(c) above in relation to income from investments, deposits or other property held as mentioned in sub-paragraph (i) or (ii) of that paragraph do not apply to income derived from investments, deposits or other property held as a member of a property investment LLP.”.

*Pension funds, &c.: exclusion of exemptions in case of gains from property investment LLPs*

- 4 In section 271 of the Taxation of Chargeable Gains Act 1992 (c. 12) (miscellaneous exemptions), after subsection (11) insert—
- “(12) Subsection (1)(b), (c), (d), (g) and (h) and subsection (2) above do not apply to gains accruing to a person from the acquisition and disposal by him of assets held as a member of a property investment LLP.”.

*Insurance companies: treatment of income or gains arising from property investment LLP*

- 5 In Chapter 1 of Part 12 of the Taxes Act 1988 (insurance companies, &c.), after section 438A insert—

**“438B Income or gains arising from property investment LLP**

- (1) Where an asset held by an insurance company as an asset of its long term business fund is held by the company as a member of a property investment LLP, the policy holders’ share of any income arising from, or chargeable gains accruing on the disposal of, the asset which—
- (a) is attributable to the company, and

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) would otherwise be referable by virtue of section 432A to pension business,  
shall be treated for the purposes of the Corporation Tax Acts as referable to basic life assurance and general annuity business.
- (2) For the purposes of this section the property business of the insurance company for the purposes of which the asset is held shall be treated as a separate business.
- “Property business” means a Schedule A business or overseas property business.
- (3) Where (apart from this subsection) an insurance company would not be carrying on basic life assurance and general annuity business, it shall be treated as carrying on such business if any income or chargeable gains of the company are treated as referable to the business by virtue of subsection (1) above.
- (4) A company may be charged to tax by virtue of this section—
- (a) notwithstanding section 439A, and
- (b) whether or not the income or chargeable gains to which subsection (1) above applies is taken into account in computing the profits of the company for the purposes of any charge to tax in accordance with Case I of Schedule D.
- (5) The policy holders’ share of income or chargeable gains to which subsection (1) above applies—
- (a) shall not be treated as relevant profits for the purposes of section 88 of the Finance Act 1989 (corporation tax on policy holders’ fraction of profits), and
- (b) shall not be treated as part of the BLAGAB profits for the purposes of section 88A of that Act (lower corporation tax rate on certain profits);
- but the whole of the income or gains to which that subsection applies shall be chargeable to tax at the rate provided by section 88 of that Act.
- (6) So far as income is brought into account as mentioned in section 83(2) of the Finance Act 1989, sections 432B to 432F (apportionment of receipts brought into account) have effect as if subsection (1) above did not apply.

#### **438C Determination of policy holders’ share for purposes of s.438B**

- (1) For the purposes of section 438B the policy holders’ share of any income or chargeable gains to which subsection (1) of that section applies is what remains after deducting the shareholders’ share.
- (2) The shareholders’ share is found by applying to the whole the fraction—

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$$\frac{A}{B}$$

where—

A is the amount of the profits of the company for the period which are chargeable to tax under section 436; and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits (apart from premiums and sums received by virtue of a claim under a reinsurance contract), over

(b) the amounts taken into account as expenses in computing those profits.

(3) Where there is no such excess as is mentioned in subsection (2) above, or where the profits are greater than any excess, the whole of the income or gains is treated as the shareholders' share.

(4) Subject to that, where there are no profits none of the income or gains is treated as the shareholders' share.”.

*Insurance companies: double taxation relief*

6 In section 804B of the Taxes Act 1988 (double taxation relief: company carrying on more than one category of life assurance business: restriction of credit)—

(a) in subsection (2) after “sections 432ZA to 432E” insert “ or section 438B ”, and

(b) in subsection (4) after “section 432A” insert “ or 438B ”.

*Insurance companies: capital allowances*

7 In section 545 of the Capital Allowances Act 2001 (c. 2) (life assurance business: investment assets), for subsection (3) substitute—

“(3) Any allowance under this Act in respect of an investment asset shall be treated as referable to the category or categories of business to which income arising from the asset is or would be referable.

If income so arising is or would be referable to more than one category of business, the allowance shall be apportioned in accordance with sections 432ZA to 432E, or section 438B, of ICTA in the same way as the income.”.

*Friendly societies: exclusion of exemptions from tax*

8 (1) In section 460 of the Taxes Act 1988 (friendly societies: exemption from tax in respect of life or endowment business), in subsection (2) (restrictions on exemption) after paragraph (ca), and before the word “and” following that paragraph, insert—

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“(cb) shall not apply to profits arising from investments, deposits or other property held as a member of a property investment LLP;”.

(2) In section 461 of that Act (registered friendly societies: exemption from tax on other business), after subsection (3) insert—

“(3A) The exemption conferred by subsection (1) above does not apply to profits arising from investments, deposits or other property held as a member of a property investment LLP.”.

(3) In section 461B of that Act (incorporated friendly societies: exemption from tax on other business), after subsection (2) insert—

“(2A) Subsection (1) above shall not apply to any profits arising or accruing to the society from or by reason of its membership of a property investment LLP.”.

#### *Exclusion of relief on loans to buy into investment LLP*

9 In section 362(2) of the Taxes Act 1988 (interest relief on loans to buy into partnership: conditions to be met), in paragraph (a) for the words from “otherwise” to “1907” substitute—

“otherwise than—

- (i) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907, or
- (ii) as a member of an investment LLP;”.

## SCHEDULE 26

Section 78.

### CAPITAL GAINS TAX: TAPER RELIEF: BUSINESS ASSETS

#### *Introductory*

1 Schedule A1 to the Taxation of Chargeable Gains Act 1992 (c. 12) (application of taper relief) is amended as follows.

#### *Conditions for assets other than shares to qualify as business assets*

2 (1) Paragraph 5 is amended as follows.

(2) In sub-paragraph (3)(a) (asset used for purposes of trade carried on by trustees of settlement) after “settlement” insert—

“or by a partnership whose members at that time included—

- (i) the trustees of the settlement; or
- (ii) any one or more of the persons who at that time were the trustees of the settlement (so far as acting in their capacity as such trustees)”.

#### *Companies which are qualifying companies*

3 (1) Paragraph 6 is amended as follows.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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(2) After sub-paragraph (1) (qualifying company by reference to an individual) insert—

“(1A) A company shall also be taken to have been a qualifying company by reference to an individual at any time when—

- (a) the company was a non-trading company or the holding company of a non-trading group,
- (b) the individual was an officer or employee of the company, or of a company having a relevant connection with it, and
- (c) the individual did not have a material interest in the company or in any company which at that time had control of the company.”.

(3) After sub-paragraph (2) (qualifying company by reference to the trustees of a settlement) insert—

“(2A) A company shall also be taken to have been a qualifying company by reference to the trustees of a settlement at any time when—

- (a) the company was a non-trading company or the holding company of a non-trading group,
- (b) an eligible beneficiary was an officer or employee of the company, or of a company having a relevant connection with it, and
- (c) the trustees of the settlement did not have a material interest in the company or in any company which at that time had control of the company.”.

(4) At the end of the paragraph add—

“(4) For the purposes of this paragraph an individual shall be regarded as having a material interest in a company if—

- (a) the individual,
- (b) the individual together with one or more persons connected with him, or
- (c) any person connected with the individual, with or without any other such persons,

has a material interest in the company.

(5) For the purposes of this paragraph the trustees of a settlement shall be regarded as having a material interest in a company if—

- (a) the trustees of the settlement,
- (b) the trustees of the settlement together with one or more persons connected with them, or
- (c) any person connected with the trustees of the settlement, with or without any other such persons,

has a material interest in the company.

(6) In this paragraph “company” does not include a unit trust scheme, notwithstanding anything in section 99.

(7) This paragraph is supplemented by paragraph 6A below (meaning of “material interest”).”.

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### Meaning of “material interest”

4 After paragraph 6 insert—

#### “Meaning of “material interest”

6A (1) For the purposes of paragraph 6 above, a material interest in a company means possession of, or the ability to control (directly or through the medium of other companies or by any other indirect means),—

- (a) more than 10% of the issued shares in the company of any particular class,
- (b) more than 10% of the voting rights in the company,
- (c) such rights as would, if the whole of the income of the company were distributed among the participators (without regard to any rights of any person as a loan creditor) give an entitlement to receive more than 10% of the amount distributed, or
- (d) such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 10% of the assets of the company which would then be available for distribution among the participators.

(2) For the purposes of sub-paragraph (1) above a right to acquire shares or rights (however arising) shall be treated as a right to control them.

(3) A person shall be treated for the purposes of this paragraph as having a right to acquire any shares or rights—

- (a) which he is entitled to acquire at a future date, or
- (b) which he will at a future date be entitled to acquire.

(4) Where—

- (a) in the case of any shares or rights, an entitlement falling within sub-paragraph (3)(a) or (b) above is conferred on a person by a contract, but
- (b) the contract is conditional,

the person shall be treated for the purposes of this paragraph as having a right to acquire the shares or rights as from the time at which the contract is made.

(5) In any case where—

- (a) the shares of any particular class attributed to a person consist of or include shares which he or another person has a right to acquire, and
- (b) the circumstances are such that if that right were to be exercised the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right,

then in determining at any time prior to the exercise of the right whether the number of shares of that class attributed to the person exceeds a particular percentage of the issued shares of that class, the number of issued shares of that class shall be taken to be increased by the number of unissued shares referred to in paragraph (b) above.

(6) The references in sub-paragraph (5) above to the shares of any particular class attributed to a person are to the shares which in accordance with sub-paragraph (1)(a) above fall to be brought into account in his case to determine

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whether their number exceeds a particular percentage of the issued shares of the company of that class.

- (7) Sub-paragraphs (5) and (6) above shall apply, with the necessary modifications, in relation to—
- (a) voting rights in the company (and attribution of such rights to a person in accordance with sub-paragraph (1)(b) above),
  - (b) rights which would, if the whole of the income of the company were distributed among the participators (without regard to any rights of any person as a loan creditor) give an entitlement to receive any of the amount distributed (and attribution of such rights to a person in accordance with sub-paragraph (1)(c) above), and
  - (c) rights which would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive any of the assets of the company which would then be available for distribution among the participators (and attribution of such rights to a person in accordance with sub-paragraph (1)(d) above),
- as they apply in relation to shares of any particular class (and their attribution to a person in accordance with sub-paragraph (1)(a) above).
- (8) For the purposes of this paragraph “participator” and “loan creditor” have the meaning given by section 417 of the Taxes Act.”.

#### *Interpretation of Schedule A1*

- 5 (1) Paragraph 22 is amended as follows.
- (2) In sub-paragraph (1) (definitions) insert each of the following definitions at the appropriate place—
- ““non-trading company” means a company which is not a trading company;”;
- ““non-trading group” means a group of companies which is not a trading group;”.

#### *Qualifying shareholdings in joint venture companies*

- 6 (1) Paragraph 23 is amended as follows.
- (2) Sub-paragraph (8) (which concerns the meaning of “relevant connection” and is subsumed by the paragraph 24 inserted by this Schedule) shall cease to have effect.

#### *Joint enterprise companies: relevant connection*

- 7 After paragraph 23 (qualifying shareholdings in joint venture companies) add—

##### **“Joint enterprise companies: relevant connection**

- 24 (1) This Schedule has effect subject to sub-paragraph (5) below in any case where a company (“the investing company”) has a qualifying shareholding in a joint enterprise company.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (2) For the purposes of this paragraph, a company is a “joint enterprise company” if, and only if, 75% or more of its ordinary share capital (in aggregate) is held by not more than five companies.
- (3) For the purposes of sub-paragraph (2) above the shareholdings of members of a group of companies shall be treated as held by a single company.
- (4) For the purposes of this paragraph a company has a “qualifying shareholding” in a joint enterprise company if—
  - (a) it holds more than 30% of the ordinary share capital of the joint enterprise company, or
  - (b) it is a member of a group of companies, it holds ordinary share capital of the joint enterprise company and the members of the group between them hold more than 30% of that share capital.
- (5) The following shall be treated as having a relevant connection with each other—
  - (a) the investing company;
  - (b) the joint enterprise company;
  - (c) any company having a relevant connection with the investing company;
  - (d) any company having a relevant connection with the joint enterprise company by virtue of being—
    - (i) a 51 per cent subsidiary of that company, or
    - (ii) a member of the same commercial association of companies.
- (6) For the purposes of this paragraph “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act.”.

## SCHEDULE 27

Section 81.

### DOUBLE TAXATION RELIEF

#### *Computation of income subject to foreign tax*

- 1 (1) Section 795 of the Taxes Act 1988 is amended as follows.
- (2) In subsection (2)(b) (dividend to be treated as increased by any underlying tax taken into account in determining credit to be allowed in respect of the dividend) after “increased by” insert “—(i)” and after “in respect of the dividend” add—

“, and

  - (ii) any underlying tax which, by virtue of section 799(1)(b) or section 799(1B)(b), does not fall to be so taken into account”.
- (3) After subsection (3) insert—

“(3A) The amount of any income or gain shall not be increased under subsection (2) (b)(i) above by so much of any underlying tax—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) as represents an increase under section 801(4B); or
  - (b) as represents relievable underlying tax (within the meaning of sections 806A to 806J) arising in respect of another dividend and treated as underlying tax under those sections.”.
- (4) This paragraph has effect in relation to dividends paid on or after 31st March 2001 by a company resident outside the United Kingdom to a company resident in the United Kingdom (whenever any such dividend as is mentioned in section 801(2) or (3) of the Taxes Act 1988 was paid).

*Restriction of relief for underlying tax*

- 2 (1) Section 799 of the Taxes Act 1988 (computation of underlying tax) is amended as follows.
- (2) For subsection (1A) (the formula for restricting the amount of underlying tax in respect of which credit relief may be given) substitute—
- “(1A) The formula is—

$$(D + U) \times M\%$$

where—

D is the amount of the dividend;

U is the amount of underlying tax that would fall to be taken into account as mentioned in subsection (1) above, apart from paragraph (b) of that subsection; 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.”.

- (3) After subsection (1A) insert—
- “(1B) Where, under any arrangements, a company makes a claim for an allowance by way of credit in accordance with this Chapter—
- (a) the claim may be so framed as to exclude such amounts of underlying tax as may be specified for the purpose in the claim; and
  - (b) any amounts of underlying tax so excluded shall be left out of account for the purposes of this section.”.
- (4) 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.
- (5) 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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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

section 801(2) or (3) of the Taxes Act 1988, this paragraph shall be taken to have had effect at the time the dividend paid by that company was paid.

*Credit for underlying tax: UK company related through overseas company*

F55<sup>3</sup> .....

**Textual Amendments**

**F55** Sch. 27 para. 3 repealed (7.4.2005) by Finance Act 2005 (c. 7), Sch. 11 Pt. 2(9)

*Dividends that give rise to eligible unrelieved foreign tax*

4 (1) Section 806A of the Taxes Act 1988 (eligible unrelieved foreign tax) is amended as follows.

(2) At the end of subsection (5) (cases where an amount of eligible unrelieved foreign tax arises: Case B: restriction by the mixer cap) add—

“But if that is so in any case by reason only of the mixer cap restricting the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of a dividend paid by a company resident in the United Kingdom, the case does not fall within Case B.”.

(3) The amendment made by this paragraph has effect in relation to—

- (a) dividends arising on or after 31st March 2001 to companies resident in the United Kingdom from companies resident outside the United Kingdom, and
  - (b) foreign tax in respect of such dividends,
- (whenever the dividend mentioned in the amendment was paid).

*The amounts that are eligible unrelieved foreign tax*

5 (1) Section 806B (determination of the amounts that are eligible unrelieved foreign tax) is amended as follows.

(2) For subsections (3) to (6) (amounts of eligible unrelieved foreign tax in Case B) substitute—

“(3) In Case B, the amount (if any) by which—

- (a) the aggregate of the upper rate amounts falling to be brought into account for the purposes of this paragraph by virtue of subsection (4) or (5) below, exceeds
- (b) the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, before any increase under section 801(4B),

shall be an amount of eligible unrelieved foreign tax.

(4) In the case of the Case V dividend (but not any lower level dividend), the upper rate amount to be brought into account for the purposes of subsection (3)(a) above—

- (a) in a case where the mixer cap does not restrict the amount of tax to be taken into account as mentioned in section 799(1) (before any

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- increase under section 801(4B)) in the case of that dividend, is that amount of tax; or
- (b) in a case where the mixer cap restricts the amount of tax to be so taken into account in the case of that dividend, is the greater amount that would have been so taken into account if, in the application of the formula in section 799(1A) in the case of that dividend (but not any lower level dividend) M% had, in relation to—
- (i) so much of D as does not represent any lower level dividend, and
- (ii) so much of U as is not underlying tax attributable to any lower level dividend,
- been the upper percentage.
- (5) In the case of any dividend (the “relevant dividend”) received as mentioned in subsection (2) or (3) of section 801 which is a lower level dividend in relation to the Case V dividend, the upper rate amount to be brought into account for the purposes of subsection (3)(a) above—
- (a) in a case where the mixer cap does not restrict the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of the relevant dividend, is the appropriate portion of that amount of underlying tax;
- (b) in a case where—
- (i) the relevant dividend was paid by a company resident in the United Kingdom, and
- (ii) the mixer cap restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of that dividend,
- is the appropriate portion of that restricted amount of underlying tax; or
- (c) in a case where—
- (i) the relevant dividend was paid by a company resident outside the United Kingdom, and
- (ii) the mixer cap restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of that dividend,
- is the appropriate portion of the greater amount of tax that would have been so treated if, in the application of the formula in section 799(1A) in the case of that dividend (but not any other dividend) M% had, in relation to so much of D as does not represent any lower level dividend, and so much of U as is not underlying tax attributable to any lower level dividend, been the upper percentage.
- (6) For the purposes of subsection (5) above, the “appropriate portion” of any amount there mentioned in the case of a dividend is found by multiplying that amount by the product of the reducing fractions for each of the higher level dividends.”.
- (3) In subsection (9) (disregard of sections 806C and 806D for purpose of determining certain amounts in subsections (2)(b), (3)(b) or (5)(b)) for “(3)(b) or (5)(b)” substitute “(4)(b) or (5)(c) ”.
- (4) The amendments made by this paragraph have effect in relation to—

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) dividends arising on or after 31st March 2001 to companies resident in the United Kingdom from companies resident outside the United Kingdom, and
  - (b) foreign tax in respect of such dividends,
- (whenever any such dividend as is mentioned in section 801(2) or (3) of the Taxes Act 1988 was paid).

