



# Finance Act 2002

## 2002 CHAPTER 23

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [24th July 2002]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and to grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### EXCISE DUTIES

##### *Tobacco products duty*

#### **1 Rates of tobacco products duty**

- (1) For the Table of rates of duty in Schedule 1 to the Tobacco Products Duty Act 1979 (c. 7) substitute—

TABLE

|               |   |
|---------------|---|
| 1. Cigarettes | An amount equal to 22 per cent of the retail price plus £94.24 per thousand cigarettes. |
| 2. Cigars     | £137.26 per kilogram.   |

*Status: Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.*

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|  |                      |
|--|----------------------|
| 3. Hand-rolling tobacco                      | £98.66 per kilogram. |
| 4. Other smoking tobacco and chewing tobacco | £60.34 per kilogram. |

- (2) This section shall be deemed to have come into force at 6 o'clock in the evening of 17th April 2002.

### *Alcoholic liquor duties*

## **2 Rates of duty on cider**

- (1) In section 62(1A) of the Alcoholic Liquor Duties Act 1979 (c. 4) (rates of duty on cider)—
- in paragraph (b) (rate of duty per hectolitre in the case of cider of a strength exceeding 7.5 per cent that is not sparkling cider), for “£39.21” substitute “£38.43”;
  - in paragraph (c) (rate of duty per hectolitre in any other case), for “£26.13” substitute “£25.61”.
- (2) This section shall be deemed to have come into force on 28th April 2002.

## **3 Duty on beverages made with spirits to be at spirits rate**

- (1) Omit section 1(9) of the Alcoholic Liquor Duties Act 1979 (under which alcoholic beverages of a strength between 1.2 and 5.5 per cent made with spirits are treated as not being spirits, unless of a description specified by Treasury order).
- (2) This section shall be deemed to have come into force on 28th April 2002.

## **4 Reduced rates of duty on beer from small breweries**

- (1) Schedule 1 to this Act (which makes provision for the excise duty on beer to be charged at reduced rates on beer produced in small breweries) has effect.
- (2) Subject to subsection (3), subsection (1) shall be deemed to have come into force on 1st June 2002.
- (3) So far as relating to—
- the insertion by paragraph 2 of that Schedule of the new section 36H of the Alcoholic Liquor Duties Act 1979, and
  - paragraph 3 of that Schedule,
- subsection (1) comes into force on the day on which this Act is passed.

### **Commencement Information**

- II** S. 4 wholly in force; s. 4(1) in force at 1.6.2002 for specified purposes, otherwise s. 4 in force at 24.7.2002, see s. 4(2)(3)

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## *Hydrocarbon oil duties*

### **5 Biodiesel**

(1) The Hydrocarbon Oil Duties Act 1979 (c. 5) is amended as follows.

(2) After section 2 insert—

#### **“2AA Biodiesel**

(1) In this Act “biodiesel” means diesel quality liquid fuel—

- (a) that is produced from biomass or waste cooking oil,
- (b) the ester content of which is not less than 96.5% by weight, and
- (c) the sulphur content of which does not exceed 0.005% by weight or is nil.

(2) In subsection (1)—

- (a) “diesel quality” means capable of being used for the same purposes as heavy oil;
- (b) “liquid” does not include any substance that is gaseous at a temperature of 15°C and under a pressure of 1013.25 millibars;
- (c) “biomass” means vegetable and animal substances constituting the biodegradable fraction of—
  - (i) products, wastes and residues from agriculture, forestry and related activities, or
  - (ii) industrial and municipal waste.”.

(3) In section 2A (power to amend definitions), after subsection (1) insert—

“(1A) The Treasury may by order made by statutory instrument amend the definition for the purposes of this Act of “biodiesel”.”.

(4) After section 6 (excise duty on hydrocarbon oil) insert—

#### **“6AA Excise duty on biodiesel**

(1) A duty of excise shall be charged on the setting aside for a chargeable use by any person, or (where it has not already been charged under this section) on the chargeable use by any person, of biodiesel.

(2) In subsection (1) “chargeable use” means use—

- (a) as fuel for any engine, motor or other machinery, or
- (b) as an additive or extender in any substance so used.

(3) The rate of duty under this section shall be £0.2582 a litre.

#### **6AB Excise duty on blends of biodiesel and heavy oils**

(1) A duty of excise shall be charged on bioblend—

- (a) imported into the United Kingdom, or
- (b) produced in the United Kingdom and delivered for home use from a refinery or from other premises used for the production of

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hydrocarbon oil or from any bonded storage for hydrocarbon oil, not being bioblend chargeable with duty under paragraph (a) above.

This is subject to subsection (6) below.

- (2) In this Act “bioblend” means any mixture that is produced by mixing—
  - (a) biodiesel, and
  - (b) heavy oil not charged with the excise duty on hydrocarbon oil.
- (3) The rate at which the duty shall be charged on any bioblend shall be a composite rate representing—
  - (a) in respect of the proportion of the bioblend that is hydrocarbon oil, the rate that would be applicable to the bioblend if it consisted entirely of heavy oil of the description that went into producing the bioblend, and
  - (b) in respect of the proportion of the bioblend that is biodiesel, the rate that would be applicable to the bioblend if it consisted entirely of biodiesel.
- (4) The references in subsection (3) above to the proportions of—
  - (a) hydrocarbon oil, and
  - (b) biodiesel,
 are to the proportions by volume to the nearest 0.001%.
- (5) If the Commissioners are not satisfied as to the proportion of biodiesel in any bioblend, the rate of duty chargeable shall be the rate that would be applicable to the bioblend if it consisted entirely of heavy oil of the description that went into producing the bioblend.
- (6) Where imported bioblend is removed to a refinery, the duty chargeable under subsection (1) above shall, instead of being charged at the time of the importation of the bioblend, be charged on the delivery of any goods from the refinery for home use and shall be the same as that which would be payable on the importation of like goods.

#### **6AC Application to biodiesel and bioblend of provisions relating to hydrocarbon oil**

- (1) The Commissioners may by regulations provide for—
  - (a) references in this Act, or specified references in this Act, to hydrocarbon oil to be construed as including references to—
    - (i) biodiesel;
    - (ii) bioblend;
  - (b) references in this Act, or specified references in this Act, to duty on hydrocarbon oil to be construed as including references to duty under—
    - (i) section 6AA above;
    - (ii) section 6AB above;
  - (c) biodiesel, or bioblend, to be treated for the purposes of such of the following provisions of this Act as may be specified as if it fell within a specified description of hydrocarbon oil.
- (2) Where the effect of provision made under subsection (1) above is to extend any power to make regulations, provision made in exercise of the power as

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extended may be contained in the same statutory instrument as the provision extending the power.

(3) In this section “specified” means specified by regulations under this section.

(4) Regulations under this section may make different provision for different cases.

(5) Paragraph (b) of subsection (1) above shall not be taken as prejudicing the generality of paragraph (a) of that subsection.”.

(5) Schedule 2 to this Act contains minor and consequential amendments of the Hydrocarbon Oil Duties Act 1979 (c. 5).

(6) Subsection (4), and subsection (5) so far as relating to paragraphs 2 and 4(1) of that Schedule, have effect in relation to biodiesel that—

(a) is set aside for chargeable use (as defined in the section 6AA inserted by subsection (4)) after such date as the Commissioners of Customs and Excise may by order made by statutory instrument appoint, or

(b) not having been so set aside, is the subject of such chargeable use after that date,

and has not been set aside for chargeable use under section 6A of that Act (fuel substitutes) on or before that date.

(7) Subsection (4), and subsection (5) so far as relating to paragraph 2 of that Schedule, have effect in relation to bioblend that—

(a) is imported into the United Kingdom after the date appointed under subsection (6)(a), or

(b) not having been so imported—

(i) is produced in the United Kingdom and delivered for home use after that date, and

(ii) has not been set aside for chargeable use under section 6A of that Act (fuel substitutes) on or before that date.

(8) Subsection (5)—

(a) so far as relating to paragraph 3 of that Schedule, comes into force on the day after the date appointed under subsection (6)(a),

(b) so far as relating to paragraph 5 of that Schedule, applies to mixtures produced after the date appointed under subsection (6)(a), and

(c) so far as relating to paragraph 7 of that Schedule, comes into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

#### **Subordinate Legislation Made**

**P1** S. 5(6)(a) power fully exercised: 25.7.2002 appointed by [S.I. 2002/1926, art. 2](#)

## **6 Regulating trade in rebated heavy oil etc**

(1) Schedule 3 to this Act has effect.

(2) In that Schedule—

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Part 1 makes provision for regulating trade in certain heavy oil on which rebate of excise duty has been allowed, and

Part 2 amends provisions of the Hydrocarbon Oil Duties Act 1979 relating to rebates.

- (3) Subject to subsection (4), subsection (1) so far as relating to paragraph 1 of that Schedule shall not come into force until such day as the Commissioners of Customs and Excise may appoint by order made by statutory instrument.
- (4) For the purpose of the exercise of any power to make regulations, subsection (1) so far as relating to that paragraph comes into force on the day on which this Act is passed.

#### Subordinate Legislation Made

P2 S. 6(3) power wholly exercised: 1.4.2003 appointed for specified purposes by S.I. 2002/3056, art. 2

## 7 Fuel substitutes

- (1) In section 6A of the Hydrocarbon Oil Duties Act 1979 (c. 5) (fuel substitutes)—
  - (a) in subsection (5) (power to provide that fuel substitute to be treated as if it were a description of hydrocarbon oil), for the words from “the description of such one or more of the following” to the end substitute “such description of hydrocarbon oil as may be so specified”;
  - (b) in subsection (6)(a) (power to be exercised so that fuel substitute charged with duty and otherwise treated as if it were description of hydrocarbon oil to which it is most closely equivalent), for “the substance falling within the descriptions specified in subsection (5) above” substitute “hydrocarbon oil of the description”.
- (2) In section 10 of the Finance Act 1993 (c. 34) (mineral oil fuel substitutes)—
  - (a) in subsection (2) (power to provide that mineral oil fuel substitute to be treated as if it were a particular description of hydrocarbon oil), for the words from “the description of such one or more of the following” to the end substitute “such description of hydrocarbon oil as may be so specified”;
  - (b) in subsection (3) (power to be exercised so that mineral oil fuel substitute treated as if it were description of hydrocarbon oil to which it is most closely equivalent), for “the substance falling within the descriptions specified in subsection (2) above” substitute “hydrocarbon oil of the description”.

### *Betting and gaming duties*

## 8 Amusement machine licences: excepted machines

- (1) Section 21 of the Betting and Gaming Duties Act 1981 (c. 63) (amusement machine licences) is amended as follows.
- (2) In subsection (3A) (excepted machines), for paragraphs (c) and (d) (certain thirty-five penny machines and video machines) substitute—
  - “(c) a fifty-penny machine that is not a gaming machine.”.
- (3) For subsection (3B) substitute—

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“(3B) For the purposes of this section an amusement machine is a fifty-penny machine if, and only if—

- (a) where it is a machine on which a game can be played solo, the price for a solo game does not exceed 50p; and
- (b) where it is a machine on which a game can be played by more than one person at a time, the price to participate in such a game does not exceed 50p.”.

(4) In subsection (3C) (definition of the price for a solo game), for “35p”, in both places where it occurs, substitute “ 50p ”.

(5) In section 25 of that Act (definition of different types of machine), in subsections (4) and (6) (treatment of machines capable of being played by more than one person at a time), for “an excepted video machine falling within section 21(3A)(d) above” substitute “ a fifty-penny machine within section 21(3B) above ”.

(6) This section has effect in relation to the provision of an amusement machine at any time on or after 1st May 2002.

## 9 Amusement machine licence duty: rates

(1) In the Table in section 23(2) of the Betting and Gaming Duties Act 1981 (c. 63) (rates of amusement machine licence duty), for column (4) (medium-prize machines other than five-penny machines) and column 6 (machines not in any other category) substitute—

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| <b>“(4)</b>       | <b>(6)</b>        |
|-------------------|-------------------|
| <b>Category C</b> | <b>Category E</b> |
| <b>£</b>          | <b>£</b>          |
| 80                | 225               |
| 160               | 435               |
| 235               | 630               |
| 305               | 820               |
| 370               | 990               |
| 430               | 1155              |
| 485               | 1300              |
| 535               | 1440              |
| 585               | 1560              |
| 625               | 1675              |
| 665               | 1775              |
| 695               | 1860”             |

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(2) This section applies in relation to any amusement machine licence for which an application is received by the Commissioners of Customs and Excise after 30th April 2002.

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## 10 Rates of gaming duty

- (1) For the Table in section 11(2) of the Finance Act 1997 (c. 16) (rates of gaming duty) substitute—

“TABLE

| <i>Part of gross gaming yield</i> | <i>Rate</i>    |
|-----------------------------------|----------------|
| The first £488,000                | 2.5 per cent.  |
| The next £1,083,500               | 12.5 per cent. |
| The next £1,083,500               | 20 per cent.   |
| The next £1,897,000               | 30 per cent.   |
| The remainder                     | 40 per cent.”  |

- (2) This section has effect in relation to accounting periods beginning on or after 1st April 2002.

## 11 Gaming duty to be chargeable in respect of sic bo and three card poker

- (1) In section 10(2) of the Finance Act 1997 (c. 16) (games in respect of which gaming duty is chargeable)—

- (a) after “American roulette” insert “ sic bo ”;
- (b) after “super pan 9” insert “ three card poker ”.

- (2) This section has effect in relation to games begun on or after 24th April 2002.

## 12 Pool betting duty etc

- (1) Schedule 4 to this Act has effect.

- (2) In that Schedule, Part 1—

makes provision about pool betting duty, and  
provides for coupon betting to cease to be subject to pool betting duty but to be subject to general betting duty instead,

and Part 2 contains minor amendments and transitional provisions.

- (3) The amendments made by paragraph 2 of that Schedule have effect for the purposes of accounting periods beginning on or after 31st March 2002; but this does not apply to the substitution of the new regulation-making provisions.

- (4) The amendments made by paragraphs 3 and 4 of that Schedule apply to bets made on or after 31st March 2002.

- (5) Subsections (1) to (4) shall (subject to subsections (6) and (7)) be deemed to have come into force on 31st March 2002.

- (6) Subsection (1), so far as relating to paragraphs 5, 6(a) and (c), 7 to 9, 10(1), (2), (5) to (11), (13) and (14), 11, 12(1) and (3), 13 and 14 of Schedule 4 to this Act, shall be deemed to have come into force on 24th April 2002.

- (7) Subsection (1), so far as relating to—



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- (a) the substitution of the new regulation-making provisions by paragraph 2 of that Schedule, and
  - (b) paragraphs 10(3), (4) and (12) and 12(2) of that Schedule,
- comes into force on the day on which this Act is passed; but the powers conferred by the new regulation-making provisions are exercisable only as respects accounting periods beginning after that day.
- (8) In this section “the new regulation-making provisions” means the following new provisions of the Betting and Gaming Duties Act 1981 (c. 63)—
- section 7D(6) to (8),
  - section 7E(4) and (5),
  - section 7F(6) and (7),
  - section 8(3) and (4), and
  - section 8B(1)(b) and (2).

#### Commencement Information

- I2** S. 12 wholly in force; s. 12(1) in force at 31.3.2002 or 24th April 2002, otherwise s. 12 in force at 24.7.2002, see. s. 12(5)-(7)

### 13 General betting duty: spread bets

- (1) For section 3(2) of the Betting and Gaming Duties Act 1981 (c. 63) (definition of “spread bet” by reference to the Financial Services Act 1986) substitute—
- “(2) A bet is a spread bet if, at the time it is made, it constitutes a contract to which section 412 of the Financial Services and Markets Act 2000 (gaming contract not void etc if entry into contract is activity specified under the section and contract relates to investment so specified) applies at that time.”.
- (2) Subsection (1) applies to bets made after the day on which this Act is passed.

### 14 General betting duty: overseas bet-brokers

- (1) In Part 1 of the Betting and Gaming Duties Act 1981 (betting duties), after section 9 (prohibitions for protection of revenue) insert—

#### “9A Further prohibitions for protection of revenue: overseas bet-brokers

- (1) A person shall be guilty of an offence if—
- (a) he knowingly issues, circulates or distributes in the United Kingdom, or has in his possession for that purpose, any advertisement or other document inviting the use of or otherwise relating to bet-broking services, and
  - (b) any person providing any of the bet-broking services concerned—
    - (i) is outside the United Kingdom, and
    - (ii) provides them in the course of a business.
- (2) In this section “bet-broking services” means—

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- (a) facilities provided by a person that may be used by other persons in making bets with third persons, or
  - (b) a person’s services of acting as agent for other persons in making bets on their behalf with third parties (whether the persons on whose behalf the bets are made are disclosed principals or undisclosed principals).
- (3) In subsection (2) “bet” means a bet other than one made by way of pool betting.
- (4) A person who gets or tries to get any advertisement or other document given or sent to him shall not be guilty of an offence by reason of his thereby procuring or inciting some other person to commit, or aiding or abetting the commission of, an offence under this section.”.
- (2) After section 9A of that Act (inserted by subsection (1) above) insert—

**“9B Offences under sections 9 and 9A: penalties**

- (1) This section applies where a person is guilty of an offence under section 9 or 9A (a “relevant offence”).
  - (2) In the case of the person’s first conviction for a relevant offence, he is liable—
    - (a) on summary conviction to a penalty of the prescribed sum, or
    - (b) on conviction on indictment to a penalty of any amount.
  - (3) In the case of a second or subsequent conviction of the person for a relevant offence, he is liable—
    - (a) on summary conviction to a penalty of the prescribed sum or to imprisonment for a term not exceeding three months or to both, or
    - (b) on conviction on indictment to a penalty of any amount or to imprisonment for a term not exceeding one year or to both.”.
- (3) Omit section 9(4) of that Act (penalties for offences under section 9).
- (4) In paragraph 5 of Schedule 6 to that Act (convictions under predecessors of section 9 to be treated as convictions under section 9), for “For the purposes of section 9(4)” substitute “ For the purposes of section 9B ”.
- (5) Subsection (1) comes into force on the day after that on which this Act is passed.
- (6) The amendments made by subsections (2) to (4) apply for the purposes of punishing offences committed after the day on which this Act is passed.