*Underlying tax excluded from claim not to be allowed under section 811*

- 6 (1) Section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) is amended as follows.
- (2) In subsection (2) (miscellaneous provisions relating to the application of subsection (1))—
- (a) omit “and” immediately preceding paragraph (b);
  - (b) insert “and” at the end of that paragraph; and
  - (c) insert the following paragraph at the appropriate place—
    - “(d) shall not require any income to be treated as reduced by an amount of underlying tax which, by virtue of section 799(1B)(b), falls to be left out of account for the purposes of section 799;”.
- (3) This paragraph has effect in relation to income arising on or after 31st March 2001.

*Relief for non-resident persons with branches or agencies in the UK*

- 7 (1) The amendments made by paragraph 4 of Schedule 30 to the Finance Act 2000 (c. 17) shall have effect, and be taken always to have had effect, in accordance with the following provisions of this paragraph.
- (2) In sub-paragraph (14) of that paragraph (which provides for the amendments to have effect in relation to accounting periods ending on or after 21st March 2000) for “accounting periods” substitute “chargeable periods”.
- (3) That paragraph shall be taken to have been originally enacted as so amended.

SCHEDULE 28

Section 83.

LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

**PART 1**

ASSIGNMENT OR SURRENDER OF PART OF THE RIGHTS

*Introductory*

- 1 Chapter 2 of Part 13 of the Taxes Act 1988 is amended in accordance with the following provisions of this Part of this Schedule.

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### *Interpretation*

2 In section 539 (introductory) after subsection (3) insert—

“(3A) References in this Chapter to assignment of the whole of, or assignment of part of or a share in, the rights conferred by a policy or contract shall, in any case where section 546A applies, be construed in accordance with that section.”.

### *Life policies: chargeable events*

3 (1) Section 540 is amended as follows.

(2) In subsection (1)(a) (chargeable events where policy is not a qualifying policy) at the beginning of sub-paragraph (v) (occurrence of excess under section 546 at end of year) insert “ subject to section 546B(3)(a), ”.

(3) In subsection (1)(b) (chargeable events where policy is a qualifying policy) in sub-paragraph (ii) (which refers to a surrender or assignment or such an excess) after “assignment or” insert “ (subject to section 546B(3)(a)) ”.

### *Life policies: computation of gain*

4 (1) Section 541 is amended as follows.

(2) In subsection (1), in each of paragraphs (a)(ii), (b)(ii) and (c)(ii) (which refer to the total amount treated as gain by virtue of paragraph (d) on the previous happening of chargeable events) after “paragraph (d) below” insert “ or section 546C(7)(b) ”.

(3) In paragraph (d) of that subsection (if chargeable event is occurrence of excess mentioned in section 540(1)(a)(v), the gain is the amount of the excess) at the end insert “ (subject to section 546B(3)(a)) ”.

(4) Subsection (4) (which makes provision about in-year assignments for no consideration and is superseded by the sections 546B to 546D inserted by this Schedule) shall cease to have effect.

### *Life annuity contracts: chargeable events*

5 (1) Section 542 is amended as follows.

(2) In subsection (1) (which specifies the chargeable events in relation to life annuity contracts) at the beginning of paragraph (c) (occurrence of excess under section 546 at end of year) insert “ subject to section 546B(3)(a), ”.

(3) In subsection (3) (which provides that, subject to section 544, an event referred to in subsection (1) is not a chargeable event in relation to certain contracts made before 26th June 1982) after “subsection (1) above” insert “ or section 546C(7)(a) ”.

### *Life annuity contracts: computation of gain*

6 (1) Section 543(1) is amended as follows.

(2) In each of paragraphs (a)(ii) and (b)(ii) (which refer to the total amount treated as gain by virtue of paragraph (c) on the previous happening of chargeable events) after “paragraph (c) below” insert “ or section 546C(7)(b) ”.

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- (3) In paragraph (c) (if chargeable event is occurrence of excess mentioned in section 542(1), the gain is the amount of the excess) at the end insert “ (subject to section 546B(3)(a)) ”.

*Capital redemption policies: chargeable events*

- 7 In section 545(1) (which specifies the chargeable events in relation to capital redemption policies) at the beginning of paragraph (d) (occurrence of excess under section 546 at end of year) insert “ subject to section 546B(3)(a), ”.

*The value of a part or share assigned*

- 8 (1) Section 546 (calculation of certain amounts for the purposes of sections 540, 542 and 545) is amended as follows.
- (2) In subsection (1), in paragraph (a) (calculation of value of parts or shares assigned or surrendered)—
- (a) after “which” insert “ —(i) ”;
  - (b) for “assigned or surrendered” substitute “ assigned for money or money’s worth, or surrendered, ”; and
  - (c) after “13th March 1975;” insert—  
  
“or  
  
(ii) has been assigned otherwise than for money or money’s worth during that period but in a year beginning on or before 5th April 2001;”.
- (3) At the end of the section insert—
- “(6) Where any part of or share in the rights conferred by a policy or contract is assigned, the value of the part or share, as at the time of the assignment, shall be taken for the purposes of this section to be its surrender value at that time.”.

*Assignments etc involving co-ownership*

- 9 After section 546 (calculation of certain amounts for purposes of sections 540, 542 and 545) insert—

**“546A Treatment of certain assignments etc involving co-ownership**

- (1) This section applies in any case where—
- (a) as a result of any transaction (the “material transaction”) the whole or part of or a share in the rights conferred by a policy or contract (“the material interest”) becomes beneficially owned by one person or by two or more persons jointly or in common (“the new ownership”);
  - (b) immediately before the material transaction, the material interest was in the beneficial ownership of one person or of two or more persons jointly (“the old ownership”); and
  - (c) at least one person who is a member of the old ownership is also a member of the new ownership.

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- (2) In any such case, the material transaction shall, in accordance with the following provisions of this section, be taken for the purposes of this Chapter (other than this section) to be one or more assignments, of part only of the rights conferred by the policy or contract.
- (3) For the purposes of this Chapter (other than this section), the members of the old ownership shall be treated—
- (a) where the old ownership consists of two or more persons beneficially entitled jointly, as if the material interest had been in their beneficial ownership in equal shares instead of jointly;
  - (b) where the new ownership consists of two or more persons beneficially entitled jointly, as if the result of the material transaction had been that the material interest was in the beneficial ownership of those persons in equal shares instead of jointly; and
  - (c) as if the material transaction had been the assignment by each member of the old ownership of so much (if any) of his old share as exceeds his new share (or, if he does not have a new share, the whole of his old share).
- (4) In this section—
- “new share”, in relation to the material interest and a person who is a member of the new ownership, means—
- (a) if there is only one member of the new ownership, the material interest;
  - (b) if there are two or more members of the new ownership beneficially entitled to the material interest in common, the member’s share in the material interest; or
  - (c) if there are two or more members of the new ownership beneficially entitled to the material interest jointly, the share attributed to the member by subsection (3)(b) above;
- “old share”, in relation to the material interest and a person who is a member of the old ownership, means—
- (a) if there is only one member of the old ownership, the material interest; or
  - (b) if there are two or more members of the old ownership, the share attributed to the member by subsection (3)(a) above.”.

*Charging tax in respect of certain section 546 excesses*

10 After section 546A insert—

**“546B Special provision in respect of certain section 546 excesses**

- (1) This section applies in relation to a policy or contract in any case where—
  - (a) a section 546 excess occurs at the end of any year (including the final year, whether or not ending with a terminal chargeable event); and
  - (b) the condition in subsection (2) below is satisfied in relation to that year.
- (2) The condition is that—

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- (a) during the year there has been an assignment for money or money's worth of part of or a share in the rights conferred by the policy or contract; or
  - (b) during the year there has been both—
    - (i) an assignment, otherwise than for money or money's worth, of the whole or part of or a share in the rights conferred by the policy or contract; and
    - (ii) an earlier surrender of part of or a share in the rights conferred by the policy or contract.
- (3) Where this section applies—
- (a) the occurrence of the section 546 excess shall be treated for the purposes of this Chapter as not being a chargeable event; but
  - (b) the amount of the section 546 excess shall be charged to tax in accordance with the provisions of section 546C.
- (4) In this section—
- “final year” has the meaning given by section 546(4);
  - “section 546 excess”, in relation to any year, means an excess, occurring at the end of the year, of—
    - (a) the reckonable aggregate value mentioned in subsection (2) of section 546, over
    - (b) the allowable aggregate amount mentioned in subsection (3) of that section;
  - “terminal chargeable event” means any chargeable event other than—
    - (a) an assignment for money or money's worth of the whole of the rights conferred by the policy or contract;
    - (b) the occurrence of a section 546 excess; or
    - (c) a chargeable event by virtue of section 546C(7)(a);
- “year” has the meaning given by section 546(4).

#### **546C Charging the section 546 excess to tax where section 546B applies**

- (1) This section applies where, in relation to any policy or contract, the amount of a section 546 excess occurring at the end of any year falls to be charged to tax in accordance with this section by virtue of section 546B(3)(b).
- (2) The following amounts shall be calculated as at the end of that year—
  - (a) the aggregate of the values calculated under section 546(1)(a) in respect of any part of or share in the rights conferred by the policy or contract which has been assigned for money or money's worth, or surrendered, during the year;
  - (b) the amount by which—
    - (i) the reckonable aggregate value mentioned in section 546(2), as at the end of the year, exceeds
    - (ii) the aggregate calculated under paragraph (a) above;
  - and
  - (c) the amount by which—

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- (i) the allowable aggregate amount mentioned in section 546(3), as at the end of the year, exceeds  
(ii) the amount calculated under paragraph (b) above.
- (3) In this section—
- (a) “relevant transaction” means any assignment for money or money’s worth, or any surrender, of a part of or share in the rights conferred by the policy or contract which has happened during the year;
- (b) “transaction value”, in relation to any relevant transaction, means the value calculated in accordance with section 546(1)(a) in the case of that transaction;
- (c) “the amount of available premium” means—
- (i) in relation to the earliest relevant transaction, the amount calculated under subsection (2)(c) above (that amount being taken to be nil if there is no such excess as is there mentioned); and
- (ii) in relation to each successive relevant transaction, that amount as successively reduced under subsections (5) to (7) below.
- (4) Subsection (5) below shall apply successively to each of the relevant transactions that happened in the year, in the order in which they happened.
- If the year is the final year and ends with a terminal chargeable event, this subsection is subject to section 546D.
- (5) Where this subsection applies in relation to a relevant transaction—
- (a) the transaction value shall be compared to the amount of available premium; and
- (b) if the amount of available premium exceeds or is equal to the transaction value, subsection (6) below shall apply in relation to the transaction; but
- (c) if the transaction value exceeds the amount of available premium, subsection (7) below shall apply in relation to the transaction.
- (6) Where this subsection applies in relation to a relevant transaction—
- (a) the amount of available premium shall be reduced (or further reduced) by the transaction value; and
- (b) that reduction shall have effect in relation to the next subsequent relevant transaction.
- (7) Where this subsection applies in relation to a relevant transaction—
- (a) the relevant transaction shall for the purposes of this Chapter be a chargeable event in relation to the policy or contract, except as provided by sections 540(3) and 542(3);
- (b) a gain of an amount equal to that by which the transaction value exceeds the amount of available premium shall be treated for the purposes of this Chapter as arising in connection with the policy or contract on the happening of that chargeable event; and
- (c) in relation to any subsequent relevant transaction, the amount of available premium shall be reduced to nil.

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- (8) Where the whole or any part of the amount of any gain treated as arising by subsection (7)(b) above falls to be treated under any provision of section 547 as forming part of the income of any body or person for—
- (a) the year of assessment in which the chargeable event in question happened, or
  - (b) the accounting period in which it happened,
- that year of assessment or accounting period shall be taken to be the one which includes the end of the year as at which the section 546 excess in question occurs, instead of the one (if different) in which the relevant transaction happened.
- (9) Where this section applies in relation to the final year and that year ends with a terminal chargeable event—
- (a) effect shall be given to this section before applying the provisions of this Chapter in relation to the terminal chargeable event; and
  - (b) in applying this Chapter in relation to the terminal chargeable event, any chargeable event by virtue of subsection (7)(a) above accordingly falls to be regarded as having occurred before the terminal chargeable event.
- (10) This section shall be construed as one with section 546B.

#### **546D Modifications of s.546C for final year ending with terminal chargeable event**

- (1) This section applies in any case where the year mentioned in section 546C(4) is the final year and that year ends with a terminal chargeable event.
- (2) In any such case there shall be calculated, as at the end of the year, the amount of the gain (“the gains limit”) that would have been treated as arising on the happening of the terminal chargeable event, apart from the application of sections 546B and 546C in relation to that year.
- (3) Subsection (5) of section 546C shall apply successively to each of the relevant transactions that happened in the year, in the order in which they happened, unless and until the transaction in question (the “final transaction”) is such that the aggregate of—
- (a) its transaction value apart from subsection (4) below, and
  - (b) the sum of the transaction values of any relevant transactions to which subsection (5) of that section has previously applied,
- exceeds the gains limit.
- (4) If, in the case of the final transaction,—
- (a) the aggregate mentioned in subsection (3) above exceeds the gains limit, but
  - (b) the sum mentioned in paragraph (b) of that subsection is less than that limit,
- subsection (5) of section 546C shall apply in relation to that transaction, but for the purposes of subsections (5) to (7) of that section its transaction value shall be reduced to an amount equal to the difference between the gains limit and the sum mentioned in paragraph (b) above.

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(5) Except as provided by subsection (4) above, subsection (5) of section 546C shall not apply in relation to the final transaction or any subsequent relevant transaction.

(6) This section shall be construed as one with sections 546B and 546C.”.

*Method of charging gain to tax*

11 (1) Section 547 is amended as follows.

(2) In subsection (1) (which makes provision for charging tax in cases where under section 541, 543 or 545 a gain is treated as arising) for “or 545” substitute “ , 545 or 546C ”.

(3) After subsection (1) insert—

“(1A) In their application in relation to a gain which is treated as arising by virtue of section 546C(7)(b), subsection (1) above and subsections (9) to (11) below are subject to section 546C(8).”.

(4) For subsection (4) (application of section in relation to an assignment of a share only in any rights) substitute—

“(4) References in subsection (1) above to the rights conferred by a policy or contract are, in the case of an assignment or surrender of only a part of or share in any rights, references to that part or share.”.

<sup>F56</sup>(5) .....

<sup>F56</sup>(6) .....

**Textual Amendments**

**F56** Sch. 28 para. 11(5)(6) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Method of charging gain to tax: multiple interests*

12 In section 547A, for subsection (2) (application of section in relation to an assignment of a share only in any rights) substitute—

“(2) References in this section to the rights conferred by a policy or contract are, in the case of an assignment or surrender of only a part of or share in any rights, references to that part or share.”.

*Corresponding deficiency relief*

<sup>F57</sup>13 .....

**Textual Amendments**

**F57** Sch. 28 paras. 13-15 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

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*Relief where gain charged at higher rate*

<sup>F57</sup>14 .....

**Textual Amendments**

**F57** Sch. 28 paras. 13-15 repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)

*Right of individual to recover tax from trustees*

<sup>F57</sup>15 .....

**Textual Amendments**

**F57** Sch. 28 paras. 13-15 repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)

*Right of company to recover tax from trustees*

16 In section 551A(1)(b) (which refers to the rights or share in question being held on trust) for “rights or share” substitute “ rights, or the part or share, ”.

*Non-resident policies and off-shore capital redemption policies*

- 17 (1) Section 553 is amended as follows.
- (2) In subsection (3) (reduction for non-residence of the amount that would otherwise be treated by virtue of section 541 as a gain arising) after “section 541” insert “ or 546C(7)(b) ”.
- <sup>F58</sup>(3) .....
- (4) In subsection (10) (interpretation) in the definition of “chargeable event” after “545” insert “ or 546C(7)(a) ”.

**Textual Amendments**

**F58** Sch. 28 para. 17(3) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)

**PART 2**

**PROVISION OF INFORMATION BY INSURERS**

*Information: duty of insurers*

18 For section 552 of the Taxes Act 1988 substitute—

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### “552 Information: duty of insurers

- (1) Where a chargeable event within the meaning of this Chapter has happened in relation to any policy or contract, the body by or with whom the policy or contract was issued, entered into or effected shall—
  - (a) unless satisfied that no gain is to be treated as arising by reason of the event, deliver to the appropriate policy holder before the end of the relevant three month period a certificate specifying the information described in subsection (5) below; and
  - (b) if the condition in paragraph (a) or (b) of subsection (2) below is satisfied, deliver to the inspector before the end of the relevant three month period a certificate specifying the information described in subsection (5) below together with the name and address of the appropriate policy holder.
- (2) For the purposes of this section—
  - (a) the condition in this paragraph is that the event is an assignment for money or money’s worth of the whole of the rights conferred by the policy or contract; or
  - (b) the condition in this paragraph is that the amount of the gain, or the aggregate amount of the gain and any gains connected with it, exceeds one half of the basic rate limit for the relevant year of assessment.
- (3) If, in the case of every certificate which a body delivers under subsection (1)
  - (a) above which relates to a gain attributable to a year of assessment (or, where the appropriate policy holder is a company, the corresponding financial year), the body also delivers to the inspector—
    - (a) before the end of the relevant three month period for the purposes of subsection (1)(b) above,
    - (b) by a means prescribed by the Board for the purposes of this subsection under section 552ZA(5), and
    - (c) in a form so prescribed in the case of that means,
 a certificate specifying the same information as the certificate under subsection (1)(a) together with the name and address of the appropriate policy holder, the body shall be taken to have complied with the requirements of subsection (1)(b) above in relation to that year of assessment, and the corresponding financial year, so far as relating to the chargeable events to which the certificates relate.
- (4) Where a certificate is not required to be delivered under subsection (1)(b) above in the case of any chargeable event—
  - (a) the inspector may by notice require the body to deliver to him a copy of any certificate that the body was required to deliver under subsection (1)(a) above which relates to the chargeable event; and
  - (b) it shall be the duty of the body to deliver such a copy within 30 days of receipt of the notice.
- (5) The information to be given to the appropriate policy holder pursuant to subsection (1)(a) above or the inspector pursuant to subsection (1)(b) above is—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) any unique identifying designation given to the policy or contract;
  - (b) the nature of the chargeable event and—
    - (i) the date on which it happened; and
    - (ii) if it is a chargeable event by virtue of section 546C(7)(a), the date on which the year ends;
  - (c) if the event is the assignment of all the rights conferred by the policy or contract, such of the following as may be required for computing the amount of the gain to be treated as arising by virtue of this Chapter—
    - (i) the amount or value of any relevant capital payments;
    - (ii) the amounts previously paid under the policy or contract by way of premiums or otherwise by way of consideration for an annuity;
    - (iii) the capital element in any payment previously made on account of an annuity;
    - (iv) the value of any previously assigned parts of or shares in the rights conferred by the policy or contract;
    - (v) the total of the amounts of gains treated as arising on previous chargeable events by reason, or in consequence, of the occurrence of a section 546 excess at the end of a year;
  - (d) except where paragraph (c) above applies, the amount of the gain treated as arising by reason of the event;
  - (e) the number of years relevant for computing the appropriate fraction of the gain for the purposes of section 550(3), apart from section 553(8);
  - (f) on the assumption that section 547(1)(a) has effect in relation to the gain—
    - (i) whether an individual would fall to be treated as having paid income tax at the basic rate on the amount of the gain in accordance with section 547(5)(a); and
    - (ii) if so, except in a case where paragraph (c) above applies, the amount of such tax that would fall to be so treated as paid.
- (6) For the purposes of subsection (1)(a) above, the relevant three month period is whichever of the following periods ends the latest—
- (a) the period of three months following the happening of the chargeable event;
  - (b) if the event is a surrender or assignment which is a chargeable event by virtue of section 546C(7)(a), the period of three months following the end of the year in which the event happens;
  - (c) if the event is a death or an assignment of the whole of the rights or a surrender or assignment which is a chargeable event by virtue of section 546C(7)(a), the period of three months beginning with receipt of written notification of the event.
- (7) For the purposes of subsection (1)(b) above, the relevant three month period is whichever of the following periods ends the latest—
- (a) the period of three months following the end of the year of assessment, or, where the policy holder is a company, the financial year, in which the event happened;