**Commencement Information**

**I3** S. 14 wholly in force; s. 14(2)-(6) in force at 24.7.2002 and s. 14(1) in force at 25.7.2002 by s. 14(5)

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### Vehicle excise duty

#### 15 Cars registered on or after 1st March 2001: rates of duty

- (1) For the Table in paragraph 1B of Schedule 1 to the Vehicle Excise and Registration Act 1994 (c. 22) (rates of duty applicable to light passenger vehicles registered on or after 1st March 2001 on basis of certificate specifying CO<sub>2</sub> emissions figure) substitute—

| <i>“CO<sub>2</sub> emissions figure</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>Reduced rate</i> | <i>Standard Rate</i> | <i>Premium rate</i> |
| <i>g/km</i>                             | <i>g/km</i>          | <i>£</i>            | <i>£</i>             | <i>£</i>            |
| –                                       | 120                  | 60                  | 70                   | 80                  |
| 120                                     | 150                  | 90                  | 100                  | 110                 |
| 150                                     | 165                  | 110                 | 120                  | 130                 |
| 165                                     | 185                  | 130                 | 140                  | 150                 |
| 185                                     | –                    | 150                 | 155                  | 160”                |

- (2) This section applies to any licence taken out on or after 18th April 2002 for a period beginning on or after 1st May 2002.

#### 16 Vans registered on or after 1st March 2001: rates of duty

- (1) For paragraph 1J of Schedule 1 to the Vehicle Excise and Registration Act 1994 (c. 22) (rate of duty applicable to light goods vehicles first registered on or after 1st March 2001) substitute—

“1J The annual rate of vehicle excise duty applicable to a vehicle to which this Part of this Schedule applies is—

- (a) if the vehicle is not a lower-emission van, £160;
- (b) if the vehicle is a lower-emission van, £105.

**For the purposes of paragraph 1J, a vehicle to which this Part of this Schedule applies is a “lower-emission van” if—**

- 1K
- (a) the vehicle is first registered on or after 1st March 2003, and
  - (b) the limit values given for the vehicle by the Table (which is extracted from the new table inserted in section 5.3.1.4 of Annex I of Council Directive [70/220/EEC](#) by Directive [98/69/EC](#) of the European Parliament and of the Council) are not exceeded during a Type I test.

| <i>Reference mass of vehicle</i> | <i>Limit values for types of emissions by reference to vehicle type</i> |
|----------------------------------|---|
|----------------------------------|---|

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|                  | <i>CO</i>     | <i>HC</i>     | <i>NO<sub>x</sub></i> | <i>HC</i><br>+<br><i>NO<sub>x</sub></i> | <i>PM</i>     |
|------------------|---------------|---------------|-----------------------|---|---------------|
| <i>Exceeding</i> | <i>Petrol</i> | <i>Diesel</i> | <i>Petrol</i>         | <i>Petrol</i>                           | <i>Diesel</i> |
| <i>kg</i>        | <i>kg</i>     | <i>g/km</i>   | <i>g/km</i>           | <i>g/km</i>                             | <i>g/km</i>   |
| –                | 1,305         | 1.0           | 0.5                   | 0.1                                     | 0.08          |
| 1,305            | 1760          | 1.81          | 0.63                  | 0.13                                    | 0.1           |
| 1,760            | 3,500         | 2.27          | 0.74                  | 0.16                                    | 0.11          |

1L In paragraph 1K—

“Type I test” means a test as described in section 5.3 of Annex I to Council Directive [70/220/EEC](#) as amended (test for simulating/verifying the average tailpipe emissions after a cold start and carried out using the procedure described in Annex III of that Directive as amended);

“the reference mass” of a vehicle means the mass of the vehicle with bodywork and, in the case of a towing vehicle, with coupling device, if fitted by the manufacturer, in running order, or mass of the chassis or chassis with cab, without bodywork and/or coupling device if the manufacturer does not fit the bodywork and/or coupling device (including liquids and tools, and spare wheel if fitted, and with the fuel tank filled to 90% and the other liquid containing systems, except those for used water, to 100% of the capacity specified by the manufacturer), increased by a uniform mass of 100 kilograms;

“CO” means mass of carbon monoxide;

“HC” means mass of hydrocarbons;

“NO<sub>x</sub>” means mass of oxides of nitrogen;

“PM” means mass of particulates (for compression ignition engines).”.

(2) Subsection (1) applies to any licence taken out for a period beginning on or after 1st March 2003.

## 17 Disclosure of information for vehicle excise duty exemptions

In the Vehicle Excise and Registration Act 1994 (c. 22), after section 22 insert—

### “22ZA Nil licences for vehicles for disabled persons: information

(1) This section applies to information that—

(a) is held for the purposes of functions relating to social security or war pensions—

(i) by the Secretary of State, or

(ii) by a person providing services to the Secretary of State, in connection with the provision of those services, and

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- (b) is of a description prescribed by regulations made by the Secretary of State.
- (2) Information to which this section applies may, if the consent condition is satisfied, be supplied—
  - (a) to the Secretary of State, or
  - (b) to a person providing services to the Secretary of State, for use for the purposes of relevant nil licence functions.
- (3) The “consent condition”, in relation to any information, is that—
  - (a) if the information was provided by a person other than the person to whom the information relates, the person who provided the information, or
  - (b) in any other case, the person to whom the information relates, has consented to the supply of the information and has not withdrawn that consent.
- (4) Information supplied under subsection (2) shall not—
  - (a) be supplied by the recipient to any other person unless—
    - (i) it could be supplied to that person under subsection (2), or
    - (ii) it is supplied for the purposes of any civil or criminal proceedings relating to this Act;
  - (b) be used otherwise than for the purposes of relevant nil licence functions or any such proceedings.
- (5) In this section “relevant nil licence functions” means functions relating to applications for, and the issue of, nil licences in respect of vehicles that are exempt vehicles under—
  - (a) paragraph 19 of Schedule 2, or
  - (b) paragraph 7 of Schedule 4.”.

## **18 Motorcycles (and motorcycle trade licences): rates of duty**

- (1) For paragraph 2(1) to (1B) of Schedule 1 to the Vehicle Excise and Registration Act 1994 (c. 22) (rates of duty applicable to motorcycles not exceeding 450 kilograms in weight unladen) substitute—

- “2 (1) The annual rate of vehicle excise duty applicable to a motorcycle that does not exceed 450 kilograms in weight unladen is—
- (a) if the cylinder capacity of the engine does not exceed 150 cubic centimetres, £15;
  - (b) if the vehicle is a motorbicycle and the cylinder capacity of the engine exceeds 150 cubic centimetres but does not exceed 400 cubic centimetres, £30;
  - (c) if the vehicle is a motorbicycle and the cylinder capacity of the engine exceeds 400 cubic centimetres but does not exceed 600 cubic centimetres, £45;
  - (d) in any other case, £60.”.

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- (2) In sections 13(3)(a), 35A(5)(b) and 36(3)(b) of that Act, and in section 13(4)(a) of that Act as substituted under paragraph 8 of Schedule 4 to that Act (references to paragraph 2(1)(c) of Schedule 1 in connection with motorcycle trade licences), for “(1)(c)” substitute “(1)(d)”.
- (3) Subsection (1), and the amendments in section 13 of that Act, apply to any licence taken out on or after 18th April 2002 for a period beginning on or after 1st May 2002.
- (4) The amendments in sections 35A and 36 of that Act apply where the relevant period begins on or after 1st May 2002.

## 19 Registered vehicles etc

- (1) Schedule 5 to this Act, which provides—
  - for vehicle excise duty to be charged in respect of vehicles registered under the Vehicle Excise and Registration Act 1994 that are neither used nor kept on a public road,
  - for vehicle excise duty to be charged in respect of things that have been but have ceased to be mechanically propelled vehicles,
  - for supplements to be payable where vehicle licences are renewed late, and
  - for it to be an offence to be the person in whose name an unlicensed vehicle is registered under that Act,
 has effect.
- (2) Subject to subsection (3), subsection (1) shall not come into force until such day as the Secretary of State may appoint by order made by statutory instrument; and an order under this subsection may appoint different days for different purposes.
- (3) For the purpose of the exercise of any power to make regulations, subsection (1) comes into force on the day on which this Act is passed.
- (4) The Secretary of State may by order made by statutory instrument make—
  - (a) such transitional provision as he considers necessary or expedient in connection with the coming into force of subsection (1);
  - (b) such provision consequential upon, or incidental or supplementary to, the amendments made by Schedule 5 to this Act (including provision further amending the Vehicle Excise and Registration Act 1994) as he considers necessary or expedient.
- (5) A statutory instrument containing an order under subsection (4)(b) is subject to annulment in pursuance of a resolution of either House of Parliament.

### Commencement Information

- 14** S. 19(1) in force for specified purposes at 24.7.2002, see s. 19(2)(3); s. 19(2)-(5) in force at 24.7.2002; s. 19(1) in force at 30.11.2003 for specified purposes and 19.12.2003 for remaining purposes by [S.I. 2003/3086](#), [art. 2](#)

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## 20 Calculating cylinder capacity of vehicles

- (1) In paragraph 1 of Schedule 1 to the Vehicle Excise and Registration Act 1994 (c. 22) (annual rates of duty: general), after sub-paragraph (2A) insert—

“(2B) For the purposes of this Schedule the cylinder capacity of an engine shall be calculated in accordance with regulations made by the Secretary of State.”.

- (2) Omit—

- (a) paragraph 2(4) of that Schedule (power to make regulations as to calculation of cylinder capacity of motorcycle engines), and
- (b) section 57(8) of that Act (regulations under paragraph 2(4) of Schedule 1 not subject to annulment).

- (3) Any regulations—

- (a) made under paragraph 2(4) of that Schedule or having effect as if so made, and
  - (b) in force or effective immediately before the passing of this Act,
- shall have effect after the passing of this Act as if made under the paragraph 1(2B) inserted in that Schedule by this section.

- (4) Subsection (3) has effect in place of section 17(2)(b) of the Interpretation Act 1978 (c. 30) (but is without prejudice to any other provision of that Act) and, in particular, the fact that the instrument containing any such regulations was not subject to annulment in pursuance of a resolution of either House of Parliament shall not prevent them being revoked, amended or re-enacted by regulations under that paragraph 1(2B).

### *General*

## 21 Drawback of excise duty

- (1) In section 133 of the Customs and Excise Management Act 1979 (c. 2) (claims for drawback of excise duty)—

- (a) in subsection (2), for “subsections (3) to (6)” substitute “ subsections (4) to (6) ”;
- (b) omit subsection (3) (Commissioners to be satisfied that the duty in question has been duly paid, and not already drawn back, before drawback is payable).

- (2) In section 14(1) of the Finance Act 1994 (c. 9) (reviewable decisions) after paragraph (bb) insert—

“(bc) any decision by the Commissioners as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under section 2 of the Finance (No. 2) Act 1992, or the amount of the drawback to which any person is so entitled;”.

- (3) The amendment made by subsection (2) does not apply in relation to decisions made before the day on which this Act comes into force.

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## PART 2

### VALUE ADDED TAX

#### 22 Disallowance of input tax where consideration not paid

- (1) In Part 1 of the Value Added Tax Act 1994 (c. 23) (the charge to tax), after section 26 insert—

##### “26A Disallowance of input tax where consideration not paid

- (1) Where—
- (a) a person has become entitled to credit for any input tax, and
  - (b) the consideration for the supply to which that input tax relates, or any part of it, is unpaid at the end of the period of 6 months following the relevant date,
- he shall be taken, as from the end of that period, not to have been entitled to credit for input tax in respect of the VAT that is referable to the unpaid consideration or part.
- (2) For the purposes of subsection (1) above “the relevant date”, in relation to any sum representing consideration for a supply, is—
- (a) the date of the supply, or
  - (b) if later, the date on which the sum became payable.
- (3) Regulations may make such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section.
- (4) Regulations under this section may in particular—
- (a) make provision for restoring the whole or any part of an entitlement to credit for input tax where there is a payment after the end of the period mentioned in subsection (1) above;
  - (b) make rules for ascertaining whether anything paid is to be taken as paid by way of consideration for a particular supply;
  - (c) make rules dealing with particular cases, such as those involving payment of part of the consideration or mutual debts.
- (5) Regulations under this section may make different provision for different circumstances.
- (6) Section 6 shall apply for determining the time when a supply is to be treated as taking place for the purposes of construing this section.”.

- (2) In section 36 of that Act (bad debts), omit subsections (4A) and (5)(ea).
- (3) This section has effect in relation to supplies made on or after such day as the Commissioners of Customs and Excise may appoint by order made by statutory instrument.

#### Subordinate Legislation Made

P3 S. 22(3) power fully exercised: 1.1.2003 appointed by S.I. 2002/3028, art. 2



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### Commencement Information

- I5** S. 22 has effect as specified by [The Finance Act 2002, section 22, \(Appointed Day\) Order 2002 \(S.I. 2002/3028\)](#), [art. 2](#)

## 23 Flat-rate scheme

- (1) In Part 1 of the Value Added Tax Act 1994 (c. 23) (the charge to tax), after section 26A (inserted by section 22 above) insert—

### “26B Flat-rate scheme

- (1) The Commissioners may by regulations make provision under which, where a taxable person so elects, the amount of his liability to VAT in respect of his relevant supplies in any prescribed accounting period shall be the appropriate percentage of his relevant turnover for that period.

A person whose liability to VAT is to any extent determined as mentioned above is referred to in this section as participating in the flat-rate scheme.

- (2) For the purposes of this section—
- (a) a person’s “relevant supplies” are all supplies made by him except supplies made at such times or of such descriptions as may be specified in the regulations;
  - (b) the “appropriate percentage” is the percentage so specified for the category of business carried on by the person in question;
  - (c) a person’s “relevant turnover” is the total of—
    - (i) the value of those of his relevant supplies that are taxable supplies, together with the VAT chargeable on them, and
    - (ii) the value of those of his relevant supplies that are exempt supplies.
- (3) The regulations may designate certain categories of business as categories in relation to which the references in subsection (1) above to liability to VAT are to be read as references to entitlement to credit for VAT.
- (4) The regulations may provide for persons to be eligible to participate in the flat-rate scheme only in such cases and subject to such conditions and exceptions as may be specified in, or determined by or under, the regulations.
- (5) Subject to such exceptions as the regulations may provide for, a participant in the flat-rate scheme shall not be entitled to credit for input tax.

This is without prejudice to subsection (3) above.

- (6) The regulations may—
- (a) provide for the appropriate percentage to be determined by reference to the category of business that a person is expected, on reasonable grounds, to carry on in a particular period;
  - (b) provide, in such circumstances as may be prescribed, for different percentages to apply in relation to different parts of the same prescribed accounting period;

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- (c) make provision for determining the category of business to be regarded as carried on by a person carrying on businesses in more than one category.
- (7) The regulations may provide for the following matters to be determined in accordance with notices published by the Commissioners—
- (a) when supplies are to be treated as taking place for the purposes of ascertaining a person’s relevant turnover for a particular period;
  - (b) the method of calculating any adjustments that fall to be made in accordance with the regulations in a case where a person begins or ceases to participate in the flat-rate scheme.
- (8) The regulations may make provision enabling the Commissioners—
- (a) to authorise a person to participate in the flat-rate scheme with effect from—
    - (i) a day before the date of his election to participate, or
    - (ii) a day that is not earlier than that date but is before the date of the authorisation;
  - (b) to direct that a person shall cease to be a participant in the scheme with effect from a day before the date of the direction.
- The day mentioned in paragraph (a)(i) above may be a day before the date on which the regulations come into force.
- (9) Regulations under this section—
- (a) may make different provision for different circumstances;
  - (b) may make such incidental, supplemental, consequential or transitional provision as the Commissioners think fit, including provision disapplying or applying with modifications any provision contained in or made under this Act.”.
- (2) In section 83 of that Act (appeals), after paragraph (f) insert—
- “(fza) a decision of the Commissioners—
- (i) refusing or withdrawing authorisation for a person’s liability to pay VAT (or entitlement to credit for VAT) to be determined as mentioned in subsection (1) of section 26B;
  - (ii) as to the appropriate percentage or percentages (within the meaning of that section) applicable in a person’s case.”.
- (3) In section 84 of that Act (further provisions relating to appeals), after subsection (4) insert—
- “(4ZA) Where an appeal is brought—
- (a) against such a decision as is mentioned in section 83(fza), or
  - (b) to the extent that it is based on such a decision, against an assessment, the tribunal shall not allow the appeal unless it considers that the Commissioners could not reasonably have been satisfied that there were grounds for the decision.”.

(4) This section shall be deemed to have come into force on 24th April 2002.