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- (b) if the event is a surrender or assignment which is a chargeable event by virtue of section 546C(7)(a), the period of three months following the end of the year in which the event happens;
  - (c) if the event is a death or an assignment, the period of three months beginning with receipt of written notification of the event;
  - (d) if a certificate under subsection (1)(b) above would not be required in respect of the event apart from the happening of another event, and that other event is one of those mentioned in paragraph (c) above, the period of three months beginning with receipt of written notification of that other event.
- (8) For the purposes of this section the cases where a gain is connected with another gain are those cases where—
- (a) both gains arise in connection with policies or contracts containing obligations which, immediately before the chargeable event, were obligations of the same body;
  - (b) the policy holder of those policies or contracts is the same;
  - (c) both gains are attributable to the same year of assessment or, where the policy holder is a company, to the same financial year;
  - (d) the terms of the policies or contracts are the same, apart from any difference in their maturity dates; and
  - (e) the policies or contracts were issued in respect of insurances made, or were entered into or effected, on the same date.
- (9) For the purposes of this section, the year of assessment or financial year to which a gain is attributable is—
- (a) in the case of a gain treated as arising by virtue of section 546C(7)(b), the year of assessment or financial year which includes the end of the year as at which the section 546 excess in question occurs; or
  - (b) in any other case, the year of assessment or financial year in which happens the chargeable event by reason of which the gain is treated as arising.
- (10) In this section—
- “amount”, in relation to any gain, means the amount of the gain apart from section 553(3);
- “appropriate policy holder” means—
- (a) in relation to an assignment of part of or a share in the rights conferred by a policy or contract, any person who is both—
    - (i) the policy holder, or one of the policy holders, immediately before the assignment; and
    - (ii) the assignor or one of the assignors; and
  - (b) in relation to any other chargeable event, the person who is the policy holder immediately before the happening of the event;
- “financial year” means a period of 12 months beginning with 1st April;
- “the relevant year of assessment”, in the case of any gain, means—
- (a) the year of assessment to which the gain is attributable, or

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- (b) if the gain arises to a company, the year of assessment which corresponds to the financial year to which the gain is attributable;  
“section 546 excess” has the meaning given in section 546B(4);  
“year”, in relation to any policy or contract, has the meaning given by section 546(4).
- (11) For the purposes of this section a year of assessment and a financial year correspond to each other if the financial year ends with 31st March in the year of assessment.
- (12) This section is supplemented by section 552ZA.

### **552ZA Information: supplementary provisions**

- (1) This section supplements section 552 and shall be construed as one with it.
- (2) Where the obligations under any policy or contract of the body that issued, entered into or effected it (“the original insurer”) are at any time the obligations of another body (“the transferee”) to whom there has been a transfer of the whole or any part of a business previously carried on by the original insurer, section 552 shall have effect in relation to that time, except where the chargeable event—
- (a) happened before the transfer, and
  - (b) in the case of a death or an assignment, is an event of which the notification mentioned in subsection (6) or (7) of that section was given before the transfer,
- as if the policy or contract had been issued, entered into or effected by the transferee.
- (3) Where, in consequence of section 546C(7)(a), paragraph (a) or (b) of section 552(1) requires certificates to be delivered in respect of two or more surrenders, happening in the same year, of part of or a share in the rights conferred by the policy or contract, a single certificate may be delivered under the paragraph in question in respect of all those surrenders (and may treat them as if they together constituted a single surrender) unless between the happening of the first and the happening of the last of them there has been—
- (a) an assignment of part of or a share in the rights conferred by the policy or contract; or
  - (b) an assignment, otherwise than for money or money’s worth, of the whole of the rights conferred by the policy or contract.
- (4) Where the appropriate policy holder is two or more persons—
- (a) section 552(1)(a) requires a certificate to be delivered to each of them; but
  - (b) nothing in section 552 or this section requires a body to deliver a certificate under subsection (1)(a) of that section to any person whose address has not been provided to the body (or to another body, at a time when the obligations under the policy or contract were obligations of that other body).
- (5) A certificate under section 552(1)(b) or (3)—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) shall be in a form prescribed for the purpose by the Board; and
  - (b) shall be delivered by any means prescribed for the purpose by the Board;
- and different forms, or different means of delivery, may be prescribed for different cases or different purposes.
- (6) The Board may by regulations make such provision as they think fit for securing that they are able—
    - (a) to ascertain whether there has been or is likely to be any contravention of the requirements of section 552 or this section; and
    - (b) to verify any certificate under that section.
  - (7) Regulations under subsection (6) above may include, in particular, provisions requiring persons to whom premiums under any policy are or have at any time been payable—
    - (a) to supply information to the Board; and
    - (b) to make available books, documents and other records for inspection on behalf of the Board.
  - (8) Regulations under subsection (6) above may—
    - (a) make different provision for different cases; and
    - (b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.”.

*Duties of overseas insurers’ tax representatives*

- 19 In section 552B of the Taxes Act 1988, for subsection (2) (which specifies the relevant duties) substitute—

“(2) For the purposes of this section “the relevant duties” are—

- (a) the duties imposed by section 552,
- (b) the duties imposed by section 552ZA(2), (4) or (5), and
- (c) any duties imposed by regulations made under subsection (6) of section 552ZA by virtue of subsection (7) of that section,

so far as relating to relevant insurances under which the overseas insurer in question has any obligations.”.

*Penalties*

- 20 In section 98 of the Taxes Management Act 1970 (c. 9), in the second column of the Table—

- (a) for the entry “section 552(1) to (4);” substitute “ section 552; ”; and
- (b) for the entry “regulations under section 552(4A)” substitute “ regulations under section 552ZA(6); ”.

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## SCHEDULE 29

Section 88.

### AMENDMENTS TO MACHINERY OF SELF-ASSESSMENT

#### PART 1

##### AMENDMENT OR CORRECTION OF RETURN

###### *Assessment by Revenue treated as included in return*

- 1 (1) In section 9(3) of the Taxes Management Act 1970 (personal or trustee return to include self-assessment: assessment on the taxpayer's behalf) omit the words following the paragraphs.
- (2) After that subsection insert—
  - “(3A) An assessment under subsection (3) above is treated for the purposes of this Act as a self-assessment and as included in the return.”.

###### *Power to amend or correct personal or trustee return*

- 2 (1) In section 9 of the Taxes Management Act 1970 (personal or trustee return to include self-assessment) omit subsections (4) to (6).
- (2) After that section insert—

###### **“9ZA Amendment of personal or trustee return by taxpayer**

- (1) A person may amend his return under section 8 or 8A of this Act by notice to an officer of the Board.
- (2) An amendment may not be made more than twelve months after the filing date.
- (3) In this section “the filing date” means the day mentioned in section 8(1A) or, as the case may be, section 8A(1A) of this Act.

###### **9ZB Correction of personal or trustee return by Revenue**

- (1) An officer of the Board may amend a return under section 8 or 8A of this Act so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise).
- (2) A correction under this section is made by notice to the person whose return it is.
- (3) No such correction may be made more than nine months after—
  - (a) the day on which the return was delivered, or
  - (b) if the correction is required in consequence of an amendment of the return under section 9ZA of this Act, the day on which that amendment was made.
- (4) A correction under this section is of no effect if the person whose return it is gives notice rejecting the correction.

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- (5) Notice of rejection under subsection (4) above must be given—
- (a) to the officer of the Board by whom the notice of correction was given,
  - (b) before the end of the period of 30 days beginning with the date of issue of the notice of correction.”.

*Power to amend or correct partnership return*

- 3 (1) In section 12AB of the Taxes Management Act 1970 (c. 9) (partnership returns) omit subsections (2) to (4) and the definition in subsection (5) of “filing date”.
- (2) After that section insert—

**“12ABA Amendment of partnership return by taxpayer**

- (1) A partnership return may be amended by the partner who made and delivered the return, or his successor, by notice to an officer of the Board.
- (2) An amendment may not be made more than twelve months after the filing date.
- (3) Where a partnership return is amended under this section, the officer shall by notice to each of the partners amend—
  - (a) the partner’s return under section 8 or 8A of this Act, or
  - (b) the partner’s company tax return,
 so as to give effect to the amendment of the partnership return.
- (4) In this section “the filing date” means the day specified in the notice under section 12AA(2) of this Act or, as the case may be, subsection (3) of that section.

**12ABB Correction of partnership return by Revenue**

- (1) An officer of the Board may amend a partnership return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise).
- (2) A correction under this section is made by notice to the partner who made and delivered the return, or his successor.
- (3) No such correction may be made more than nine months after—
  - (a) the day on which the return was delivered, or
  - (b) if the correction is required in consequence of an amendment of the return under section 12ABA of this Act, the day on which that amendment was made.
- (4) A correction under this section is of no effect if the person to whom the notice of correction was given, or his successor, gives notice rejecting the correction.
- (5) Notice of rejection under subsection (4) above must be given—
  - (a) to the officer of the Board by whom the notice of correction was given,

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) before the end of the period of 30 days beginning with the date of issue of the notice of correction.
  - (6) Where a partnership return is corrected under this section, the officer shall by notice to each of the partners amend—
    - (a) the partner's return under section 8 or 8A of this Act, or
    - (b) the partner's company tax return,so as to give effect to the correction of the partnership return.
- Any such amendment shall cease to have effect if the correction is rejected.”.

## PART 2

### ENQUIRIES INTO RETURNS

#### *Enquiry into personal or trustee return*

- 4 (1) For section 9A of the Taxes Management Act 1970 (c. 9) (power to enquire into returns) substitute—

#### **“9A Notice of enquiry**

- (1) An officer of the Board may enquire into a return under section 8 or 8A of this Act if he gives notice of his intention to do so (“notice of enquiry”)—
  - (a) to the person whose return it is (“the taxpayer”),
  - (b) within the time allowed.
- (2) The time allowed is—
  - (a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the filing date;
  - (b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
  - (c) if the return is amended under section 9ZA of this Act, up to and including the quarter day next following the first anniversary of the day on which the amendment was made.

For this purpose the quarter days are 31st January, 30th April, 31st July and 31st October.

- (3) A return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) of the return under section 9ZA of this Act.
- (4) An enquiry extends to anything contained in the return, or required to be contained in the return, including any claim or election included in the return, subject to the following limitation.
- (5) If the notice of enquiry is given as a result of an amendment of the return under section 9ZA of this Act—
  - (a) at a time when it is no longer possible to give notice of enquiry under subsection (2)(a) or (b) above, or

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

(b) after an enquiry into the return has been completed, the enquiry into the return is limited to matters to which the amendment relates or which are affected by the amendment.

(6) In this section “the filing date” means the day mentioned in section 8(1A) or, as the case may be, section 8A(1A) of this Act.

### **9B Amendment of return by taxpayer during enquiry**

- (1) This section applies if a return is amended under section 9ZA of this Act (amendment of personal or trustee return by taxpayer) at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) So far as the amendment affects the amount stated in the self-assessment included in the return as the amount of tax payable, it does not take effect while the enquiry is in progress and—
  - (a) if the officer states in the closure notice that he has taken the amendment into account and that—
    - (i) the amendment has been taken into account in formulating the amendments contained in the notice, or
    - (ii) his conclusion is that the amendment is incorrect,
 the amendment shall not take effect;
  - (b) otherwise, the amendment takes effect when the closure notice is issued.
- (4) For the purposes of this section the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

### **9C Amendment of self-assessment during enquiry to prevent loss of tax**

- (1) This section applies where an enquiry is in progress into a return as a result of notice of enquiry by an officer of the Board under section 9A(1) of this Act.
- (2) If the officer forms the opinion—
  - (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
  - (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,
 he may by notice to the taxpayer amend the assessment to make good the deficiency.
- (3) In the case of an enquiry which under section 9A(5) of this Act is limited to matters arising from an amendment of the return, subsection (2) above only applies so far as the deficiency is attributable to the amendment.
- (4) For the purposes of this section the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which notice of enquiry is given, and

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) ending with the day on which the enquiry is completed.

#### **9D Choice between different Cases of Schedule D**

- (1) Where in the case of a return under section 8 or 8A of this Act—
- (a) alternative methods are allowed by the Tax Acts for bringing amounts into charge to tax,
  - (b) the return is made using one of those methods but could have been made using an alternative method, and
  - (c) an officer of the Board determines which of the alternative methods is to be used,
- the officer's determination is final and conclusive, for the purposes of any enquiry into the return, as to the basis of charge to be used.
- (2) For the purposes of this section the cases where the Tax Acts allow alternative methods for bringing amounts into charge to tax are where they may be brought into charge either—
- (a) in computing profits chargeable to tax under Case I or II of Schedule D, or
  - (b) as amounts within Case III, IV or V of that Schedule.”.
- (2) In section 9A(2)(a) of the Taxes Management Act 1970 (c. 9) (as substituted by subparagraph (1) above) as it applies in relation to returns for years of assessment before the year 2001-02, for “up to the end of the period of twelve months after the filing date” substitute “ twelve months beginning with that date ”.

#### *Enquiry into partnership return*

- 5 (1) For section 12AC of the Taxes Management Act 1970 (c. 9) (power to enquire into partnership return) substitute—

#### **“12AC Notice of enquiry**

- (1) An officer of the Board may enquire into a partnership return if he gives notice of his intention to do so (“notice of enquiry”)—
- (a) to the partner who made and delivered the return, or his successor,
  - (b) within the time allowed.
- (2) The time allowed is—
- (a) if the return was delivered on or before the filing date, up to the end of the period of twelve months after the filing date;
  - (b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
  - (c) if the return is amended under section 12ABA of this Act, up to and including the quarter day next following the first anniversary of the day on which the amendment was made.

For this purpose the quarter days are 31st January, 30th April, 31st July and 31st October.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (3) A return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) of the return under section 12ABA of this Act.
- (4) An enquiry extends to anything contained in the return, or required to be contained in the return, including any claim or election included in the return, subject to the following limitation.
- (5) If the notice of enquiry is given as a result of an amendment of the return under section 12ABA of this Act—
  - (a) at a time when it is no longer possible to give notice of enquiry under subsection (2)(a) or (b) above, or
  - (b) after an enquiry into the return has been completed,
 the enquiry into the return is limited to matters to which the amendment relates or which are affected by the amendment.
- (6) The giving of notice of enquiry under subsection (1) above at any time shall be deemed to include the giving of notice of enquiry—
  - (a) under section 9A(1) of this Act to each partner who at that time has made a return under section 8 or 8A of this Act or at any subsequent time makes such a return, or
  - (b) under paragraph 24 of Schedule 18 to the Finance Act 1998 to each partner who at that time has made a company tax return or at any subsequent time makes such a return.
- (7) In this section “the filing date” means the day specified in the notice under section 12AA(2) of this Act or, as the case may be, subsection (3) of that section.

#### **12AD Amendment of partnership return by taxpayer during enquiry**

- (1) This section applies if a partnership return is amended under section 12ABA of this Act (amendment of partnership return by taxpayer) at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) So far as the amendment affects any amount stated in the partnership statement included in the return, it does not take effect while the enquiry is in progress and—
  - (a) if the officer states in the closure notice that he has taken the amendment into account and that—
    - (i) the amendment has been taken into account in formulating the amendments contained in the notice, or
    - (ii) his conclusion is that the amendment is incorrect,
 the amendment shall not take effect;
  - (b) otherwise, the amendment takes effect when the closure notice is issued.
- (4) Where the effect of an amendment is deferred under subsection (3) above—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) no amendment to give effect to that amendment (“the deferred amendment”) shall be made under section 12ABA(3) of this Act (consequential amendment of partners’ returns) while the enquiry is in progress;
  - (b) if the deferred amendment does not take effect but is taken into account as mentioned in subsection (3)(a)(i) above, section 28B(4) of this Act (amendment of partners’ returns consequential on amendment of partnership return by closure notice) applies accordingly; and
  - (c) if the deferred amendment takes effect under subsection (3)(b) above, any necessary amendment under section 12ABA(3) of this Act may then be made.
- (5) For the purposes of this section the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

#### **12AE Choice between different Cases of Schedule D**

- (1) Where in the case of a partnership return—
- (a) alternative methods are allowed by the Tax Acts for bringing amounts into charge to tax,
  - (b) the return is made using one of those methods but could have been made using an alternative method, and
  - (c) an officer of the Board determines which of the alternative methods is to be used,
- the officer’s determination is final and conclusive, for the purposes of any enquiry into the return, as to the basis of charge to be used.
- (2) For the purposes of this section the cases where the Tax Acts allow alternative methods for bringing amounts into charge to tax are those specified—
- (a) for income tax purposes, in section 9D(2) of this Act;
  - (b) for corporation tax purposes, in paragraph 84(2) or (3) of Schedule 18 to the Finance Act 1998.”.
- (2) In section 12AC(2)(a) of the Taxes Management Act 1970 (c. 9) (as substituted by sub-paragraph (1) above) as it applies in relation to returns for years of assessment before the year 2001-02, for “up to the end of the period of twelve months after the filing date” substitute “ twelve months beginning with that date ”.

### **PART 3**

#### **REFERRAL OF QUESTIONS DURING ENQUIRY**

##### *Enquiry into personal, trustee or partnership return*

- 6 (1) After Part 3 of the Taxes Management Act 1970 insert—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

## “PART 3A

### REFERRAL OF QUESTIONS DURING ENQUIRY

#### Referral of questions during enquiry

28Z(A) At any time when an enquiry is in progress under section 9A(1) or 12AC(1) of this Act, any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.

- (2) Notice of referral must be given—
  - (a) jointly by the taxpayer and an officer of the Board,
  - (b) in writing,
  - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this section in relation to an enquiry.
- (5) For the purposes of this section the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.
- (6) In this section “the taxpayer” means—
  - (a) in relation to an enquiry under section 9A(1) of this Act, the person to whom the notice of enquiry was given;
  - (b) in relation to an enquiry under section 12AC(1) of this Act, the person to whom the notice of enquiry was given or his successor.

#### Withdrawal of notice of referral

28Z(B) Either party may withdraw a notice of referral under section 28ZA of this Act by notice in accordance with this section.

- (2) Notice of withdrawal must be given—
  - (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

#### Regulations with respect to referrals

28Z(C) The Lord Chancellor may make provision by regulations with respect to referrals to the Special Commissioners under—

- (a) section 28ZA of this Act, or
  - (b) paragraph 31A of Schedule 18 to the Finance Act 1998.
- (2) Regulations under subsection (1) above may, in particular—

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) make provision with respect to any of the matters dealt with in the following provisions of this Act—
    - (i) section 50 (procedure before the Special Commissioners),
    - (ii) section 56 (statement of case for opinion of the High Court),
    - (iii) section 56A (appeals from the Special Commissioners), and
    - (iv) section 58 (proceedings in Northern Ireland), or
  - (b) provide for any of those provisions to apply, with such modifications as may be specified in the regulations, in relation to a referral to the Special Commissioners under the provisions mentioned in subsection (1) above.
- (3) Regulations under subsection (1) above may—
- (a) make different provision for different cases or different circumstances, and
  - (b) contain such supplementary, incidental, consequential and transitional provision as the Lord Chancellor thinks appropriate.
- (4) Regulations under subsection (1) above shall—
- (a) be made by statutory instrument, and
  - (b) be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In the following provisions any reference to an appeal includes a reference to a referral under section 28ZA of this Act or paragraph 31A of Schedule 18 to the Finance Act 1998—
- (a) sections 56B, 56C and 56D of this Act (power of the Lord Chancellor to make regulations about the practice and procedure to be followed in connection with appeals to the Special Commissioners); and
  - (b) section 57 of this Act (power of the Board to make regulations about appeals relating to chargeable gains).
- (6) Any regulations under section 56B or 57 of this Act which are in force immediately before the commencement of subsection (1) above shall apply in relation to referrals under section 28ZA of this Act or paragraph 31A of Schedule 18 to the Finance Act 1998, subject to any necessary modifications, as they apply in relation to appeals to the Special Commissioners.
- (7) Regulations under this section relating to proceedings in Scotland shall not be made except with the consent of the Scottish Ministers.

#### **Effect of referral on enquiry**

- 28ZD) While proceedings on a referral under section 28ZA of this Act are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this section proceedings on a referral are in progress where—
- (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (c) the questions referred have not been finally determined.
- (3) For the purposes of subsection (2)(c) above a question referred is finally determined when—
  - (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of that determination being varied or set aside (disregarding any power to give permission to appeal out of time).

### **Effect of determination**

- 28Z(E) The determination of a question referred to the Special Commissioners under section 28ZA of this Act is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by an officer of the Board—
    - (a) in reaching his conclusions on the enquiry, and
    - (b) in formulating any amendments of the return required to give effect to those conclusions.
  - (3) Any right of appeal under section 31(1)(a), (b) or (c) of this Act may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.”
  - (2) This paragraph applies—
    - (a) where the notice of enquiry is given after the passing of this Act, or
    - (b) where the enquiry is in progress immediately before the passing of this Act.

For the purposes of paragraph (b) an enquiry is in progress until the officer’s enquiries fall to be treated as completed under section 28A(5) or, as the case may be, section 28B(5) of the Taxes Management Act 1970 (c. 9) (as those provisions had effect apart from this Schedule).

### *Enquiry into company tax return*

- 7 (1) In Part 4 of Schedule 18 to the Finance Act 1998 (c. 36) (enquiry into company tax return), after paragraph 31 insert—

#### **“Referral of questions to Special Commissioners during enquiry**

- 31A (1) At any time when an enquiry is in progress into a company’s tax return any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
  - (a) jointly by the company and the Inland Revenue,
  - (b) in writing,
  - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which the Inland Revenue give notice of enquiry into the return, and
  - (b) ending with the day on which the enquiry is completed.

#### **Withdrawal of notice of referral**

- 31B (1) The Inland Revenue or the company may withdraw a notice of referral under paragraph 31A by notice in accordance with this paragraph.
- (2) Notice of withdrawal must be given—
  - (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

#### **Effect of referral on enquiry**

- 31C (1) While proceedings on a referral under paragraph 31A are in progress in relation to an enquiry—
  - (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
  - (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
  - (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of that determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

#### **Effect of determination**

- 31D (1) The determination of a question referred to the Special Commissioners under paragraph 31A is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by the Inland Revenue in reaching their conclusions on the enquiry.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (3) Any right of appeal under paragraph 30 or 34(3) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.”.
- (2) This paragraph applies in relation to an enquiry under Part 4 of Schedule 18 to the Finance Act 1998 (c. 36)—
- (a) in relation to which notice of enquiry is given after the passing of this Act, or
  - (b) which is in progress (within the meaning of paragraph 31(5) of that Schedule) immediately before the passing of this Act.

## PART 4

### PROCEDURE ON COMPLETION OF ENQUIRY

#### *Procedure on completion of enquiry into personal or trustee return*

- 8 (1) For section 28A of the Taxes Management Act 1970 (c. 9) (amendment of self-assessment where enquiries made) substitute—

#### **“28A Completion of enquiry into personal or trustee return**

- (1) An enquiry under section 9A(1) of this Act is completed when an officer of the Board by notice (a “closure notice”) informs the taxpayer that he has completed his enquiries and states his conclusions.

In this section “the taxpayer” means the person to whom notice of enquiry was given.

- (2) A closure notice must either—
- (a) state that in the officer’s opinion no amendment of the return is required, or
  - (b) make the amendments of the return required to give effect to his conclusions.
- (3) A closure notice takes effect when it is issued.
- (4) The taxpayer may apply to the Commissioners for a direction requiring an officer of the Board to issue a closure notice within a specified period.
- (5) Any such application shall be heard and determined in the same way as an appeal.
- (6) The Commissioners hearing the application shall give the direction applied for unless they are satisfied that there are reasonable grounds for not issuing a closure notice within a specified period.”

- (2) This paragraph applies—
- (a) where the notice of enquiry is given after the passing of this Act, or
  - (b) where the enquiry is in progress immediately before the passing of this Act.

For the purposes of paragraph (b) an enquiry is in progress until the officer’s enquiries fall to be treated as completed under section 28A(5) of the Taxes

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

Management Act 1970 (c. 9) (as that provision had effect apart from this Schedule).

*Procedure on completion of enquiry into partnership return*

- 9 (1) For section 28B of the Taxes Management Act 1970 (amendment of partnership statement where enquiries made) substitute—

**“28B Completion of enquiry into partnership return**

- (1) An enquiry under section 12AC(1) of this Act is completed when an officer of the Board by notice (a “closure notice”) informs the taxpayer that he has completed his enquiries and states his conclusions.

In this section “the taxpayer” means the person to whom notice of enquiry was given or his successor.

- (2) A closure notice must either—
- (a) state that in the officer’s opinion no amendment of the return is required, or
  - (b) make the amendments of the return required to give effect to his conclusions.
- (3) A closure notice takes effect when it is issued.
- (4) Where a partnership return is amended under subsection (2) above, the officer shall by notice to each of the partners amend—
- (a) the partner’s return under section 8 or 8A of this Act, or
  - (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership return.
- (5) The taxpayer may apply to the Commissioners for a direction requiring an officer of the Board to issue a closure notice within a specified period.
- (6) Any such application shall be heard and determined in the same way as an appeal.
- (7) The Commissioners hearing the application shall give the direction applied for unless they are satisfied that there are reasonable grounds for not issuing a closure notice within a specified period.”.

- (2) This paragraph applies—
- (a) where the notice of enquiry is given after the passing of this Act, or
  - (b) where the enquiry is in progress immediately before the passing of this Act.

For the purposes of paragraph (b) an enquiry is in progress until the officer’s enquiries fall to be treated as completed under section 28B(5) of the Taxes Management Act 1970 (c. 9) (as that provision had effect apart from this Schedule).

*Procedure on completion of enquiry into claims, &c. not included in returns*

- 10 (1) Schedule 1A to the Taxes Management Act 1970 (claims, &c. not included in returns) is amended as follows.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

(2) For paragraph 7 (amendments of claims where enquiries made) substitute—

**“Completion of enquiry into claim**

7 (1) An enquiry under paragraph 5 above is completed when an officer of the Board by notice (a “closure notice”) informs the claimant that he has completed his enquiries and states his conclusions.

(2) In the case of a claim for discharge or repayment of tax, the closure notice must either—

- (a) state that in the officer’s opinion no amendment of the claim is required, or
- (b) if in the officer’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

In the case of an enquiry falling within paragraph 5(1)(b) above, paragraph (b) above only applies so far as the deficiency or excess is attributable to the claimant’s amendment.

(3) In the case of a claim that is not a claim for discharge or repayment of tax, the closure notice must either—

- (a) allow the claim, or
- (b) disallow the claim, wholly or to such extent as appears to the officer appropriate.

(4) A closure notice takes effect when it is issued.

(5) The claimant may apply to the Commissioners for a direction requiring an officer of the Board to issue a closure notice within a specified period.

(6) Any such application shall be heard and determined in the same way as an appeal.

(7) The Commissioners hearing the application shall give the direction applied for unless they are satisfied that there are reasonable grounds for not issuing a closure notice within a specified period.

(8) In relation to a partnership claim, references in this paragraph to the claimant are to the person who made the claim or his successor.”.

(3) This paragraph applies—

- (a) where the notice of enquiry is given after the passing of this Act, or
- (b) where the enquiry is in progress immediately before the passing of this Act.

For the purposes of paragraph (b) an enquiry is in progress until the officer’s enquiries fall to be treated as completed under paragraph 7(4) of Schedule 1A to the Taxes Management Act 1970 (c. 9) (as that provision had effect apart from this Schedule).

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

## PART 5

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### Appeals

- 11 (1) For section 31 of the Taxes Management Act 1970 (right of appeal) substitute—

#### “31 Appeals: right of appeal

- (1) An appeal may be brought against—
- (a) any amendment of a self-assessment under section 9C of this Act (amendment by Revenue during enquiry to prevent loss of tax),
  - (b) any conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act (amendment by Revenue on completion of enquiry into return),
  - (c) any amendment of a partnership return under section 30B(1) of this Act (amendment by Revenue where loss of tax discovered), or
  - (d) any assessment to tax which is not a self-assessment.
- (2) An appeal under subsection (1)(a) above against an amendment of a self-assessment made while an enquiry is in progress shall not be heard and determined until the enquiry is completed.
- (3) A determination under section 9D or 12AE of this Act (choice between different Cases of Schedule D) may not be questioned on an appeal under this section.
- (4) This section has effect subject to any express provision in the Taxes Acts, including in particular any provision making one kind of assessment conclusive in an appeal against another kind of assessment.

#### 31A Appeals: notice of appeal

- (1) Notice of an appeal under section 31 of this Act must be given—
- (a) in writing,
  - (b) within 30 days after the specified date,
  - (c) to the relevant officer of the Board.
- (2) In relation to an appeal under section 31(1)(a) or (c) of this Act—
- (a) the specified date is the date on which the notice of amendment was issued, and
  - (b) the relevant officer of the Board is the officer by whom the notice of amendment was given.
- (3) In relation to an appeal under section 31(1)(b) of this Act—
- (a) the specified date is the date on which the closure notice was issued, and
  - (b) the relevant officer of the Board is the officer by whom the closure notice was given.
- (4) In relation to an appeal under section 31(1)(d) of this Act—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) the specified date is the date on which the notice of assessment was issued, and
  - (b) the relevant officer of the Board is the officer by whom the notice of assessment was given.
- (5) The notice of appeal must specify the grounds of appeal.
- (6) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not wilful or unreasonable.

### **31B Appeals: appeals to General Commissioners**

- (1) An appeal under section 31(1) of this Act shall be to the General Commissioners, subject to—
- (a) section 31C of this Act (appeals to be brought to Special Commissioners),
  - (b) any provision made by or under Part 5 of this Act, and
  - (c) any other provision of the Taxes Acts providing for an appeal to be brought to the Special Commissioners to the exclusion of the General Commissioners.
- (2) Subsection (1) above has effect subject to any election under section 31D of this Act (election to take appeal to Special Commissioners).

### **31C Appeals: appeals to Special Commissioners**

- (1) Unless the Special Commissioners otherwise direct, an appeal under section 31(1)(a), (b) or (c) of this Act shall be to the Special Commissioners if—
- (a) the appeal relates to a return in relation to which notice of enquiry has been given under section 9A(1) or 12AC(1) of this Act, and
  - (b) notice has been given under section 28ZA of this Act referring a question relating to the subject-matter of that enquiry to the Special Commissioners.

This applies even if the notice of referral was subsequently withdrawn.

- (2) An appeal under section 31(1)(d) of this Act (appeal against assessment other than self-assessment) shall be to the Special Commissioners if the assessment was made—
- (a) by the Board, or
  - (b) under section 350 of the principal Act.

### **31D Appeals: election to bring appeal before Special Commissioners**

- (1) The appellant may elect (in accordance with section 46(1) of this Act) to bring before the Special Commissioners an appeal under section 31(1) of this Act that would otherwise be to the General Commissioners.
- (2) Any such election above shall be disregarded if—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) the appellant and the inspector or other officer of the Board agree in writing, at any time before the determination of the appeal, that it is to be disregarded, or
      - (b) the General Commissioners have given a direction under subsection (5) below and have not revoked it.
    - (3) Where an election has been made under subsection (1) above, the inspector or other officer of the Board may refer the election to the General Commissioners.
    - (4) A reference under subsection (3) above must be made—
      - (a) after giving notice to the appellant, and
      - (b) before the determination of the appeal in respect of which the election has been made.
    - (5) On a reference under subsection (3) above the Commissioners shall, unless they are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, direct that the election be disregarded.
    - (6) If at any time after giving a direction under subsection (5) above (but before the determination of the appeal) the General Commissioners are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, they shall revoke the direction.
    - (7) A decision to give or revoke a direction under subsection (5) above shall be final.”.
  - (2) This paragraph applies in relation to—
    - (a) amendments of a self-assessment under section 9C of the Taxes Management Act 1970 (c. 9) as inserted by paragraph 4 of this Schedule,
    - (b) closure notices issued under section 28A(1) or 28B(1) of that Act as substituted by paragraphs 8 and 9 of this Schedule,
    - (c) amendments of partnership returns under section 30B(1) of that Act where notice of the amendment is issued after the passing of this Act, and
    - (d) assessments to tax which are not self-assessments where the notice of the assessment is issued after the passing of this Act.
- 12 (1) Schedule 1A to the Taxes Management Act 1970 (c. 9) (claims etc. not included in returns) is amended as follows.
- (2) For paragraph 9(1) (appeals against amendments under paragraph 7) substitute—
- “(1) An appeal may be brought against—
- (a) any conclusion stated or amendment made by a closure notice under paragraph 7(2) above, or
  - (b) any decision contained in a closure notice under paragraph 7(3) above.
- (1A) Notice of the appeal must be given—
- (a) in writing,
  - (b) within 30 days after the date on which the closure notice was issued,
  - (c) to the officer of the Board by whom the closure notice was given.”.

(3) In paragraph 9(2) (extended time limit for appeal) for “(1)” substitute “(1A)(b)”.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (4) In paragraph 9(3) (Commissioners' power to vary amendment) for "amendment under paragraph 7(3) above" substitute " amendment made by a closure notice under paragraph 7(2) above ".
- (5) In paragraph 9(4) (application of paragraph 8 where amendment varied) for "an amendment made under paragraph 7(3) above" substitute " any such amendment ".
- (6) In paragraph 9(5) (claims disallowed) for "specified in a notice under paragraph 7(3A)" substitute " which was the subject of a decision contained in a closure notice under paragraph 7(3) ".
- (7) In paragraph 10 (appeals to be heard by the Special Commissioners) for "an amendment under paragraph 7(3) above of" substitute " any conclusion stated or amendment made by a closure notice under paragraph 7(2) above relating to ".
- (8) This paragraph applies in relation to closure notices issued under paragraph 7 of Schedule 1A to the Taxes Management Act 1970 as substituted by paragraph 10 of this Schedule.
- 13 (1) Part 11 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns: supplementary provisions) is amended as follows.
- (2) In paragraph 93 (general jurisdiction of Special or General Commissioners) after sub-paragraph (2) insert—
- “(2A) Unless the Special Commissioners otherwise direct, an appeal under paragraph 30 or 34(3) shall be to the Special Commissioners if—
- (a) the appeal relates to a return in relation to which notice of enquiry has been given under paragraph 24, and
- (b) notice has been given under paragraph 31A referring a question relating to the subject-matter of that enquiry to the Special Commissioners.
- This applies even if the notice of referral was subsequently withdrawn.”.

*Due date for payment after amendment or correction of return*

- 14 (1) Section 59B of the Taxes Management Act 1970 (c. 9) (payment of income tax and capital gains tax) is amended as follows.
- (2) In subsection (4A)(a)—
- (a) for "28A(5)" substitute " 28A(1) ", and
- (b) for "the officer's enquiries are treated as" substitute " the enquiry is ".
- (3) For subsection (5) substitute—
- “(5) An amount of tax which is payable or repayable as a result of the amendment or correction of a self-assessment under—
- (a) section 9ZA, 9ZB, 9C or 28A of this Act (amendment or correction of return under section 8 or 8A of this Act), or
- (b) section 12ABA(3)(a), 12ABB(6)(a), 28B(4)(a), 30B(2)(a), 33A(4)(a) or 50(9)(a) of this Act (amendment of partner's return to give effect to amendment or correction of partnership return),

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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is payable (or repayable) on or before the day specified by the relevant provision of Schedule 3ZA to this Act.”.

15 After Schedule 3 to the Taxes Management Act 1970 insert—

“SCHEDULE  
3ZA

DATE BY WHICH PAYMENT TO BE MADE AFTER  
AMENDMENT OR CORRECTION OF SELF-ASSESSMENT

**General**

- 1 (1) This Schedule specifies the day by which tax has to be paid (or repaid) following the amendment or correction of a self-assessment.
- (2) If in any case the general rules in section 59B(3) and (4) of this Act give a later day, those rules apply instead.
- (3) The provisions of this Schedule have effect subject to section 55(6) and (9) of this Act (provisions as to postponement of payment, etc. in case of appeal).