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## 24 Invoices

- (1) In the Value Added Tax Act 1994 (c. 23) omit the following (which are superseded by the provision inserted by subsection (2))—
  - (a) subsection (9) of section 6 (time of supply);
  - (b) in paragraph 2 (VAT invoices etc) of Schedule 11 (administration, collection and enforcement)—
    - (i) in the heading, the words “, VAT invoices”;
    - (ii) in sub-paragraph (1), the words from “and may require” to the end;
    - (iii) sub-paragraphs (2) and (2A).
- (2) After paragraph 2 of Schedule 11 to that Act insert—

### “VAT invoices

- 2A (1) Regulations may require a taxable person supplying goods or services to provide an invoice (a “VAT invoice”) to the person supplied.
- (2) A VAT invoice must give—
  - (a) such particulars as may be prescribed of the supply, the supplier and the person supplied;
  - (b) such an indication as may be prescribed of whether VAT is chargeable on the supply under this Act or the law of another member State;
  - (c) such particulars of any VAT that is so chargeable as may be prescribed.
- (3) Regulations may confer power on the Commissioners to allow the requirements of any regulations as to the information to be given in a VAT invoice to be relaxed or dispensed with.
- (4) Regulations may—
  - (a) provide that the VAT invoice that is required to be provided in connection with a particular description of supply must be provided within a prescribed time after the supply is treated as taking place, or at such time before the supply is treated as taking place as may be prescribed;
  - (b) allow for the invoice to be issued later than required by the regulations where it is issued in accordance with general or special directions given by the Commissioners.
- (5) Regulations may—
  - (a) make provision about the manner in which a VAT invoice may be provided, including provision prescribing conditions that must be complied with in the case of an invoice issued by a third party on behalf of the supplier;
  - (b) prescribe conditions that must be complied with in the case of a VAT invoice that relates to more than one supply;
  - (c) make, in relation to a document that refers to a VAT invoice and is intended to amend it, such provision corresponding to that which may be made in relation to a VAT invoice as appears to the Commissioners to be appropriate.

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- (6) Regulations may confer power on the Commissioners to require a person who has received in the United Kingdom a VAT invoice that is (or part of which is) in a language other than English to provide them with an English translation of the invoice (or part).
- (7) Regulations under this paragraph—
  - (a) may be framed so as to apply only in prescribed cases or only in relation to supplies made to persons of prescribed descriptions;
  - (b) may make different provision for different circumstances.

### **Self-billed invoices**

- 2B (1) This paragraph applies where a taxable person provides to himself a document (a “self-billed invoice”) that purports to be a VAT invoice in respect of a supply of goods or services to him by another taxable person.
- (2) Subject to compliance with such conditions as may be—
- (a) prescribed,
  - (b) specified in a notice published by the Commissioners, or
  - (c) imposed in a particular case in accordance with regulations,
- a self-billed invoice shall be treated as the VAT invoice required by regulations under paragraph 2A above to be provided by the supplier.
- (3) For the purposes of section 6(4) (under which the time of supply can be determined by the prior issue of an invoice) a self-billed invoice shall not be treated as issued by the supplier.
- (4) For the purposes of section 6(5) and (6) (under which the time of supply can be determined by the subsequent issue of an invoice) a self-billed invoice in relation to which the conditions mentioned in subparagraph (2) are complied with shall, subject to compliance with such further conditions as may be prescribed, be treated as issued by the supplier.
- In such a case, any notice of election given or request made for the purposes of section 6(5) or (6) by the person providing the self-billed invoice shall be treated for those purposes as given or made by the supplier.

- (5) Regulations under this paragraph—
  - (a) may be framed so as to apply only in prescribed cases or only in relation to supplies made to persons of prescribed descriptions;
  - (b) may make different provision for different circumstances.”.

- (3) For paragraph 3 of that Schedule substitute—

### **Electronic communication and storage of VAT invoices etc**

- “3 (1) Regulations may prescribe, or provide for the Commissioners to impose in a particular case, conditions that must be complied with in relation to—
- (a) the provision by electronic means of any item to which this paragraph applies;

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- (b) the preservation by electronic means of any such item or of information contained in any such item.
- (2) The items to which this paragraph applies are—
  - (a) any VAT invoice;
  - (b) any document that refers to a VAT invoice and is intended to amend it;
  - (c) any invoice described in regulations made for the purposes of section 6(8)(b) or 12(1)(b).
- (3) Regulations under this paragraph may make different provision for different circumstances.”.
- (4) The following amendments to the Value Added Tax Act 1994 (c. 23) are consequential on other amendments made by this section—
  - (a) in section 6(15), for “paragraph 2(1)” substitute “ paragraph 2A ”;
  - (b) in section 83 (appeals), for paragraph (z) substitute—
    - “(z) any conditions imposed by the Commissioners in a particular case by virtue of paragraph 2B(2)(c) or 3(1) of Schedule 11”;
  - (c) in section 88 (supplies spanning change of rate etc)—
    - (i) in subsection (5), for “paragraph 2” substitute “ paragraph 2A ”;
    - (ii) in subsection (6), for “section 6(9) or paragraph 7 of Schedule 4” substitute “ paragraph 7 of Schedule 4 or paragraph 2B(4) of Schedule 11 ”.
- (5) This section comes into force on such day as the Treasury may by order made by statutory instrument appoint, and different days may be appointed for different provisions or different purposes.
- (6) An order under subsection (5) may contain such transitional provisions and savings as appear to the Treasury necessary or expedient in connection with the provisions brought into force.

#### **Commencement Information**

**16** S. 24 in force at 1.12.2003 by S.I. 2003/3043, art. 2

## **25 Relief from VAT on acquisition if importation would attract relief**

In Part 2 of the Value Added Tax Act 1994 (reliefs, exemptions and repayments), after section 36 insert—

*“Acquisitions*

### **36A Relief from VAT on acquisition if importation would attract relief**

- (1) The Treasury may by order make provision for relieving from VAT the acquisition from another member State of any goods if, or to the extent that, relief from VAT would be given by an order under section 37 if the acquisition were an importation from a place outside the member States.

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- (2) An order under this section may provide for relief to be subject to such conditions as appear to the Treasury to be necessary or expedient.

These may—

- (a) include conditions prohibiting or restricting the disposal of or dealing with the goods concerned;
  - (b) be framed by reference to the conditions to which, by virtue of any order under section 37 in force at the time of the acquisition, relief under such an order would be subject in the case of an importation of the goods concerned.
- (3) Where relief from VAT given by an order under this section was subject to a condition that has been breached or not complied with, the VAT shall become payable at the time of the breach or, as the case may be, at the latest time allowed for compliance.”.

### PART 3

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

### CHAPTER 1

#### CHARGE AND RATE BANDS

##### *Income tax*

#### 26 **Charge and rates for 2002-03**

Income tax shall be charged for the year 2002-03, and for that year—

- (a) the starting rate shall be 10%;
- (b) the basic rate shall be 22%;
- (c) the higher rate shall be 40%.

#### 27 **Indexed rate bands for 2002-03: PAYE deductions etc**

For the year 2002-03, the following provisions of the Taxes Act 1988 shall have effect as if “17th June” were substituted for “ 17th May ”

- (a) section 1(5A) (which provides that statutory inflation-linked changes to income tax rate bands for a year of assessment do not require changes to be made to PAYE deductions or repayments until 18th May in that year);
- (b) section 257C(2A) (which makes corresponding provision in relation to personal allowances etc) as it has effect for the application of—
  - (i) section 257AA(2) of that Act (children’s tax credit), and
  - (ii) section 265 of that Act (blind person’s allowance).

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## **28 Personal allowance for 2003-04 for those aged under 65**

- (1) For the year 2003-04 the amount specified in section 257(1) of the Taxes Act 1988 (personal allowance for those aged under 65) shall be taken to be £4,615.
- (2) Accordingly, section 257C(1) of that Act (indexation), so far as it relates to the amount so specified, does not apply for that year.

## **29 Personal allowances for 2003-04 for those aged 65 or over**

- (1) For the year 2003-04—
  - (a) the amount specified in section 257(2) of the Taxes Act 1988 (personal allowance for those aged between 65 and 74) shall be taken to be £6,610;
  - (b) the amount specified in section 257(3) of that Act (personal allowance for those aged 75 or over) shall be taken to be the indexed amount plus £240.

In paragraph (b) “the indexed amount” means the amount that would apply by virtue of section 257C(1) of that Act (indexation).

- (2) Accordingly, section 257C(1), so far as it relates to the amounts specified in section 257(2) and (3), does not apply for that year (except as it applies for the purposes of subsection (1)(b) above).

### *Corporation tax*

## **30 Charge and main rate for financial year 2003**

Corporation tax shall be charged for the financial year 2003 at the rate of 30%.

## **31 Small companies’ rate and fraction for financial year 2002**

For the financial year 2002—

- (a) the small companies’ rate shall be 19%, and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be 11/400ths.

## **32 Corporation tax starting rate and fraction for financial year 2002**

For the financial year 2002—

- (a) the corporation tax starting rate shall be 0%, and
- (b) the fraction mentioned in section 13AA(3) of the Taxes Act 1988 (marginal relief for small companies) shall be 19/400ths.

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## CHAPTER 2

### OTHER PROVISIONS

#### *Employment income and related matters*

#### **<sup>F1</sup>33 Employer-subsidised public transport bus services**

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##### **Textual Amendments**

- F1** Ss. 33-37 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with [Sch. 7](#))

#### **<sup>F1</sup>34 Car fuel: calculation of cash equivalent of benefit**

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##### **Textual Amendments**

- F1** Ss. 33-37 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with [Sch. 7](#))

#### **<sup>F1</sup>35 Statutory paternity pay and statutory adoption pay**

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##### **Textual Amendments**

- F1** Ss. 33-37 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with [Sch. 7](#))

#### **<sup>F1</sup>36 Exemption of minor benefits: application to non-cash vouchers**

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##### **Textual Amendments**

- F1** Ss. 33-37 repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\), s. 723, Sch. 8 Pt. 1](#) (with [Sch. 7](#))

#### **<sup>F1</sup>37 Minor amendments to Schedule E charge**

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**Textual Amendments**

**F1** Ss. 33-37 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)

**38 Provision of services through an intermediary: minor amendments**

(1) Schedule 12 to the Finance Act 2000 (c. 17) (provision of services through an intermediary) is amended as follows.