**Amendment of personal or trustee return by the taxpayer**

- 2 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 9ZA of this Act (amendment of personal or trustee return by taxpayer).
- (2) Subject to sub-paragraph (3) below, the amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice of amendment was given.
- (3) If section 9B(3) of this Act applies (amendment of self-assessment by taxpayer during enquiry: deferral of effect), then—
  - (a) if the amendment is taken into account as mentioned in paragraph (a) (i) of that subsection, paragraph 5 below (amendment of personal or trustee return by closure notice) applies accordingly; and
  - (b) if the amendment takes effect under paragraph (b) of that subsection on the issue of the closure notice, the amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the closure notice was given.

**Correction of personal or trustee return by Revenue**

- 3 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the correction of a self-assessment under section 9ZB of this Act (correction of personal or trustee return by the Revenue).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice of correction was given.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

***Amendment of personal or trustee return to prevent loss of tax***

- 4 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 9C of this Act (amendment of personal or trustee return by Revenue to prevent loss of tax).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice of amendment was given.

***Amendment of personal or trustee return by closure notice***

- 5 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 28A of this Act (amendment of personal or trustee return by closure notice following enquiry).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the closure notice was given.

***Amendment consequential on amendment of partnership return by taxpayer***

- 6 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 12ABA(3)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership return amended by taxpayer).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 12ABA(3)(a) of this Act was given.

***Amendment consequential on correction of partnership return by Revenue***

- 7 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 12ABB(6)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership return corrected by Revenue).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 12ABB(6)(a) of this Act was given.

***Amendment consequential on amendment of partnership return by closure notice***

- 8 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 28B(4)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership return amended by closure notice).

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 28B(4)(a) of this Act was given.

***Amendment consequential on amendment of partnership return to prevent loss of tax***

- 9 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 30B(2)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership return amended by Revenue to prevent loss of tax).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 30B(2)(a) of this Act was given.

***Amendment consequential on amendment of partnership return by way of error or mistake relief***

- 10 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 33A(4)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership return amended by Revenue to afford relief in case of error or mistake).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 33A(4)(a) of this Act was given.

***Amendment consequential on reduction or increase on appeal of amounts stated in partnership statement***

- 11 (1) This paragraph applies where an amount of tax is payable or repayable as a result of the amendment of a self-assessment under section 50(9)(a) of this Act (consequential amendment of partner's personal or trustee return where partnership statement amended by Revenue following decision on appeal).
- (2) The amount is payable (or repayable) on or before the day following the end of the period of 30 days beginning with the day on which the notice under section 50(9)(a) of this Act was given.”.
- 16 (1) Paragraphs 14 and 15 above apply where the relevant day is, or is after, the day on which this Act is passed.
- (2) In sub-paragraph (1) the “relevant day” means the first day of the period of 30 days specified in the relevant provision of Schedule 3ZA to the Taxes Management Act 1970 (c. 9) (as inserted by paragraph 15 above).

***Effect of return on recovery proceedings***

- 17 (1) In section 28C of the Taxes Management Act 1970 (determination of tax in absence of personal or trustee return), in subsection (4) (effect of subsequent self-assessment on recovery proceedings), for “an officer of the Board has commenced any proceedings” substitute “proceedings have been commenced”.

*Status: Point in time view as at 27/03/2006.*

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- (2) In paragraph 40 of Schedule 18 to the Finance Act 1998 (c. 36) (determination of tax in absence of company tax return), in sub-paragraph (4) (effect of subsequent self-assessment on recovery proceedings), for “the Inland Revenue have begun proceedings” substitute “proceedings have been begun”.
- (3) This paragraph applies in relation to proceedings begun after the passing of this Act.

*Other amendments of the Taxes Management Act 1970*

- 18 (1) Section 12AA of the Taxes Management Act 1970 (partnership return) is amended as follows.
- (2) After subsection (10) insert—
- “(10A) In this Act a “partnership return” means a return in pursuance of a notice under subsection (2) or (3) above.”.
- (3) In subsection (11) for “a return in pursuance of a notice under subsection (2) or (3) above” substitute “a partnership return”.
- 19 In section 12AB(1) of the Taxes Management Act 1970 (partnership return to include partnership statement), for “return under section 12AA of this Act” substitute “partnership return”.
- 20 (1) Section 12B of the Taxes Management Act 1970 (preservation of records) is amended as follows.
- (2) In subsection (1)(b)(i)—
- (a) omit “or any amendment of the return”,
- (b) for “28A(5) or 28B(5)” substitute “28A(1) or 28B(1)”, and
- (c) omit “treated as”.
- (3) In subsection (1)(b)(ii) omit “or any amendment of the return”.
- 21 (1) Section 19A of the Taxes Management Act 1970 (c. 9) (power to call for documents for purposes of certain enquiries) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) This section applies where an officer of the Board gives notice of enquiry under section 9A(1) or 12AC(1) of this Act to a person (“the taxpayer”).”.
- (3) In subsection (2)—
- (a) for “enquiring into the return or amendment” substitute “the enquiry”, and
- (b) in paragraph (a), for “the return is incorrect or incomplete or the amendment is incorrect, and” substitute—
- “—
- (i) the return is incorrect or incomplete, or
- (ii) in the case of an enquiry which is limited under section 9A(5) or 12AC(5) of this Act, the amendment to which the enquiry relates is incorrect, and”.
- (4) In subsection (2A)(a) for “28A(7A)(d) or 28B(6A)(d)” substitute “9D(1)(c) or 12AE(1)(c)”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (5) In subsection (5) for “any pending appeal by him” substitute—
- “—
- (i) any pending appeal by him, or
- (ii) any pending referral to the Special Commissioners under section 28ZA of this Act to which he is a party.”.
- 22 In section 29(7)(a)(ii) of the Taxes Management Act 1970 (assessment where loss of tax discovered), for “any return with respect to the partnership under section 12AA of this Act” substitute “any partnership return with respect to the partnership”.
- 23 (1) Section 30 of the Taxes Management Act 1970 (recovery of overpayment of tax, etc.) is amended as follows.
- (2) In subsection (5)(b)—
- (a) omit “, or an amendment of such a return”,
- (b) for “28A(5)” substitute “28A(1)”, and
- (c) for “the officer’s enquiries are treated as” substitute “the enquiry is”.
- 24 (1) Section 30B of the Taxes Management Act 1970 (amendment of partnership statement where loss of tax discovered) is amended as follows.
- (2) In subsection (1) for “amend the statement” substitute “amend the partnership return”.
- (3) For subsection (2) substitute—
- “(2) Where a partnership return is amended under subsection (1) above, the officer shall by notice to each of the relevant partners amend—
- (a) the partner’s return under section 8 or 8A of this Act, or
- (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership return.”.
- (4) In subsections (6)(a) and (7)(b) for “return under section 12AA of this Act” substitute “partnership return”.
- 25 (1) Section 33A of the Taxes Management Act 1970 (c. 9) (error or mistake in partnership statement) is amended as follows.
- (2) In the sidenote and in subsections (1), (3), (5) and (9) for “partnership statement” substitute “partnership return”.
- (3) For subsection (4) substitute—
- “(4) Where a partnership return is amended under subsection (3) above, the Board shall by notice to each of the relevant partners amend—
- (a) the partner’s return under section 8 or 8A of this Act, or
- (b) the partner’s company tax return,
- so as to give effect to the amendments of the partnership return.”.
- 26 In section 42(6)(a) of the Taxes Management Act 1970 (procedure for making claims, etc.), for “return under section 12AA of this Act” substitute “partnership return”.
- 27 (1) Section 46B(2) of the Taxes Management Act 1970 (questions to be determined by Special Commissioners: appeals to which the section applies) is amended as follows.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (2) For paragraphs (a), (b) and (c) substitute—
- “(a) an appeal against an amendment of a self-assessment under section 9C of this Act or paragraph 30 of Schedule 18 to the Finance Act 1998;
  - (aa) an appeal against an amendment of a return under paragraph 34(2) of Schedule 18 to the Finance Act 1998;
  - (b) an appeal against a conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act;
  - (c) an appeal against an amendment of a partnership return under section 30B(1) of this Act;”.
- (3) In paragraph (e), for “an amendment under paragraph 7(3) of Schedule 1A to this Act of” substitute “a conclusion stated or amendment made by a closure notice under paragraph 7(2) of Schedule 1A to this Act relating to”.
- (4) In paragraph (f), for “notice under paragraph 7(3A)” substitute “closure notice under paragraph 7(3)”.
- 28 (1) Section 46C of the Taxes Management Act 1970 (jurisdiction of Special Commissioners over certain claims) is amended as follows.
- (2) In subsection (2) for paragraphs (a) and (b) substitute—
- “(a) an appeal against an amendment of a self-assessment under section 9C of this Act or paragraph 30 of Schedule 18 to the Finance Act 1998;
  - (b) an appeal against an amendment of a return under paragraph 34(2) of Schedule 18 to the Finance Act 1998;
  - (c) an appeal against a conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act;
  - (d) an appeal against an amendment of a partnership return under section 30B(1) of this Act.”.
- 29 (1) Section 46D(2) of the Taxes Management Act 1970 (c. 9) (questions to be determined by Lands Tribunal: appeals to which the section applies) is amended as follows.
- (2) For paragraphs (a), (b) and (c) substitute—
- “(a) an appeal against an amendment of a self-assessment under section 9C of this Act or paragraph 30 of Schedule 18 to the Finance Act 1998;
  - (aa) an appeal against an amendment of a return under paragraph 34(2) of Schedule 18 to the Finance Act 1998;
  - (b) an appeal against a conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act;
  - (c) an appeal against an amendment of a partnership return under section 30B(1) of this Act;”.
- (3) In paragraph (e), for “an amendment under paragraph 7(3) of Schedule 1A to this Act of” substitute “a conclusion stated or amendment made by a closure notice under paragraph 7(2) of Schedule 1A to this Act relating to”.
- (4) In paragraph (f), for “notice under paragraph 7(3A)” insert “closure notice under paragraph 7(3)”.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- 30 (1) Section 50 of the Taxes Management Act 1970 (procedure on appeals) is amended as follows.
- (2) In subsection (6)—
- (a) in paragraph (a), omit the words from “by reason of” to “Finance Act 1998”, and
- (b) in paragraph (b), omit the words from “by reason of” to “this Act”.
- (3) In subsection (7)—
- (a) in paragraph (a), omit the words from “which has been amended” to the end of the paragraph, and
- (b) in paragraph (b), omit the words from “which has been amended” to “this Act”.
- (4) In subsection (7A) for “specified in a notice under section 28A(4A)” substitute “which was the subject of a decision contained in a closure notice under section 28A”.
- (5) In subsection (9) for paragraph (a) substitute—
- “(a) the partner’s return under section 8 or 8A of this Act, or”.
- 31 (1) Section 55 of the Taxes Management Act 1970 (recovery of tax) is amended as follows.
- (2) For subsection (1)(a) substitute—
- “(a) an amendment of a self-assessment—
- (i) under section 9C of this Act, or
- (ii) under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998,
- (aa) a conclusion stated or amendment made by a closure notice under section 28A or 28B of this Act,”.
- (3) In subsection (2) for “by the amendment or assessment” substitute—
- “—
- (a) by the amendment or assessment, or
- (b) where the appeal is against a conclusion stated by a closure notice, as a result of that conclusion,”.
- (4) In subsection (3)—
- (a) after “or assessment” insert “, or as a result of the conclusion stated in the closure notice,”, and
- (b) for “the date of the issue of the notice of amendment or assessment” substitute “the specified date”.
- (5) In subsection (3A)—
- (a) for “the date of the issue of the notice of amendment or assessment” substitute “the specified date”, and
- (b) after “the amendment or assessment” insert “, or as a result of the conclusion stated in the closure notice”.
- (6) In subsection (9)(a) after “the amendment or assessment” insert “, or as a result of the conclusion stated in the closure notice,”.
- (7) For subsection (10) substitute—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- “(10) In subsection (3) above, “inspector” means the inspector or other officer of the Board—
- (a) by whom the notice of amendment or assessment was issued, or
  - (b) in the case of an appeal against a conclusion stated or amendment made by a closure notice, by whom the closure notice was issued.
- (10A) In this section “the specified date” means the date of—
- (a) the issue of the notice of amendment or assessment, or
  - (b) in the case of an appeal against a conclusion stated or amendment made by a closure notice, the issue of the closure notice.
- (10B) References in this section to an agreement being come to with an appellant, and to the giving of notice to or by an appellant, include references to an agreement being come to with, and the giving of notice to or by, a person acting on behalf of the appellant in relation to the appeal.”.
- 32 In section 95A(1)(a) of the Taxes Management Act 1970 (c. 9) (incorrect partnership return or accounts)—
- (a) in sub-paragraph (i), for “incorrect return of a kind mentioned in section 12AA of this Act” substitute “incorrect partnership return”; and
  - (b) in sub-paragraph (ii), for “return of such a kind” substitute “ partnership return ”.
- 33 (1) Section 118(1) of the Taxes Management Act 1970 (interpretation) is amended as follows.
- (2) At the appropriate place insert—
- ““partnership return” has the meaning given by section 12AA(10A) of this Act.”.
- (3) In the definition of “successor” for “a return under section 12AA of this Act” substitute “ a partnership return ”.
- 34 (1) Schedule 1A to the Taxes Management Act 1970 (claims etc. not included in returns) is amended as follows.
- (2) In paragraph 2A(2)(a) (keeping and preserving records until enquiries completed)—
- (a) for “7(4)” substitute “ 7(1) ”, and
  - (b) omit “treated as”.
- (3) In paragraph 4(3)(a) (giving effect to claims and amendments where there is an enquiry)—
- (a) for “7(4)” substitute “ 7(1) ”, and
  - (b) for “the officer’s enquiries are treated as” substitute “ the enquiry is ”.
- (4) In paragraph 8(1) (giving effect to amendments of non-partnership claim) for “of a claim other than a partnership claim being amended under paragraph 7(2) or (3)” substitute “ after the date of issue of a closure notice amending a claim other than a partnership claim under paragraph 7(2) ”.
- (5) In paragraph 8(2) (giving effect to amendments of partnership claim) for “of a claim being amended under paragraph 7(2) or (3)” substitute “ after the date of issue of a closure notice amending a partnership claim under paragraph 7(2) ”.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

*Consequential amendments of other enactments*

- 35 (1) The Taxes Act 1988 is amended as follows.
- (2) In section 379A(3) (Schedule A losses: claim for relief) for “self-assessment previously made by the claimant under section 9” substitute “ return made by the claimant under section 8 or 8A ”.
- (3) In Schedule 28AA (provision not at arm’s length) in paragraph 6(7), in the definition of “relevant notice”—
- (a) for paragraph (a) substitute—
- “(a) a closure notice under section 28A(1) or 28B(1) of the Management Act in relation to an enquiry into a return under section 8 or 8A of that Act or into a partnership return;”;
- (b) in paragraph (e) for “partnership statement” substitute “ partnership return ”.
- (4) In paragraph 6(7) of that Schedule, in the definition of “voluntary amendment” for the words from “any amendment” to the end substitute—
- “—
- (a) an amendment under section 9ZA or 12ABA of the Management Act (amendment of personal, trustee or partnership return by taxpayer), or
- (b) an amendment under Schedule 18 to the Finance Act 1998 other than one made in response to the giving of a relevant notice.”.

<sup>F59</sup>36 .....

**Textual Amendments**

**F59** Sch. 29 para. 36 repealed (with effect in accordance with Sch. 11 Pt. 2(11) Note of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 11 Pt. 2(11)

- 37 (1) In Schedule 22 to the Finance Act 1995 (c. 4) (prevention of exploitation of self-assessment transitional provisions), Part 3 (procedural and other provisions) is amended as follows.
- (2) In paragraph 11(2) for “partnership statement” substitute “ partnership return ”.
- (3) In paragraph 11(3)—
- (a) in paragraph (a)—
- (i) for “an assessment under section 9 of the Management Act” substitute “ a return under section 8 or 8A of the Management Act (personal or trustee return) ”;
- (ii) for “partnership statement under section 12AB of that Act” substitute “ partnership return ”; and
- (iii) for “assessment or statement” substitute “return”; and
- (b) for paragraph (b) substitute—
- “(b) no such return has been so made.”.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (4) In paragraph 12(1) for “an assessment made under section 9 of the Management Act (returns to include self-assessment)” substitute “ a return under section 8 or 8A of the Management Act (personal or trustee return) ”.
- (5) In paragraph 12(2)—
- (a) in paragraph (a)—
- (i) for “an assessment under section 9 of the Management Act” substitute “ a return under section 8 or 8A of the Management Act (personal or trustee return) ”; and
- (ii) for “that assessment” substitute “ that return ”; and
- (b) for paragraph (b) substitute—
- “(b) no such return has been so made.”.
- 38 (1) The Finance Act 1998 (c. 36) is amended as follows.
- (2) In section 110 (determinations requiring the sanction of the Board)—
- (a) in subsection (1)(b) for “partnership statement” substitute “ partnership return ”, and
- (b) in subsection (9), for paragraph (a) of the definition of “closure notice” substitute—
- “(a) a closure notice under section 28A(1) or 28B(1) of the Taxes Management Act 1970 in relation to an enquiry into a return under section 8 or 8A of that Act or into a partnership return; or”.
- (3) In section 111(6) (notice to potential claimants)—
- (a) for paragraph (a) substitute—
- “(a) a closure notice under section 28A(1) or 28B(1) of the Taxes Management Act 1970 in relation to an enquiry into a return under section 8 or 8A of that Act or into a partnership return;”,
- and
- (b) in paragraph (e) for “partnership statement” substitute “ partnership return ”.
- (4) In paragraph 27 of Schedule 18 (notice to produce documents for purposes of enquiry into company return), in sub-paragraph (5) for “any pending appeal by the company” substitute—
- “—
- (a) any pending appeal by the company, or
- (b) any pending referral to the Special Commissioners under paragraph 31A to which the company is a party.”.
- 39 In section 12(5) of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (application of section 31(5A) to (5E) of the 1970 Act in relation to elections under section 12(4))—
- (a) for “(5A) to (5E) of section 31” substitute “ (2) to (7) of section 31D ”, and
- (b) for “subsection (4) of that section” substitute “ subsection (1) of that section ”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- 40 In Article 11(5) of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) (application of section 31(5A) to (5E) of the 1970 Act in relation to elections under Article 11(4))—
- (a) for “(5A) to (5E) of section 31” substitute “(2) to (7) of section 31D”, and
  - (b) for “subsection (4) of that section” substitute “subsection (1) of that section”.

## SCHEDULE 30

Section 92.