<sup>F2</sup>(2) .....

<sup>F2</sup>(3) .....

(4) In that Part, in paragraph 18(3) (restriction on expenses deductible in calculating profits of partnership intermediary), for paragraph (a) substitute—

“(a) the amount that, in calculating the deemed Schedule E payment, is deducted under Step Three of the calculation in paragraph 7, and”.

(5) This section has effect for the year 2002-03 and subsequent years of assessment.

**Textual Amendments**

**F2** S. 38(2)(3) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, **Sch. 8 Pt. 1** (with Sch. 7)

**<sup>F3</sup>39 Employee share ownership plans: minor amendments**

.....

**Textual Amendments**

**F3** S. 39 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)

**40 Treatment of deductions from payments to sub-contractors**

<sup>F4</sup>(1) .....

(2) In section 829 of the Taxes Act 1988 (application of Income Tax Acts to public departments), after subsection (2) insert—

“(2A) Subsections (1) and (2) above have effect in relation to Chapter 4 of Part 13 of this Act (sub-contractors in the construction industry) as if the whole of any deduction required to be made under section 559 were in all cases a deduction of income tax.”.

<sup>F5</sup>(3) .....

(4) This section has effect in relation to deductions made under section 559 of the Taxes Act 1988 on or after 6th April 2002.

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F6 .....

**Textual Amendments**

- F4 S. 40(1) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)
- F5 S. 40(3) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)
- F6 Words in s. 40(4) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

**F7 41 Parliamentary visits to EU candidate countries: tax treatment of members' expenses**

.....

**Textual Amendments**

- F7 S. 41 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](#))

*Chargeable gains*

**42 Reallocation within group of gain or loss accruing under section 179**

- (1) After section 179 of the Taxation of Chargeable Gains Act 1992 (c. 12) (company ceasing to be member of group) insert—

**“179A Reallocation within group of gain or loss accruing under section 179**

- (1) This section applies where—
- (a) a company (“company A”) is treated by virtue of section 179(3) or (6) as having sold and immediately reacquired an asset at market value, and
  - (b) a chargeable gain or an allowable loss accrues to the company on the deemed sale.
- (2) In this section “time of accrual” means—
- (a) in a case where section 179(3) applies, the time at which, by virtue of section 179(4), the gain or loss referred to in subsection (1) above is treated as accruing to company A;
  - (b) in a case where section 179(6) applies, the latest time at which the company satisfies the conditions in section 179(7).
- (3) If—
- (a) a joint election under this section is made by company A and a company (“company C”) that was a member of the relevant group at the time of accrual, and

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- (b) the conditions in subsections (6) to (8) below are all met, the chargeable gain or allowable loss accruing on the deemed sale, or such part of it as may be specified in the election, shall be treated as accruing not to company A but to company C.
- (4) In subsection (3) above “the relevant group” means—
- (a) in a case where section 179(3) applies, the group of which company A was a member at the time of accrual;
  - (b) in a case where section 179(6) applies, the second group referred to in section 179(5).
- (5) Where two or more elections are made each specifying a part of the same gain or loss, the total amount specified may not exceed the whole of that gain or loss.
- (6) The first condition is that, at the time of accrual, company C—
- (a) was resident in the United Kingdom, or
  - (b) owned assets that were chargeable assets in relation to it.
- (7) The second condition is that neither company A nor company C was at that time a qualifying friendly society within the meaning given by section 171(5)).
- (8) The third condition is that company C was not at that time an investment trust, a venture capital trust or a dual resident investing company.
- (9) A gain or loss treated by virtue of this section as accruing to a company that is not resident in the United Kingdom shall be treated as accruing in respect of a chargeable asset held by that company.
- (10) An election under this section must be made—
- (a) by notice to an officer of the Board;
  - (b) no later than two years after the end of the accounting period of company A in which the time of accrual fell.
- (11) Any payment by company A to company C, or by company C to company A, in pursuance of an agreement between them in connection with the election—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income,
- provided it does not exceed the amount of the chargeable gain or allowable loss that is treated, as a result of the election, as accruing to company C.
- (12) For the purposes of this section an asset is a “chargeable asset” in relation to a company at a particular time if any gain accruing to the company on a disposal of the asset by the company at that time would be a chargeable gain and would by virtue of section 10(3) form part of its chargeable profits for corporation tax purposes.”
- (2) In Schedule 7B to that Act (modification of Act in relation to overseas life insurance companies), immediately before paragraph 8 insert—

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“7A In section 179A(12), the words “section 11(2)(b), (c) or (d) of the Taxes Act” shall be treated as substituted for “section 10(3)”.”.

- (3) In section 97(1) of the Inheritance Tax Act 1984 (c. 51) (transfers within group, etc)—
- (a) after sub-paragraph (ii) of paragraph (a) insert “or—
    - (iii) an election under section 179A of that Act as a result of which a chargeable gain is treated as accruing to the transferor company instead of to another member of the group, or an allowable loss is treated as accruing to another member of the group instead of to the transferor company,”;
  - (b) in paragraph (aa) for “the deemed transfer” substitute “ the election ”.
- (4) This section applies—
- (a) in relation to a case where a company is treated by virtue of section 179(3) of the Taxation of Chargeable Gains Act 1992 (c. 12) as having sold and immediately reacquired an asset, where the company’s ceasing to be a member of the group in question happens on or after 1st April 2002;
  - (b) in relation to a case where a company is so treated by virtue of section 179(6) of that Act, where the relevant time (within the meaning of that subsection) is on or after that date.

#### 43 Roll-over of degrouping charge on business assets

- (1) After section 179A of the Taxation of Chargeable Gains Act 1992 (c. 12) (inserted by section 42 above) insert—

##### “179B Roll-over of degrouping charge on business assets

- (1) Where a company is treated by virtue of section 179(3) or (6) as having sold and immediately reacquired an asset at market value, relief under section 152 or 153 (roll-over relief on replacement of business assets) is available in accordance with this section in relation to any gain accruing to the company on the deemed sale.
- (2) For this purpose, sections 152 and 153 and the other enactments specified in Schedule 7AB apply with the modifications set out in that Schedule.
- (3) Where there has been an election under section 179A, any claim for relief available in accordance with this section must be made by company C rather than company A.
- (4) For this purpose, the enactments modified by Schedule 7AB have effect as if—
  - (a) references to company A, except those in sections 152(1)(a) and (1B), 153(1B), 153A(5), 159(1), 175 and 198(1), were to company C;
  - (b) the references to “that company” in section 159(1) and “the company” in section 185(3)(b) were to company C;
  - (c) the reference to “that trade” in section 198(1) were to a ring fence trade carried on by company C.

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- (5) Where there has been an election under section 179A in respect of part only of the chargeable gain accruing on the deemed sale of an asset, the enactments modified by Schedule 7AB and subsections (3) and (4) above apply as if the deemed sale had been of a separate asset representing a corresponding part of the asset; and any necessary apportionments shall be made accordingly.
- (6) A reference in this section to company A or to company C is to the company referred to as such in section 179A.”.
- (2) After Schedule 7AA to the 1992 Act insert the Schedule 7AB set out in Schedule 7 to this Act.
- (3) In section 86(2) of the Finance Act 1993 (c. 34) (roll-over relief: power to amend section 155 of the 1992 Act by order), at the end add—

“Any such order may make such consequential amendments of Schedule 7AB as appear to the Treasury to be appropriate.”.
- (4) This section applies—
  - (a) in relation to a case where a company is treated by virtue of section 179(3) of the 1992 Act as having sold and immediately reacquired an asset, where the company’s ceasing to be a member of the group in question happens on or after 1st April 2002;
  - (b) in relation to a case where a company is so treated by virtue of section 179(6) of that Act, where the relevant time (within the meaning of that subsection) is on or after that date.

#### **44 Exemptions for disposals by companies with substantial shareholding**

- (1) In Chapter 1 of Part 6 of the Taxation of Chargeable Gains Act 1992 (c. 12) (provisions relating to chargeable gains of companies), after section 192 insert—

*“Disposals by companies with substantial shareholding*

##### **192A Exemptions for gains or losses on disposal of shares etc**

Schedule 7AC (exemptions for disposal of shares etc by companies with substantial shareholding) has effect.”.

- (2) Schedule 8 to this Act (exemptions for disposals by companies with substantial shareholding) has effect.

In that Schedule—

Part 1 contains Schedule 7AC to be inserted after Schedule 7AB to the Taxation of Chargeable Gains Act 1992 (c. 12) (inserted by Schedule 7 to this Act); and Part 2 contains consequential amendments.

- (3) This section and Schedule 8 to this Act apply in relation to disposals on or after 1st April 2002.
- (4) Paragraph 38 of the Schedule 7AC inserted by that Schedule (degrouching: time when deemed sale and reacquisition treated as taking place) has effect where the time of

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degrouching or relevant time (as defined for the purposes of that paragraph) is on or after that date.

- (5) The amendment made by paragraph 2 of Schedule 8 to this Act has effect where the company in question ceases to be a member of the group in question on or after that date.

#### **45 Share exchanges and company reconstructions**

- (1) Schedule 9 to this Act (chargeable gains: share exchanges and company reconstructions) has effect.
- (2) In that Schedule—
- Part 1 provides for the replacement of sections 135 and 136 of the Taxation of Chargeable Gains Act 1992;
  - Part 2 makes consequential amendments; and
  - Part 3 provides for commencement.

#### **46 Taper relief: holding period for business assets**

- (1) In the table in section 2A(5) of the Taxation of Chargeable Gains Act 1992 (calculation of taper relief), for the first two columns (under the heading “Gains on disposals of business assets”) substitute—

| Number of whole years in qualifying holding period | Percentage of gain chargeable |
|--|-------------------------------|
| 1  | 50                            |
| 2 or more  | 25                            |

- (2) This section applies to disposals on or after 6th April 2002.

#### **47 Taper relief: minor amendments**

Schedule 10 to this Act contains minor amendments relating to taper relief under the Taxation of Chargeable Gains Act 1992 (c. 12).

#### **48 Use of trading losses against chargeable gains**

- (1) In section 72 of the Finance Act 1991 (c. 31) (use of trading losses against chargeable gains), in subsection (4) (which has the effect that the maximum amount of trading loss that may be so used is calculated by reference to the amount of chargeable gains after taper relief) for “disregarding section 3(1)” substitute “disregarding sections 2A (taper relief) and 3(1) (annual exempt amount)”.
- (2) The amendment in subsection (1) has effect in relation to claims under that section in respect of trading losses sustained in the year 2004-05 or subsequent years of assessment, subject to the following provisions.
- (3) A person making a claim under section 72 of that Act in respect of a trading loss sustained in the year 2002-03 may elect that, for the purposes of the claim, the amendment made by subsection (1) above shall have effect—
- (a) in relation to the chargeable gains accruing to him in the year 2001-02,

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- (b) in relation to the chargeable gains accruing to him in the year 2002-03, or
  - (c) in relation to the chargeable gains accruing to him in the year 2001-02 and the year 2002-03.
- (4) A person making a claim under that section in respect of a trading loss sustained in the year 2003-04 may elect that, for the purposes of the claim, the amendment made by subsection (1) above shall have effect—
- (a) in relation to the chargeable gains accruing to him in the year 2002-03,
  - (b) in relation to the chargeable gains accruing to him in the year 2003-04, or
  - (c) in relation to the chargeable gains accruing to him in the year 2002-03 and the year 2003-04.
- (5) An election under subsection (3) or (4) must be made—
- (a) in writing,
  - (b) to an officer of the Board,
  - (c) within the time for making a claim under section 72 of the Finance Act 1991 in respect of a trading loss sustained in the year 2002-03 or, as the case may be, the year 2003-04,
- and must specify the year or years of assessment in relation to the chargeable gains of which it is made.

#### **49 Election to forgo roll-over relief on transfer of business**

- (1) After section 162 of the Taxation of Chargeable Gains Act 1992 (c. 12) (roll-over relief on transfer of business) insert—

##### **“162A Election for section 162 not to apply**

- (1) Section 162 shall not apply where the transferor makes an election under this section.
- (2) An election under this section must be made by a notice given to an officer of the Board no later than the relevant date.
- (3) Except where subsection (4) below applies, the relevant date is the second anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.
- (4) Where, by the end of the year of assessment following the one in which the transfer of the business took place, the transferor has disposed of all the new assets, the relevant date is the first anniversary of the 31st January next following the year of assessment in which the transfer of the business took place.
- (5) For the purposes of subsection (4) above—
  - (a) a disposal of any of the new assets by the transferor shall be disregarded if it falls within section 58(1) (transfers between husband and wife); but
  - (b) where a disposal of any assets to a person is disregarded by virtue of paragraph (a) above, a subsequent disposal by that person of any of those assets (other than a disposal to the transferor) shall be regarded as a disposal by the transferor.

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- (6) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this section.
- (7) Where, immediately before it was transferred, the business was owned by two or more persons—
  - (a) each of them has a separate entitlement to make an election under this section;
  - (b) an election made by a person by virtue of paragraph (a) above shall apply only to—
    - (i) the share of the amount of the gain on the old assets, and
    - (ii) the share of the new assets,
 that is attributable to that person for the purposes of this Act.
- (8) The reference in subsection (7) above to ownership by two or more persons includes, in Scotland as well as elsewhere in the United Kingdom, a reference to ownership by a partnership consisting of two or more persons.
- (9) Expressions used in this section and in section 162 have the same meaning in this section as in that one.

But references in this section to new assets also include any shares or debentures that are treated by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains) as the same asset as the new assets.”.

- (2) This section applies in relation to a transfer of a business on or after 6th April 2002.

## 50 Shares acquired on same day: election for alternative treatment

- (1) After section 105 of the Taxation of Chargeable Gains Act 1992 (c. 12) (disposal on or before day of acquisition of shares and other unidentified assets) insert—

### “105A Shares acquired on same day: election for alternative treatment

- (1) Subsection (2) below applies where an individual—
  - (a) acquires shares (“the relevant shares”) of the same class, on the same day and in the same capacity, and
  - (b) some of the relevant shares (“the approved-scheme shares”) are shares acquired by him as a result of—
    - (i) the exercise of a qualifying option within the meaning of paragraph 1(1) of Schedule 14 to the Finance Act 2000 (enterprise management incentives) in circumstances where paragraph 44, 45 or 46 of that Schedule (exercise of option to acquire shares) applies, or
    - (ii) the exercise of an option to which subsection (1) of section 185 of the Taxes Act (approved share option schemes) applies in circumstances where paragraphs (a) and (b) of subsection (3) of that section apply.



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- (2) Where the individual first makes a disposal of any of the relevant shares, he may elect for subsections (3) to (5) below to have effect in relation to that disposal and all subsequent disposals of any of those shares.
- (3) In circumstances where section 105 applies, that section shall have effect as if—
  - (a) paragraph (a) of subsection (1) of that section required the approved-scheme shares to be treated as acquired by the individual by a single transaction separate from the remainder of the relevant shares (which shall also be treated by virtue of that paragraph as acquired by the individual by a single transaction), and
  - (b) subsection (1) of that section required the approved-scheme shares to be treated as disposed of after the remainder of the relevant shares.
- (4) If the relevant shares include shares to which relief under Chapter 3 of Part 7 of the Taxes Act or deferral relief (within the meaning of Schedule 5B to this Act) is attributable—
  - (a) paragraph 4(4) of that Schedule has effect as if it required the approved-scheme shares falling within paragraph (a), (b), (c) or (d) of that provision to be treated as disposed of after the remainder of the relevant shares falling within the paragraph in question, and
  - (b) section 299 of the Taxes Act has effect for the purposes of section 150A(4) below as if it required—
    - (i) the approved-scheme shares falling within paragraph (a), (b), (c) or (d) of subsection (6A) of section 299 of that Act to be treated as disposed of after the remainder of the relevant shares falling within the paragraph in question, and
    - (ii) the approved-scheme shares to which subsection (6B) of that section applies to be treated as disposed of after the remainder of the relevant shares to which that subsection applies.
- (5) Where section 127 applies in relation to any of the relevant shares (“the reorganisation shares”), that section shall apply separately to such of those shares as are approved-scheme shares and to the remainder of the reorganisation shares (so that those approved-scheme shares and the remainder of the reorganisation shares are treated as comprised in separate holdings of original shares and identified with separate new holdings).
- (6) In subsection (5)—
  - (a) the reference to section 127 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and
  - (b) “original shares” and “new holding” have the same meaning as in section 127 or (as the case may be) that section as applied by virtue of the enactment in question.
- (7) For the purposes of subsection (1) above—
  - (a) any shares to which relief under Chapter 3 of Part 7 of the Taxes Act is attributable and which were transferred to an individual as mentioned in section 304 of that Act, and
  - (b) any shares to which deferral relief (within the meaning of Schedule 5B to this Act), but not relief under that Chapter, is

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attributable and which were acquired by an individual on a disposal to which section 58 above applies,  
shall be treated as acquired by the individual on the day on which they were issued.

- (8) In this section the references to Chapter 3 of Part 7, section 299 and section 304 of the Taxes Act shall be read as references to those provisions as they apply to shares issued after 31st December 1993 (enterprise investment scheme).