### STAMP DUTY: LAND IN DISADVANTAGED AREAS

#### *Stamp duty reduced for land partly in a disadvantaged area*

- 1 (1) Where any land is situated partly in a disadvantaged area and partly outside such an area, liability to *F<sup>60</sup> ad valorem* stamp duty] (c. 16) on—
- (a) a conveyance or transfer of an estate or interest in the land, or
  - (b) a lease of the land,
- shall be determined in accordance with sub-paragraph (2).
- (2) Where liability to stamp duty falls to be determined in accordance with this sub-paragraph—
- (a) the consideration in respect of which duty would be chargeable, but for the provisions of this paragraph, shall be apportioned, on such basis as is just and reasonable, as between the part of the land which is situated in a disadvantaged area and the part which is not so situated, and
  - (b) the instrument shall be chargeable only in respect of the consideration attributed to such part of the land as is not situated in a disadvantaged area.
- (3) Where stamp duty, or a greater amount of stamp duty, would be chargeable on an instrument but for sub-paragraphs (1) and (2), those sub-paragraphs shall have effect in relation to the instrument only if the instrument is certified to the Commissioners as being an instrument in relation to which those sub-paragraphs have effect.
- (4) No instrument which is certified as mentioned in sub-paragraph (3) shall be taken to be duly stamped unless—
- (a) it is stamped in accordance with section 12 of the Stamp Act 1891 (c. 39) with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped, or
  - (b) it is stamped with the duty to which it would have been liable but for this paragraph.

#### **Textual Amendments**

**F60** Words in [Sch. 30 para. 1\(1\)](#) substituted (24.7.2002) by [2002 c. 23, s. 110\(4\)](#)

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

**C2** [Sch. 30 para. 1](#) excluded (28.11.2001) by [S.I. 2001/3746, reg. 4\(1\)\(b\)](#)  
[Sch. 30 para. 1](#) restricted (28.11.2001) by [S.I. 2001/3746, reg. 5](#)

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

*Apportionment of consideration for stamp duty purposes*

- 2 (1) Where any part or parcel of the property referred to in section 58(1) of the Stamp Act 1891 (consideration to be apportioned between separate parts or parcels as parties think fit) consists of an estate or interest in land situated wholly or partly in a disadvantaged area, that provision shall have effect—
- (a) as if “the parties think fit” read “is just and reasonable”, and
  - (b) as if “such conveyance is” read “such conveyance is (subject to section 92 of, and Schedule 30 to, the Finance Act 2001)”.
- (2) Where—
- (a) any part or parcel 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 an estate or interest in land situated wholly or partly in a disadvantaged area, and
  - (b) both or (as the case may be) all the relevant persons are connected with one another,
- that provision shall have effect in accordance with sub-paragraph (3).
- (3) In a case falling within sub-paragraph (2), section 58(2) of that Act 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 (subject to section 92 of, and Schedule 30 to, the Finance Act 2001) to be charged *withad valorem* duty in respect of such distinct consideration.”.
- (4) In a case where sub-paragraph (1) or (3) 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).
- (5) 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; and
  - (b) the question whether persons are connected with one another shall be determined in accordance with section 839 of the Taxes Act 1988.
- (6) In sub-paragraph (4) “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.

*Certification of instruments for stamp duty purposes*

- 3 (1) If or to the extent that [<sup>F61</sup> a conveyance, transfer or lease is exempted from stamp duty by section 92(1) or paragraph 1 above (read with section 92A) the transaction in question shall be disregarded] for the purposes of paragraph 6 of Schedule 13 to the Finance Act 1999 (c. 16) (certification of instrument as not forming part of transaction or series of transactions exceeding specified amount). [<sup>F62</sup>This is without

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

prejudice to section 92A(4) (instrument must be certified where exemption depends on amount or value of consideration).]

- (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 disregarded in accordance with sub-paragraph (1) above.

**Textual Amendments**

**F61** Words in Sch. 30 para. 3(1) substituted (24.7.2002) by 2002 c. 23, s. 110(5)(a)

**F62** Words in Sch. 30 para.3(1) inserted (24.7.2002) by 2002 c. 23, s. 110(5)(b)

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

**C3** Sch. 30 para. 3 excluded (28.11.2001) by S.I. 2001/3746, reg. 4(2)

SCHEDULE 31

Section 99.

VALUE ADDED TAX: RE-ENACTMENT OF REDUCED RATE PROVISIONS

**PART 1**

NEW SCHEDULE 7A TO THE VALUE ADDED TAX ACT 1994

- 1 The Schedule inserted after Schedule 7 to the Value Added Tax Act 1994 (c. 23) is as follows—

“SCHEDULE  
7A

CHARGE AT REDUCED RATE

**PART 1**

INDEX TO REDUCED-RATE SUPPLIES OF GOODS AND SERVICES

Children’s car seats.....	Group 5
Domestic fuel or power.....	Group 1
Energy-saving materials: installation.....	Group 2
Heating equipment, security goods and gas supplies: grant-funded installation or connection.....	Group 3
Renovation and alteration of dwellings.....	Group 7
Residential conversions.....	Group 6

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Women's sanitary products..... Group 4

## PART 2

### THE GROUPS

#### GROUP 1 — SUPPLIES OF DOMESTIC FUEL OR POWER

##### ITEM NO.

- 1 Supplies for qualifying use of—
- (a) coal, coke or other solid substances held out for sale solely as fuel;
  - (b) coal gas, water gas, producer gases or similar gases;
  - (c) petroleum gases, or other gaseous hydrocarbons, whether in a gaseous or liquid state;
  - (d) fuel oil, gas oil or kerosene; or
  - (e) electricity, heat or air-conditioning.

##### NOTES:

##### *Matters included or not included in the supplies*

- 1 (1) Item 1(a) shall be deemed to include combustible materials put up for sale for kindling fires but shall not include matches.
- (2) Item 1(b) and (c) shall not include any road fuel gas (within the meaning of the Hydrocarbon Oil Duties Act 1979 (c. 5)) on which a duty of excise has been charged or is chargeable.
- (3) Item 1(d) shall not include hydrocarbon oil on which a duty of excise has been or is to be charged without relief from, or rebate of, such duty by virtue of the provisions of the Hydrocarbon Oil Duties Act 1979.

##### *Meaning of “fuel oil”, “gas oil” and “kerosene”*

- 2 (1) In this Group “fuel oil” means heavy oil which contains in solution an amount of asphaltenes of not less than 0.5 per cent. or which contains less than 0.5 per cent. but not less than 0.1 per cent. of asphaltenes and has a closed flash point not exceeding 150°C.
- (2) In this Group “gas oil” means heavy oil of which not more than 50 per cent. by volume distils at a temperature not exceeding 240°C and of which more than 50 per cent. by volume distils at a temperature not exceeding 340°C.
- (3) In this Group “kerosene” means heavy oil of which more than 50 per cent. by volume distils at a temperature not exceeding 240°C.
- (4) In this paragraph “heavy oil” has the same meaning as in the Hydrocarbon Oil Duties Act 1979.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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### ***Meaning of “qualifying use”***

- 3 In this Group “qualifying use” means—
- (a) domestic use; or
  - (b) use by a charity otherwise than in the course or furtherance of a business.

### ***Supplies only partly for qualifying use***

- 4 For the purposes of this Group, where there is a supply of goods partly for qualifying use and partly not—
- (a) if at least 60 per cent. of the goods are supplied for qualifying use, the whole supply shall be treated as a supply for qualifying use; and
  - (b) in any other case, an apportionment shall be made to determine the extent to which the supply is a supply for qualifying use.

### ***Supplies deemed to be for domestic use***

- 5 For the purposes of this Group 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 of wood, peat or charcoal not intended for sale by the recipient;
  - (c) a supply to a person at any premises of piped gas (that is, gas within item 1(b), or petroleum gas in a gaseous state, provided through pipes) where the gas (together with any other piped gas provided to him at the premises by the same supplier) was not provided at a rate exceeding 150 therms a month or, if the supplier charges for the gas by reference to the number of kilowatt hours supplied, 4397 kilowatt hours a month;
  - (d) a supply of petroleum gas in a liquid state where the 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 gas is not intended for sale by the recipient;
  - (e) 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 gas;
  - (f) a supply of not more than 2,300 litres of fuel oil, gas oil or kerosene;
  - (g) a 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.

### ***Other supplies that are for domestic use***

- 6 For the purposes of this Group supplies not within paragraph 5 are for domestic use if and only if the goods supplied are for use in—
- (a) a building, or part of a building, that consists of a dwelling or number of dwellings;

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) a building, or part of a building, used for a relevant residential purpose;
- (c) self-catering holiday accommodation;
- (d) a caravan; or
- (e) a houseboat.

### ***Interpretation of paragraph 6***

- 7 (1) For the purposes of this Group, “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.
- (2) For the purposes of this Group “self-catering holiday accommodation” includes any accommodation advertised or held out as such.
- (3) In paragraph 6 “houseboat” means 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.

## **GROUP 2 — INSTALLATION OF ENERGY-SAVING MATERIALS**

### ITEM NO.

- 1 Supplies of services of installing energy-saving materials in—
  - (a) residential accommodation, or
  - (b) a building intended for use solely for a relevant charitable purpose.
- 2 Supplies of energy-saving materials by a person who installs those materials in—
  - (a) residential accommodation, or
  - (b) a building intended for use solely for a relevant charitable purpose.

NOTES:

### ***Meaning of “energy-saving materials”***

- 1 For the purposes of this Group “energy-saving materials” means any of the following—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) insulation for walls, floors, ceilings, roofs or lofts or for water tanks, pipes or other plumbing fittings;
- (b) draught stripping for windows and doors;
- (c) central heating system controls (including thermostatic radiator valves);
- (d) hot water system controls;
- (e) solar panels;
- (f) wind turbines;
- (g) water turbines.

***Meaning of “residential accommodation”***

- 2 (1) For the purposes of this Group “residential accommodation” means—
- (a) a building, or part of a building, that consists of a dwelling or a number of dwellings;
  - (b) a building, or part of a building, used for a relevant residential purpose;
  - (c) a caravan used as a place of permanent habitation; or
  - (d) a houseboat.
- (2) For the purposes of this Group “use for a relevant residential purpose” has the same meaning as it has for the purposes of Group 1 (see paragraph 7(1) of the Notes to that Group).
- (3) In sub-paragraph (1)(d) “houseboat” has the meaning given by paragraph 7(3) of the Notes to Group 1.

***Meaning of “use for a relevant charitable purpose”***

- 3 For the purposes of this Group “use for a relevant charitable purpose” means use by a charity in either or both of the following ways, namely—
- (a) otherwise than in the course or furtherance of a business;
  - (b) as a village hall or similarly in providing social or recreational facilities for a local community.

**GROUP 3 — GRANT-FUNDED INSTALLATION OF HEATING  
EQUIPMENT OR SECURITY GOODS OR CONNECTION OF GAS SUPPLY**

ITEM NO.

- 1 Supplies to a qualifying person of any services of installing heating appliances in the qualifying person’s sole or main residence.
- 2 Supplies of heating appliances made to a qualifying person by a person who installs those appliances in the qualifying person’s sole or main residence.
- 3 Supplies to a qualifying person of services of connecting, or reconnecting, a mains gas supply to the qualifying person’s sole or main residence.
- 4 Supplies of goods made to a qualifying person by a person connecting, or reconnecting, a mains gas supply to the qualifying person’s sole or main residence, being goods whose installation is necessary for the connection, or reconnection, of the mains gas supply.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- 5 Supplies to a qualifying person of services of installing, maintaining or repairing a central heating system in the qualifying person's sole or main residence.
- 6 Supplies of goods made to a qualifying person by a person installing, maintaining or repairing a central heating system in the qualifying person's sole or main residence, being goods whose installation is necessary for the installation, maintenance or repair of the central heating system.
- 7 Supplies consisting in the leasing of goods that form the whole or part of a central heating system installed in the sole or main residence of a qualifying person.
- 8 Supplies of goods that form the whole or part of a central heating system installed in a qualifying person's sole or main residence and that, immediately before being supplied, were goods leased under arrangements such that the consideration for the supplies consisting in the leasing of the goods was, in whole or in part, funded by a grant made under a relevant scheme.
- 9 Supplies to a qualifying person of services of installing qualifying security goods in the qualifying person's sole or main residence.
- 10 Supplies of qualifying security goods made to a qualifying person by a person who installs those goods in the qualifying person's sole or main residence.

NOTES:

***Supply only included so far as grant-funded***

- 1 (1) Each of items 1 to 7, 9 and 10 applies to a supply only to the extent that the consideration for the supply is, or is to be, funded by a grant made under a relevant scheme.
- (2) Item 8 applies to a supply only to the extent that the consideration for the supply—
  - (a) is, or is to be, funded by a grant made under a relevant scheme; or
  - (b) is a payment becoming due only by reason of the termination (whether by the passage of time or otherwise) of the leasing of the goods in question.

***Meaning of “relevant scheme”***

- 2 (1) For the purposes of this Group a scheme is a “relevant scheme” if it is one which satisfies the conditions specified in this paragraph.
- (2) The first condition is that the scheme has as one of its objectives the funding of the installation of energy-saving materials in the homes of any persons who are qualifying persons.
- (3) The second condition is that the scheme disburses, whether directly or indirectly, its grants in whole or in part out of funds made available to it in order to achieve that objective—
  - (a) by the Secretary of State,

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) by the Scottish Ministers,
  - (c) by the National Assembly for Wales,
  - (d) by a Minister (within the meaning given by section 7(3) of the Northern Ireland Act 1998 (c. 47)) or a Northern Ireland department,
  - (e) by the European Community,
  - (f) under an arrangement approved by the Gas and Electricity Markets Authority,
  - (g) under an arrangement approved by the Director General of Electricity Supply for Northern Ireland, or
  - (h) by a local authority.
- (4) The reference in sub-paragraph (3)(f) to an arrangement approved by the Gas and Electricity Markets Authority includes a reference to an arrangement approved by the Director General of Electricity Supply, or the Director General of Gas Supply, before the transfer (under the Utilities Act 2000 (c. 27)) of his functions to the Authority.

#### ***Apportionment of grants that also cover other supplies***

- 3 Where a grant is made under a relevant scheme in order—
- (a) to fund a supply of a description to which any of items 1 to 10 applies (“the relevant supply”), and
  - (b) also to fund a supply to which none of those items applies (“the non-relevant supply”),
- the proportion of the grant that is to be attributed, for the purposes of paragraph 1, to the relevant supply shall be the same proportion as the consideration reasonably attributable to that supply bears to the consideration for that supply and for the non-relevant supply.

#### ***Meaning of “heating appliances”***

- 4 For the purposes of items 1 and 2 “heating appliances” means any of the following—
- (a) gas-fired room heaters that are fitted with thermostatic controls;
  - (b) electric storage heaters;
  - (c) closed solid fuel fire cassettes;
  - (d) electric dual immersion water heaters with foam-insulated hot water tanks;
  - (e) gas-fired boilers;
  - (f) oil-fired boilers;
  - (g) radiators.

#### ***Meaning of “qualifying security goods”***

- 5 For the purposes of items 9 and 10 “qualifying security goods” means any of the following—
- (a) locks or bolts for windows;
  - (b) locks, bolts or security chains for doors;
  - (c) spy holes;
  - (d) smoke alarms.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

***Meaning of “qualifying person”***

- 6 (1) For the purposes of this Group, a person to whom a supply is made is “a qualifying person” if at the time of the supply he—
- (a) is aged 60 or over; or
  - (b) is in receipt of one or more of the benefits mentioned in sub-paragraph (2).
- (2) Those benefits are—
- (a) council tax benefit under Part 7 of the Contributions and Benefits Act;
  - (b) disability living allowance under Part 3 of the Contributions and Benefits Act or Part 3 of the Northern Ireland Act;
  - (c) disabled person’s tax credit, working families’ tax credit, housing benefit or income support under Part 7 of the Contributions and Benefits Act or Part 7 of the Northern Ireland Act;
  - (d) an income-based jobseeker’s allowance within the meaning of section 1(4) of the Jobseekers Act 1995 (c. 18) or Article 3(4) of the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/275 (N.I. 15));
  - (e) disablement pension under Part 5 of the Contributions and Benefits Act, or Part 5 of the Northern Ireland Act, that is payable at the increased rate provided for under section 104 (constant attendance allowance) of the Act concerned;
  - (f) war disablement pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 (S.I. 1983/883) that is payable at the increased rate provided for under article 14 (constant attendance allowance) or article 26A (mobility supplement) of that Order.
- (3) In sub-paragraph (2)—
- (a) “the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 (c. 4); and
  - (b) “the Northern Ireland Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

**GROUP 4 — WOMEN’S SANITARY PRODUCTS**

ITEM NO.

- 1 Supplies of women’s sanitary products.

NOTES:

***Meaning of “women’s sanitary products”***

- 1 (1) In this Group “women’s sanitary products” means women’s sanitary products of any of the following descriptions—
- (a) subject to sub-paragraph (2), products that are designed, and marketed, as being solely for use for absorbing, or otherwise collecting, lochia or menstrual flow;

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (b) panty liners, other than panty liners that are designed as being primarily for use as incontinence products;
  - (c) sanitary belts.
- (2) Sub-paragraph (1)(a) does not include protective briefs or any other form of clothing.

#### **GROUP 5 — CHILDREN’S CAR SEATS**

ITEM NO.

- 1 Supplies of children’s car seats.

NOTES:

##### ***Meaning of “children’s car seats”***

- 1 (1) For the purposes of this Group, the following are “children’s car seats”—
- (a) a safety seat;
  - (b) the combination of a safety seat and a related wheeled framework;
  - (c) a booster seat;
  - (d) a booster cushion.
- (2) In this Group “child” means a person aged under 14 years.

##### ***Meaning of “safety seat”***

- 2 In this Group “safety seat” means a seat—
- (a) designed to be sat in by a child in a road vehicle,
  - (b) designed so that, when in use in a road vehicle, it can be restrained—
    - (i) by a seat belt fitted in the vehicle, or
    - (ii) by belts, or anchorages, that form part of the seat being attached to the vehicle, or
    - (iii) in either of those ways, and
  - (c) incorporating an integral harness, or integral impact shield, for restraining a child seated in it.

##### ***Meaning of “related wheeled framework”***

- 3 For the purposes of this Group, a wheeled framework is “related” to a safety seat if the framework and the seat are each designed so that—
- (a) when the seat is not in use in a road vehicle it can be attached to the framework, and
  - (b) when the seat is so attached, the combination of the seat and the framework can be used as a child’s pushchair.

##### ***Meaning of “booster seat”***

- 4 In this Group “booster seat” means a seat designed—
- (a) to be sat in by a child in a road vehicle, and

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (b) so that, when in use in a road vehicle, it and a child seated in it can be restrained by a seat belt fitted in the vehicle.

***Meaning of “booster cushion”***

- 5 In this Group “booster cushion” means a cushion designed—
- (a) to be sat on by a child in a road vehicle, and
- (b) so that a child seated on it can be restrained by a seat belt fitted in the vehicle

**GROUP 6 — RESIDENTIAL CONVERSIONS**

ITEM NO.

- 1 The supply, in the course of a qualifying conversion, of qualifying services related to the conversion.
- 2 The supply of building materials if—
- (a) the materials are supplied by a person who, in the course of a qualifying conversion, is supplying qualifying services related to the conversion, and
- (b) those services include the incorporation of the materials in the building concerned or its immediate site.

NOTES:

***Supplies only partly within item 1***

- 1 (1) Sub-paragraph (2) applies where a supply of services is only in part a supply to which item 1 applies.
- (2) The supply, to the extent that it is one to which item 1 applies, is to be taken to be a supply to which item 1 applies.
- (3) An apportionment may be made to determine that extent.

***Meaning of “qualifying conversion”***

- 2 (1) A “qualifying conversion” means—
- (a) a changed number of dwellings conversion (see paragraph 3);
- (b) a house in multiple occupation conversion (see paragraph 5); or
- (c) a special residential conversion (see paragraph 7).
- (2) Sub-paragraph (1) is subject to paragraphs 9 and 10.

***Meaning of “changed number of dwellings conversion”***

- 3 (1) A “changed number of dwellings conversion” is—
- (a) a conversion of premises consisting of a building where the conditions specified in this paragraph are satisfied, or
- (b) a conversion of premises consisting of a part of a building where those conditions are satisfied.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (2) The first condition is that after the conversion the premises being converted contain a number of single household dwellings that is—
  - (a) different from the number (if any) that the premises contain before the conversion, and
  - (b) greater than, or equal to, one.
- (3) The second condition is that there is no part of the premises being converted that is a part that after the conversion contains the same number of single household dwellings (whether zero, one or two or more) as before the conversion.

***Meaning of “single household dwelling” and “multiple occupancy dwelling”***

- 4 (1) For the purposes of this Group “single household dwelling” means a dwelling—
  - (a) that is designed for occupation by a single household, and
  - (b) in relation to which the conditions set out in sub-paragraph (3) are satisfied.
- (2) For the purposes of this Group “multiple occupancy dwelling” means a dwelling—
  - (a) that is designed for occupation by persons not forming a single household, and
  - (b) in relation to which the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions are—
  - (a) that the dwelling consists of self-contained living accommodation,
  - (b) that there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling,
  - (c) that the separate use of the dwelling is not prohibited by the terms of any covenant, statutory planning consent or similar provision, and
  - (d) that the separate disposal of the dwelling is not prohibited by any such terms.
- (4) For the purposes of this paragraph, a dwelling “is designed” for occupation of a particular kind if it is so designed—
  - (a) as a result of having been originally constructed for occupation of that kind and not having been subsequently adapted for occupation of any other kind, or
  - (b) as a result of adaptation.

***Meaning of “house in multiple occupation conversion”***

- 5 (1) A “house in multiple occupation conversion” is—
  - (a) a conversion of premises consisting of a building where the condition specified in sub-paragraph (2) below is satisfied, or
  - (b) a conversion of premises consisting of a part of a building where that condition is satisfied.
- (2) The condition is that—

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- (a) before the conversion the premises being converted contain only a single household dwelling or two or more such dwellings,
- (b) after the conversion those premises contain only a multiple occupancy dwelling or two or more such dwellings, and
- (c) the use to which those premises are intended to be put after the conversion is not to any extent use for a relevant residential purpose.

***Meaning of “use for a relevant residential purpose”***

- 6 For the purposes of this Group “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, prison or similar institution or an hotel, inn or similar establishment.

***Meaning of “special residential conversion”***

- 7 (1) A “special residential conversion” is a conversion of premises consisting of—
- (a) a building or two or more buildings,
  - (b) a part of a building or two or more parts of buildings, or
  - (c) a combination of—
    - (i) a building or two or more buildings, and
    - (ii) a part of a building or two or more parts of buildings,
 where the conditions specified in this paragraph are satisfied.
- (2) The first condition is that, before the conversion, the premises being converted contain only—
- (a) a dwelling or two or more dwellings, or
  - (b) a dwelling, or two or more dwellings, and
    - (i) an ancillary outbuilding occupied together with the dwelling or one or more of the dwellings, or
    - (ii) two or more ancillary outbuildings each occupied together with the dwelling or one or more of the dwellings.
- (3) In sub-paragraph (2) “dwelling” means single household dwelling or multiple occupancy dwelling.

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- (4) The second condition is that where before the conversion the premises being converted contain a multiple occupancy dwelling or two or more such dwellings, the use to which that dwelling, or any of those dwellings, was last put before the conversion was not to any extent use for a relevant residential purpose.
- (5) The third condition is that the premises being converted must be intended to be used after the conversion solely for a relevant residential purpose.
- (6) The fourth condition is that, where the relevant residential purpose is an institutional purpose, the premises being converted must be intended to form after the conversion the entirety of an institution used for that purpose.
- (7) In sub-paragraph (6) “institutional purpose” means a purpose within paragraph 6(a) to (c), (f) or (g).

***Special residential conversions: reduced rate only for supplies made to intended user of converted accommodation***

- 8 (1) This paragraph applies where the qualifying conversion concerned is a special residential conversion.
- (2) Item 1 or 2 does not apply to a supply unless—
  - (a) it is made to a person who intends to use the premises being converted for the relevant residential purpose, and
  - (b) before it is made, the person to whom it is made has given to the person making it a certificate that satisfies the requirements in sub-paragraph (3).
- (3) Those requirements are that the certificate—
  - (a) is in such form as may be specified in a notice published by the Commissioners, and
  - (b) states that the conversion is a special residential conversion.
- (4) In sub-paragraph (2)(a) “the relevant residential purpose” means the purpose within paragraph 6 for which the premises being converted are intended to be used after the conversion.

***“Qualifying conversion” includes related garage works***

- 9 (1) A qualifying conversion includes any garage works related to the—
  - (a) changed number of dwellings conversion,
  - (b) house in multiple occupation conversion, or
  - (c) special residential conversion,concerned.
- (2) In this paragraph “garage works” means—
  - (a) the construction of a garage, or
  - (b) a conversion of a non-residential building, or of a non-residential part of a building, that results in a garage.
- (3) For the purposes of sub-paragraph (1), garage works are “related” to a conversion if—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- (a) they are carried out at the same time as the conversion, and
  - (b) the resulting garage is intended to be occupied with—
    - (i) where the conversion concerned is a changed number of dwellings conversion, a single household dwelling that will after the conversion be contained in the building, or part of a building, being converted,
    - (ii) where the conversion concerned is a house in multiple occupation conversion, a multiple occupancy dwelling that will after the conversion be contained in the building, or part of a building, being converted, or
    - (iii) where the conversion concerned is a special residential conversion, the institution or other accommodation resulting from the conversion.
- (4) In sub-paragraph (2) “non-residential” means neither designed, nor adapted, for use—
- (a) as a dwelling or two or more dwellings, or
  - (b) for a relevant residential purpose.

***Conversion not “qualifying” if planning consent and building control approval not obtained***

- 10 (1) A conversion is not a qualifying conversion if any statutory planning consent needed for the conversion has not been granted.
- (2) A conversion is not a qualifying conversion if any statutory building control approval needed for the conversion has not been granted.

***Meaning of “supply of qualifying services”***

- 11 (1) In the case of a conversion of a building, “supply of qualifying services” means a supply of services that consists in—
- (a) the carrying out of works to the fabric of the building, or
  - (b) the carrying out of works within the immediate site of the building that are in connection with—
    - (i) the means of providing water, power, heat or access to the building,
    - (ii) the means of providing drainage or security for the building, or
    - (iii) the provision of means of waste disposal for the building.
- (2) In the case of a conversion of part of a building, “supply of qualifying services” means a supply of services that consists in—
- (a) the carrying out of works to the fabric of the part, or
  - (b) the carrying out of works to the fabric of the building, or within the immediate site of the building, that are in connection with—
    - (i) the means of providing water, power, heat or access to the part,
    - (ii) the means of providing drainage or security for the part, or
    - (iii) the provision of means of waste disposal for the part.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (3) In this paragraph—
- (a) references to the carrying out of works to the fabric of a building do not include the incorporation, or installation as fittings, in the building of any goods that are not building materials;
  - (b) references to the carrying out of works to the fabric of a part of a building do not include the incorporation, or installation as fittings, in the part of any goods that are not building materials.

***Meaning of “building materials”***

- 12 In this Group “building materials” has the meaning given by Notes (22) and (23) of Group 5 to Schedule 8 (zero-rating of construction and conversion of buildings).

**GROUP 7 — RENOVATION AND ALTERATION OF DWELLINGS**

ITEM NO.

- 1 The supply, in the course of the renovation or alteration of a single household dwelling, of qualifying services related to the renovation or alteration.
- 2 The supply of building materials if—
- (a) the materials are supplied by a person who, in the course of the renovation or alteration of a single household dwelling, is supplying qualifying services related to the renovation or alteration, and
  - (b) those services include the incorporation of the materials in the dwelling concerned or its immediate site.

NOTES:

***Supplies only partly within item 1***

- 1 (1) Sub-paragraph (2) applies where a supply of services is only in part a supply to which item 1 applies.
- (2) The supply, to the extent that it is one to which item 1 applies, is to be taken to be a supply to which item 1 applies.
- (3) An apportionment may be made to determine that extent.

***Meaning of “alteration” and “single household dwelling”***

- 2 For the purposes of this Group—
- “alteration” includes extension;
  - “single household dwelling” has the meaning given by paragraph 4 of the Notes to Group 6.

***Items 1 and 2 only apply where dwelling has been empty for at least 3 years***

- 3 (1) Item 1 or 2 does not apply to a supply unless either of the empty home conditions is satisfied.

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- (2) The first “empty home condition” is that the dwelling concerned has not been lived in during the period of 3 years ending with the commencement of the relevant works.
- (3) The second “empty home condition” is that—
- (a) the dwelling was not lived in during a period of at least 3 years;
  - (b) the person, or one of the persons, whose beginning to live in the dwelling brought that period to an end was a person who (whether alone or jointly with another or others) acquired the dwelling at a time—
    - (i) no later than the end of that period, and
    - (ii) when the dwelling had been not lived in for at least 3 years;
  - (c) no works by way of renovation or alteration were carried out to the dwelling during the period of 3 years ending with the acquisition;
  - (d) the supply is made to a person who is—
    - (i) the person, or one of the persons, whose beginning to live in the property brought to an end the period mentioned in paragraph (a), and
    - (ii) the person, or one of the persons, who acquired the dwelling as mentioned in paragraph (b); and
  - (e) the relevant works are carried out during the period of one year beginning with the day of the acquisition.
- (4) In this paragraph “the relevant works” means—
- (a) where the supply is of the description set out in item 1, the works that constitute the services supplied;
  - (b) where the supply is of the description set out in item 2, the works by which the materials concerned are incorporated in the dwelling concerned or its immediate site.
- (5) In sub-paragraph (3), references to a person acquiring a dwelling are to that person having a major interest in the dwelling granted, or assigned, to him for a consideration.

***Items 1 and 2 only apply if planning consent and building control approval obtained***

- 4 (1) Item 1 or 2 does not apply to a supply unless any statutory planning consent needed for the renovation or alteration has been granted.
- (2) Item 1 or 2 does not apply to a supply unless any statutory building control approval needed for the renovation or alteration has been granted.

***Meaning of “supply of qualifying services”***

- 5 (1) “Supply of qualifying services” means a supply of services that consists in—
- (a) the carrying out of works to the fabric of the dwelling, or
  - (b) the carrying out of works within the immediate site of the dwelling that are in connection with—
    - (i) the means of providing water, power, heat or access to the dwelling,

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- (ii) the means of providing drainage or security for the dwelling,  
or
  - (iii) the provision of means of waste disposal for the dwelling.
- (2) In sub-paragraph (1)(a), the reference to the carrying out of works to the fabric of the dwelling does not include the incorporation, or installation as fittings, in the dwelling of any goods that are not building materials.

### **Meaning of “building materials”**

- 6 In this Group “building materials” has the meaning given by Notes (22) and (23) of Group 5 to Schedule 8 (zero-rating of construction and conversion of buildings).”.

## **PART 2**

### **CONSEQUENTIAL AMENDMENTS**

#### *Value Added Tax Act 1994 (c.23)*

- 2 In section 2 of the Value Added Tax Act 1994 (rate of VAT), in each of subsections (2) and (3) (power to vary rate by up to 25% for up to one year), after “for the time being in force” insert “ under this section ”.
- 3 In section 62(1)(a)(i) of the Value Added Tax Act 1994 (penalty for giving incorrect certificate as to entitlement to reduced rate etc.), for “paragraph 1 of Schedule A1,” substitute “ any of the Groups of Schedule 7A, ”.
- 4 (1) Section 88 of the Value Added Tax Act 1994 (supplies spanning change of rate etc.) is amended as follows.
- (2) In subsection (1) (section applies where there is a change in the rate of VAT in force under section 2 or the descriptions of exempt or zero-rated supplies or acquisitions)—
- (a) after “section 2” insert “ or 29A ”, and
  - (b) for “or zero-rated” (in both places) substitute “ , zero-rated or reduced-rate ”.
- (3) In subsection (2) (election to disregard time of supply rules), after “any question whether it is zero-rated or exempt” insert “ or a reduced-rate supply ”.
- (4) In subsection (4) (election to disregard time of acquisition rules), after “any question whether it is zero-rated or exempt” insert “ or a reduced-rate acquisition ”.
- (5) After subsection (7) insert—
- “(8) References in this section—
  - (a) to a supply being a reduced-rate supply, or
  - (b) to an acquisition being a reduced-rate acquisition,
- are references to a supply, or (as the case may be) an acquisition, being one on which VAT is charged at the rate in force under section 29A.”.
- 5 In section 96(9) of the Value Added Tax Act 1994 (notes in Schedules 8 and 9 to be used for interpretation and capable of being varied), after “Schedules” insert “ 7A, ”.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

- 6
- (1) Section 97(4) of the Value Added Tax Act 1994 (orders that cease to have effect if not approved by the House of Commons within 28 days of being made) is amended as follows.
  - (2) In paragraph (c)(i) (orders increasing rate of VAT in force), after “in force” insert “under section 2”.
  - (3) In paragraph (c), after sub-paragraph (ii) insert—
    - “(iia) for varying Schedule 7A so as to cause VAT to be charged on a supply at the rate in force under section 2 instead of that in force under section 29A;”.
  - (4) In paragraph (d)(i) (exception for orders under section 51 that are consequential on orders that vary Schedule 8 or 9 but do not fall within paragraph (c)), after “Schedule” insert “7A,”.

*Finance Act 2000 (c.17)*

- 7
- In paragraph 9 of Schedule 6 to the Finance Act 2000 (climate change levy: meaning of “for domestic use”), after sub-paragraph (4) (power under section 2(1C) of the Value Added Tax Act 1994 (c. 23) to amend Schedule A1 to that Act includes power to make corresponding amendments to paragraph 9) there is inserted—
- “(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.”.

SCHEDULE 32

Section 101.

PETROLEUM REVENUE TAX: UNRELIEVABLE FIELD LOSSES

*Schedule applies where there has been a transfer to which Parts 2 and 3 of Schedule 17 to the Finance Act 1980 do not apply*

- 1
- (1) This Schedule applies where—
    - (a) there has been a transfer of the whole or part of the interest in an oil field of a participator in the field (see paragraph 4),
    - (b) the transfer is an excluded transfer (see paragraph 2), and
    - (c) an allowable loss has accrued from the field to—
      - (i) the old participator,
      - (ii) the new participator, or
      - (iii) a subsequent new owner (see paragraph 3).
  - (2) In this Schedule—
 

“the loss-maker” means the person to whom the allowable loss accrues;

“the old participator” means the person whose interest is wholly or partly transferred by the transfer and “the new participator” means the person to whom the interest or part is transferred by the transfer;

“the transferred interest” means—

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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- (a) where the transfer is of the whole of the old participator's interest in the field, that interest, and
- (b) where the transfer is of part of the old participator's interest in the field, that part.

*Meaning of "excluded transfer"*

- 2 For the purposes of this Schedule, a transfer of the whole or part of the interest in an oil field of a participator in the field is an "excluded transfer" if—
- (a) Parts 2 and 3 of Schedule 17 to the Finance Act 1980 (c. 48) do not apply to the transfer, and
  - (b) either—
    - (i) the transfer is made pursuant to an agreement made on or after 7th March 2001, or
    - (ii) the transfer is made pursuant to a conditional agreement made before 7th March 2001 and the condition is satisfied on or after 7th March 2001.

*Meaning of "subsequent new owner"*

- 3 For the purposes of this Schedule, a "subsequent new owner" is any participator in the field who has the transferred interest, or any part of the transferred interest, as a result of—
- (a) a transfer by the new participator of the whole or part of the transferred interest, or
  - (b) the combination of such a transfer as is mentioned in paragraph (a) and—
    - (i) a transfer by a subsequent new owner of the whole or part of the transferred interest, or
    - (ii) two or more such transfers as are mentioned in sub-paragraph (i).

*Transfers of interests in oil fields: interpretation*

- 4 (1) For the purposes of this Schedule, a participator in an oil field transfers the whole or part of his interest in the field whenever as a result of a transaction or event other than—
- (a) the making of an agreement or arrangement of the kind mentioned in paragraph 5 of Schedule 3 to the Oil Taxation Act 1975 (c. 22) (agreement or arrangement for transfer of participator's rights to associated company), or
  - (b) a re-determination under a unitisation agreement,
- the whole or part of his share in the oil to be won and saved from the field becomes the share or part of the share of another person who is or becomes a participator in the field.
- (2) Paragraph 1(2) of Schedule 17 to the Finance Act 1980 (c. 48) (meaning of "unitisation agreement" and "re-determination") applies for the purposes of sub-paragraph (1) above as for those of paragraph 1(1) of that Schedule.

*Schedule applies in place of section 6(1C) of the Oil Taxation Act 1975*

- 5 Where this Schedule makes provision for determining the unrelievable portion of an allowable loss, that portion is determined in accordance with the provisions of this

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

Schedule instead of in accordance with the provisions of section 6(1C) of the Oil Taxation Act 1975.

*General rule for determinations under this Schedule of “unrelievable portion” of loss*

- 6 (1) The unrelievable portion of the allowable loss is so much of the intermediate unrelieved loss as cannot be relieved under paragraph 7 against relevant profits.
- (2) In this Schedule—
- “the intermediate unrelieved loss” is so much of the allowable loss as cannot be relieved under section 7 of the Oil Taxation Act 1975 against assessable profits accruing from the field to the loss-maker;
- “relevant profits” means assessable profits—
- (a) accruing from the field to any participator in the field other than the loss-maker,
- (b) computed as if the amounts mentioned in section 2(8)(a) of that Act did not include expenditure unrelated to the field except where it has been allowed in pursuance of a claim or election for its allowance received by the Board before 29th November 1994, and
- (c) reduced (after being so computed) under section 7 of that Act.
- (3) In sub-paragraph (2) “expenditure unrelated to the field” has the meaning given by section 6(9) of that Act.

*Loss to be relieved against other participators’ profits*

- 7 (1) The intermediate unrelieved loss shall (but only for the purposes of determinations under this Schedule) be relieved against relevant profits accruing to a different owner.
- (2) The provisions of paragraphs 8 to 10 apply for the purposes of relieving the intermediate unrelieved loss under this paragraph.
- (3) In this paragraph and paragraph 8, a “different owner” means any participator in the field who—
- (a) has the loss-maker’s interest at any time (whether before or after the transfer) when the loss-maker does not have that interest, or
- (b) has a part of the loss-maker’s interest at any time (whether before or after the transfer) when the loss-maker does not have that part.
- (4) In sub-paragraph (3) “the loss-maker’s interest” means—
- (a) if the loss-maker is the old participator or the new participator, the transferred interest;
- (b) if the loss-maker is a subsequent new owner and at any time (whether before or after the transfer) has the whole of the transferred interest, that interest; and
- (c) if the loss-maker is a subsequent new owner and paragraph (b) does not apply, the aggregate of each part of the transferred interest that at any time (whether before or after the transfer) is a part that the loss-maker has.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

*Extent to which losses to be relieved*

- 8 (1) Where the interest in the field of a different owner is the transferred interest, the intermediate unrelieved loss is to be relieved against the whole of any relevant profits accruing to the different owner.
- (2) Where the interest in the field of a different owner is part of the transferred interest, the corresponding part (but only that part) of the intermediate unrelieved loss is to be relieved against the whole of any relevant profits accruing to the different owner.
- (3) Where—
- (a) a different owner’s interest in the field includes the transferred interest, but
  - (b) the transferred interest is only part of the different owner’s interest in the field,
- the intermediate unrelieved loss is to be relieved against the corresponding part (but no other part) of any relevant profits accruing to the different owner.
- (4) Sub-paragraph (5) applies where—
- (a) a different owner’s interest in the field includes part only of the transferred interest (“the owned part of the transferred interest”), and
  - (b) the owned part of the transferred interest is only part of the different owner’s interest in the field.
- (5) Only the part of the intermediate unrelieved loss corresponding to the owned part of the transferred interest is to be relieved, and it is to be relieved against (but only against) the part of any relevant profits accruing to the different owner that corresponds to the part which the owned part of the transferred interest forms of the different owner’s interest in the field.

*Profits not to be utilised more than once*

- 9 The intermediate unrelieved loss may not be relieved against relevant profits to the extent that those profits have already been utilised for the purposes of paragraph 7.

*Relieving different losses against the same profits*

- 10 (1) Where intermediate unrelieved losses accruing to each of two or more persons fall to be relieved under paragraph 7 against the same relevant profits, such a loss accruing to a person who last had the transferred interest (or part of it) at an earlier time shall be so relieved before one accruing to a person who last had the interest (or part) at a later time.
- (2) Where—
- (a) two or more persons each last had a part of the transferred interest at the same time, and
  - (b) intermediate unrelieved losses accruing to each of them fall to be relieved under paragraph 7 against the same relevant profits,
- those losses shall be so relieved in such a manner as ensures that the same proportion of each is so relieved.
- (3) In this paragraph, references to an intermediate unrelieved loss accruing to a person are to the intermediate unrelieved loss in respect of an allowable loss accruing to the person.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

*Construction as one with Part 1 of the Oil Taxation Act 1975*

- 11 This Schedule shall be construed as one with Part 1 of the Oil Taxation Act 1975 (c. 22).

## SCHEDULE 33

Section 110.

### REPEALS

#### Commencement Information

- II** Sch. 33 in force at Royal Assent but for coming into force of individual repeals, see appropriate notes

## PART 1

### EXCISE DUTIES

#### (1) HYDROCARBON OILS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Hydrocarbon Oil Duties Act 1979 (c. 5)	<p>In section 1—</p> <p>(a) in subsection (3A), the words “(other than higher octane unleaded petrol)”;</p> <p>(b) subsection (3C).</p> <p>Section 2(1A).</p> <p>In section 2A(1), the words “higher octane unleaded petrol;”.</p> <p>In section 27(1), the definition of “higher octane unleaded petrol”.</p> <p>In Schedule 2A—</p> <p>(a) paragraph 2;</p> <p>(b) in paragraph 3, the word “, 2”;</p> <p>(c) paragraph 8(3);</p> <p>(d) in paragraph 10(1), the words “Subject to sub-paragraph (2),”;</p> <p>(e) paragraphs 10(2) and 11(2).</p>
Finance Act 1996 (c. 8)	Section 4(4) and (5).
Finance Act 2000 (c. 17)	Section 5(2) and (4).
	In Schedule 1, paragraphs 2, 3(4) and 4.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

These repeals shall be deemed to have come into force in accordance with section 2(5) of this Act.

## (2) GENERAL BETTING DUTY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	In Schedule 1, paragraph 2(4)(b) and (c).

These repeals have effect in accordance with section 6(2) of this Act.

## (3) VEHICLE EXCISE DUTY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Vehicle Excise and Registration Act 1994 (c. 22)	Section 19(3).  In Schedule 1— (a) in paragraph 2(1)(a), the words “or the motorcycle is an electrically propelled vehicle”; (b) Part 4A; (c) paragraph 5(5A); (d) in paragraph 7(2), the words “IVA,”; (e) in paragraph 16(1)(a), the words “IVA,”.
Finance Act 1995 (c. 4)	In Schedule 4, paragraph 10.
Finance Act 1996 (c. 8)	Section 15(1) and (2). Section 16(6) and (7). In Schedule 2, paragraph 8.

- The repeals of—
  - section 19(3) of the Vehicle Excise and Registration Act 1994, and
  - paragraph 8 of Schedule 2 to the Finance Act 1996,come into force on the passing of this Act.
- The other repeals have effect in relation to licences issued on or after 1st April 2001 and shall be deemed to have come into force on 1st April 2001.  
  
These repeals have effect in accordance with paragraph 21 of Schedule 3 to this Act.

## (4) EXCISE DUTY: PAYMENTS BY COMMISSIONERS IN CASE OF ERROR OR DELAY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1994 (c. 9)	In Schedule 6, paragraphs 9 and 10.
Finance Act 1997 (c. 16)	In Schedule 5—

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

(a) in paragraph 14(3)(b), the word “or”;

(b) paragraph 15(2)(a);

(c) in paragraph 15(2)(b), the word “or”.

## PART 2

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

#### (1) MILEAGE ALLOWANCES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Sections 197B to 197F.
Finance Act 1990 (c. 29)	Section 578A(1)(c) and the word “or” immediately preceding it.
Capital Allowances Act 2001 (c. 2)	Section 23 and Schedule 4.
	Section 80.

These repeals have effect for the year 2002-03 and subsequent years of assessment.

#### (2) EMPLOYEE SHARE OWNERSHIP PLANS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2000 (c. 17)	In Schedule 8, paragraph 82(2).

This repeal shall be deemed always to have had effect.

#### (3) ENTERPRISE INCENTIVES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 289—
	(a) in subsection (1), the word “and” at the end of paragraph (ba);
	(b) in subsection (2), paragraph (c) and the word “or” immediately preceding it;
	(c) subsections (4) and (5).
	In section 289A(7), paragraph (c) and the word “and” immediately preceding it.
	Section 289A(9).
	Section 291(6).

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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In section 293(2), the words “be an unquoted company and”.

In section 293(3B)(b), the words “and oil exploration”.

Section 297(2)(d) and (9).

In section 303—

(a) subsections (3) to (7);

(b) in subsection (9A), the words “or, as the case may be, the receipt of value in question”.

Section 303A(8).

In section 312(1), the definitions of—

“appraisal licence”;

“the designated period”;

“development licence”;

“exploration licence”;

“modified appraisal licence”, “modified development licence” and “modified exploration licence”;

“Northern Ireland licence” (and in relation to such a licence “the initial term”, “the 30 year renewal term” and “the five year renewal term”);

“oil” and “oil extraction activities”;

“oil exploration”; and

“the 1984 Regulations” and the word “and” immediately preceding the definition of “the 1984 Regulations”.

Section 312(7) and (8).

In section 576—

(a) in subsection (4), the words from “at all times” to “and which”;

(b) in subsection (4B)(a), the words “, the words “an unquoted company and be” in subsection (2),”.

In Schedule 15B, paragraph 1(7).

Taxation of Chargeable Gains Act 1992  
(c. 12)

In Schedule 5B—

(a) in paragraph 1(2), the word “and” at the end of paragraph (f);

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

	(b) paragraph 13(4);
	(c) paragraph 14A(7);
	(d) in paragraph 19(1), the definition of “the designated period”.
Finance Act 1994 (c. 9)	In Schedule 15, paragraphs 10(d), 17(b) and (c) and 21(a)(i).
Finance Act 1998 (c. 36)	In Schedule 13, paragraphs 6(1), 7(1), 15(2), 20(1)(a) and 30(1)(a).
Finance Act 2000 (c. 17)	In Schedule 17, paragraphs 2, 3(2), 4, 5(2) and (5), 6(2) and 7.

- 1 The repeal of section 289A(9) of the Taxes Act 1988 has effect in accordance with paragraph 9(2) of Schedule 15 to this Act.
- 2 The repeals in the following provisions have effect in accordance with paragraph 40(3) of Schedule 15 to this Act—
- 3 The repeals in section 576 of the Taxes Act 1988 have effect in accordance with paragraph 38(5) of Schedule 15 to this Act.
- 4 The repeal in Schedule 15B to the Taxes Act 1988 has effect in accordance with paragraph 3(2) of Schedule 16 to this Act.
- 5 The repeal in paragraph 21 of Schedule 15 to the Finance Act 1994 has effect in accordance with paragraph 22(2) of Schedule 15 to this Act.
- 6 The remaining repeals have effect in accordance with paragraph 40(2) of Schedule 15 to this Act.

These repeals have effect in accordance with section 65 of this Act.

#### (4) CAPITAL ALLOWANCES: ENERGY-SAVING PLANT AND MACHINERY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Capital Allowances Act 2001 (c. 2)	In section 39, the word “or” immediately preceding the words “section 45”.
	In section 46(1), the word “or” immediately preceding the words “section 45”.

#### (5) CAPITAL ALLOWANCES: OFFSHORE OIL INFRASTRUCTURE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Capital Allowances Act 2001 (c. 2)	In section 164(4)(a), the words “, of an amount equal to the net abandonment cost,”.
	In section 165(1)(b), the words “on the demolition of plant or machinery”.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

1 The repeal in section 164 of the Capital Allowances Act 2001 has effect in accordance with paragraph 9(1), (5) and (8) of Schedule 20 to this Act.

2 The repeal in section 165 of that Act shall be deemed always to have had effect.

These repeals have effect in accordance with section 71(3) of this Act.

This repeal has effect in accordance with section 78 of this Act.

This repeal has effect in accordance with paragraph 6(3) of Schedule 27 to this Act.

This repeal has effect in accordance with section 83(2) of this Act.

These repeals apply in relation to payments made after the day on which this Act is passed.

This repeal applies for the purposes of accounting periods ending on or after 1st April 2001.

With the exception of the repeals of paragraph 12(2) of Schedule 3 to the Finance (No. 2) Act 1997 and section 90(3) of the Finance Act 1998 (which come into force on the passing of this Act), these repeals have effect in accordance with section 87 of this Act.

These repeals have effect in accordance with section 88 of, and Schedule 29 to, this Act.

#### (6) CREATIVE ARTISTS: RELIEF FOR FLUCTUATING PROFITS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In Schedule 1B, paragraph 6.
Income and Corporation Taxes Act 1988 (c. 1)	Sections 534, 535, 537A and 538.
Finance Act 1996 (c. 8)	Section 128(5) to (10).

#### (7) CAPITAL GAINS TAX: TAPER RELIEF: BUSINESS ASSETS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule A1, paragraph 23(8).

#### (8) DOUBLE TAXATION RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 811(2), the word “and” immediately preceding paragraph (b).

#### (9) LIFE POLICIES, LIFE ANNUITY CONTRACTS AND CAPITAL REDEMPTION, POLICIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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Income and Corporation Taxes Act 1988 (c. 1)	Section 541(4).
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(10) DIVIDENDS PAID TO GROUP MEMBERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 6(4), the words “, 247”.
	In section 231(1), the words “, 247”.
	Sections 247 and 248.
	In Schedule 24, paragraph 6.
Finance Act 1989 (c. 26)	Section 99.
Finance Act 1996 (c. 8)	In Schedule 14, paragraph 13.
Finance Act 1998 (c. 36)	In Schedule 3, paragraph 19(3) and (4) (a).

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(11) SMALL COMPANIES’ RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 13(7)(a), the words “resident in the United Kingdom”.

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(12) ENDING OF PROVISIONAL REPAYMENT REGIME

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 438A.
	Schedule 19AB.
	In Schedule 19AC, paragraph 15.
Finance Act 1991 (c. 31)	Section 49.
	Schedule 8.
Finance Act 1993 (c. 34)	Section 121.
Finance Act 1995 (c. 4)	In Schedule 8, paragraph 12(1)(b).
Finance Act 1996 (c. 8)	Section 169.
	Schedule 34.
Finance (No. 2) Act 1997 (c. 58)	In Schedule 3, paragraphs 10 to 12 and 13(13).
Finance Act 1998 (c. 36)	Section 37(2).
	Section 90(3).
	Section 91.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

In Schedule 18, in paragraph 9(3), paragraph (b) and the word “and” preceding it.

In Schedule 19, paragraph 51.

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(13) AMENDMENTS TO MACHINERY OF SELF-ASSESSMENT

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	<p>In section 9—</p> <p>(a) in subsection (3), the words following the paragraphs;</p> <p>(b) subsections (4) to (6).</p> <p>In section 12AB—</p> <p>(a) subsections (2) to (4);</p> <p>(b) in subsection (5), the definition of “filing date”.</p> <p>In section 12B(1)—</p> <p>(a) in paragraph (b)(i), the words “or any amendment of the return” and “treated as”;</p> <p>(b) in paragraph (b)(ii), the words “or any amendment of the return”.</p> <p>In section 30(5)(b), the words “, or an amendment of such a return,”.</p> <p>In section 50—</p> <p>(a) in subsection (6)(a), the words from “by reason of” to “Finance Act 1998”;</p> <p>(b) in subsection (6)(b), the words from “by reason of” to “this Act”;</p> <p>(c) in subsection (7)(a), the words from “which has been amended” to the end of the paragraph;</p> <p>(d) in subsection (7)(b), the words from “which has been amended” to “this Act”.</p> <p>In Schedule 1A, in paragraph 2A(2)(a), the words “treated as”.</p>
Finance Act 1984 (c. 43)	In Schedule 22, paragraph 3(1).
Finance Act 1990 (c. 29)	Section 104(2)(b).
Finance Act 1994 (c. 9)	Sections 180, 186, 188 and 189. In Schedule 19, paragraph 7.

*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

Finance Act 1996 (c. 8)	In section 123, subsections (6) and (7). In Schedule 19— (a) in paragraph 2, the words “9A(1),” and “12AC(1), 19A(1), 28A(1) and 28B(1)”; (b) paragraphs 4, 5, 6, 9 and 10(1). In Schedule 22, paragraphs 3 and 4. In Schedule 24, paragraph 5.
Finance Act 1998 (c. 36)	In Schedule 19, paragraphs 4, 5, 8, 10, 14(2), 16(3), 24, 25, 26 and 27(2) and (3).

#### (14) RECOVERY PROCEEDINGS: MINOR AMENDMENTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 66(1), the words “under any assessment”. In section 67(1), the words “under any assessment”.
Finance (No.2) Act 1987 (c. 51)	Section 86(1).
Finance Act 1994 (c. 9)	In Schedule 19, paragraph 20.
Finance Act 1998 (c. 36)	In Schedule 4, paragraph 3(2). In Schedule 19, paragraph 31.

- 1 The repeals in the Taxes Management Act 1970 have effect in relation to proceedings begun after the passing of this Act.
- 2 The other repeals have effect in relation to—
  - (a) proceedings begun (or a counterclaim made) after the passing of this Act,  
and
  - (b) a set-off first claimed after the passing of this Act.

### PART 3

#### OTHER TAXES

##### (1) VALUE ADDED TAX: REDUCED RATE

<i>Short title and chapter or title and number</i>	<i>Extent of repeal or revocation</i>
Value Added Tax Act 1994 (c. 23)	Section 2(1A) to (1C). Section 97(4)(aa). Schedule A1.
Finance Act 1995 (c. 4)	Section 21.

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*Status: Point in time view as at 27/03/2006.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001. (See end of Document for details)*

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Finance (No. 2) Act 1997 (c. 58)	Section 6.
Value Added Tax (Reduced Rate) Order 1998 (S.I. 1998/ 1375)	The whole Order.
Finance Act 2000 (c. 17)	Section 135. In Schedule 6, paragraph 9(4). Schedule 35.
Value Added Tax (Reduced Rate) Order 2000 (S.I. 2000/ 2954)	The whole Order.

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- 1 The repeals of—
  - (a) sections 2(1C) and 97(4)(aa) of the Value Added Tax Act 1994, and
  - (b) paragraph 9(4) of Schedule 6 to the Finance Act 2000,come into force on 1st November 2001.
- 2 The other repeals and revocations have effect in accordance with section 99(7) of this Act.

#### (2) PETROLEUM REVENUE TAX

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1991 (c. 31)	Section 103(7)(b) and (c).
Finance Act 1995 (c. 4)	Section 146(1) and (2).

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- 1 The repeals in the Finance Act 1991 have effect in accordance with section 103(2) of this Act.
- 2 The repeals in the Finance Act 1995 have effect in accordance with section 101(5) of this Act.  
  
The repeal in paragraph 15(2)(b) of Schedule 6 to the Finance Act 2000 has effect in accordance with section 105(7) of this Act.

#### (3) LANDFILL TAX AND CLIMATE CHANGE LEVY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1998 (c. 36)	Section 148(2) to (4).
Finance Act 2000 (c. 17)	In Schedule 6— <ol style="list-style-type: none"><li>(a) in paragraph 14(2)(a), the word “and”;</li><li>(b) in paragraph 15(2)(b), the words “by that person”;</li><li>(c) paragraph 141.</li></ol>

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**Status:**

Point in time view as at 27/03/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2001.