### **105B Provision supplementary to section 105A**

- (1) The provisions of section 105A have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—
- (a) by the disposal, or
  - (b) by a transfer or delivery giving effect to it.
- (2) An election must be made, by a notice given to an officer of the Board, on or before the first anniversary of the 31st January next following the year of assessment in which the individual first makes a disposal of any of the relevant shares.
- (3) Where—
- (a) an election is made in respect of the relevant shares, and
  - (b) any shares (“the other shares”) acquired by the individual on the same day and in the same capacity as the relevant shares cease to be treated under section 104(4) as shares of a different class from the relevant shares,
- the election shall have effect in respect of the other shares from the time they cease to be so treated.
- (4) In determining for the purposes of section 105A(2) and subsection (2) above whether the individual has made a disposal of any of the relevant shares, sections 122(1) and 128(3) shall be disregarded.
- (5) No election may be made in respect of ordinary shares in a venture capital trust.

For this purpose “ordinary shares” has the meaning given in section 151A(7).

- (6) For the purposes of section 105A, shares in a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange, or would be so treated if dealt with on that recognised stock exchange.
- (7) In section 105A(2) to (5) and subsections (2) to (4) above, any reference to the relevant shares or to the approved-scheme shares includes a reference to the securities (if any) directly or indirectly derived from the shares in question by virtue of one or more applications of section 127 (including that section as applied by virtue of any enactment relating to chargeable gains).

- (8) In this section—

“the approved-scheme shares” has the same meaning as in section 105A;

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- “election” means an election under that section;  
“the relevant shares” has the same meaning as in that section; and  
“securities” has the meaning given in section 104(3);  
and in subsection (4) the reference to section 128(3) includes a reference to that provision as it is applied by virtue of any enactment relating to chargeable gains.”
- (2) The amendment made by subsection (1) has effect in relation to shares acquired by an individual on or after 6th April 2002.
- (3) For this purpose—
- (a) any shares to which relief under Chapter 3 of Part 7 of the Taxes Act 1988 is attributable and which were transferred to an individual as mentioned in section 304 of that Act, and
- (b) any shares to which deferral relief (within the meaning of Schedule 5B to the Taxation of Chargeable Gains Act 1992 (c. 12)), but not relief under that Chapter, is attributable and which were acquired by an individual on a disposal to which section 58 of that Act applies,
- shall be treated as acquired by the individual on the day on which they were issued.
- (4) In subsection (3)(a), the references to Chapter 3 of Part 7 and section 304 of the Taxes Act 1988 shall be read as references to those provisions as they apply to shares issued after 31st December 1993 (enterprise investment scheme).

## **51 Deduction of personal losses from gains treated as accruing to settlors**

Schedule 11 to this Act (deduction of personal losses from gains treated as accruing to settlors) has effect.

## **52 Capital gains tax: variation of dispositions taking effect on death**

- (1) In section 62(7) of the Taxation of Chargeable Gains Act 1992 (c. 12) (election to treat subsequent variation of dispositions taking effect on death as if effected by deceased) for the words from “unless” to the end of the subsection substitute “ unless the instrument contains a statement by the persons making the instrument to the effect that they intend the subsection to apply to the variation. ”.
- (2) This section applies in relation to instruments made on or after 1st August 2002.

### *New reliefs*

## **53 Tax relief for expenditure on research and development**

- (1) Schedule 12 to this Act has effect for accounting periods ending on or after 1st April 2002.
- (2) In that Schedule—
- Part 1 makes provision about tax relief for large companies on expenditure on research and development;
- Part 2 makes provision about tax relief for small companies on expenditure on research and development that is sub-contracted to them;

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Parts 3 to 6 make provision about the form of the relief, special provision about insurance companies and supplementary and general provision.

#### **54 Tax relief for expenditure on vaccine research etc**

- (1) Schedule 13 to this Act (which makes provision for tax relief for companies' expenditure on vaccine research etc) has effect.
- (2) Schedule 14 to this Act (which makes provision consequential on Schedule 13) has effect.

#### **55 Gifts of medical supplies and equipment**

- (1) This section applies where, for humanitarian purposes, a company makes a gift from trading stock of medical supplies, or medical equipment, for human use.
- (2) For the purposes of the Tax Acts, no amount shall be required to be brought into account as a trading receipt of the company in consequence of the making of the gift.
- (3) Any costs of transportation, delivery or distribution incurred by the company in making the gift may be deducted in computing for the purposes of corporation tax the profits of the company's trade for the accounting period in which the costs are incurred.

(4) In any case where—

- (a) relief is given under subsection (2) in respect of the making of a gift and any benefit received in any accounting period by the company or any connected person is in any way attributable to the making of that gift, or
- (b) relief is given under subsection (3) and any benefit so received is in any way attributable to the company's incurring of the costs referred to in that subsection,

the company shall in respect of that period be charged to corporation tax under Case I of Schedule D or, if the company is not chargeable to corporation tax under that Case for that period, under Case VI of Schedule D on an amount equal to the amount of that benefit.

- (5) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (4).
- (6) The Treasury may by order provide that this section is not to have effect in relation to medical supplies or medical equipment of such descriptions as may be specified in the order.
- (7) This section has effect in relation to gifts made on or after 1 April 2002.

#### **56 R&D tax relief for small and medium-sized enterprises: minor and consequential amendments**

Schedule 15 to this Act (which makes minor amendments to Schedule 20 to the Finance Act 2000 (tax relief for R&D expenditure of small and medium-sized enterprises), including amendments consequential on Schedules 12 and 13 to this Act) has effect for accounting periods ending on or after 1st April 2002.

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## **57 Community investment tax relief**

- (1) Schedule 16 to this Act (community investment tax relief) has effect.
- (2) Schedule 17 to this Act (which makes provision consequential on the introduction of community investment tax relief) has effect.
- (3) Schedules 16 and 17 shall come into force on such day as the Treasury may by order appoint.
- (4) On and after that day—
  - (a) Schedule 16 shall have effect in relation to—
    - (i) investments made on or after such day as the Treasury may so appoint, being a day not earlier than 17th April 2002, and
    - (ii) claims made on or after such day as the Treasury may so appoint,
  - (b) paragraphs 2 to 4 of Schedule 17 shall have effect for years of assessment ending on or after the day appointed under paragraph (a)(i), and
  - (c) paragraph 5 of that Schedule shall have effect for accounting periods ending on or after that day.

## **58 Relief for community amateur sports clubs**

- (1) Schedule 18 to this Act (relief for community amateur sports clubs) has effect.
- (2) Parts 1, 5 and 6 of that Schedule shall be deemed to have come into force on 1st April 2002.

Accordingly, an application under that Schedule by a club to be registered as a community amateur sports club may be granted with effect from that date or any subsequent date before the passing of this Act.
- (3) Parts 2 and 4 of that Schedule have effect in relation to accounting periods ending on or after 1st April 2002.
- (4) Part 3 of that Schedule has effect in relation to gifts made on or after 6th April 2002.

### *Capital allowances and related matters*

## **59 Cars with low carbon dioxide emissions**

Schedule 19 to this Act (first-year allowances in respect of expenditure on cars with low CO<sub>2</sub> emissions and exemption from single asset pool rules) has effect in relation to expenditure incurred on or after 17th April 2002.

## **60 Expense of hiring cars with low carbon dioxide emissions**

- (1) In section 578A of the Taxes Act (expenditure on car hire) after subsection (2) (cars to which section 578A applies) insert—
  - “(2A) This section does not apply to the hiring of a car, other than a motorcycle, if—
    - (a) it is an electrically-propelled car, or
    - (b) it is a car with low CO<sub>2</sub> emissions.
  - (2B) In subsection (2A) above—

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“car” has the meaning given by section 578B;

“car with low CO<sub>2</sub> emissions” has the meaning given by section 45D of the Capital Allowances Act 2001 (expenditure on cars with low CO<sub>2</sub> emissions to be first-year qualifying expenditure);

“electrically-propelled car” has the meaning given by that section.”.

- (2) The amendment made by this section has effect in relation to expenditure—
- (a) which is incurred on or after 17th April 2002 on the hiring of a car which is first registered on or after that date, and
  - (b) which is incurred on the hiring of a car, for a period of hire which begins on or before 31st March 2008, under a contract entered into on or before 31st March 2008.

### **61 Plant or machinery for gas refuelling station: first-year allowances**

Schedule 20 to this Act (first-year allowances in respect of expenditure on plant or machinery for gas refuelling station) has effect in relation to expenditure incurred on or after 17th April 2002.

### **62 Expenditure on green technologies: leasing**

- (1) In section 46 of the Capital Allowances Act 2001 (c. 2) (general exclusions affecting first-year qualifying expenditure) after subsection (4) (which is inserted by Schedule 19) insert—
- “(5) General exclusion 6 does not prevent expenditure being first-year qualifying expenditure under section 45A, 45D or 45E.”.
- (2) The amendment made by this section has effect in relation to expenditure incurred on or after 17th April 2002.

### **63 First-year allowances for expenditure wholly for a ring fence trade**

- (1) Schedule 21 to this Act shall have effect.
- (2) In that Schedule—
- (a) Part 1 makes provision for and in connection with first-year allowances under Part 2 of the Capital Allowances Act 2001 in respect of expenditure incurred by a company on the provision of plant or machinery for use wholly for the purposes of a ring fence trade chargeable to tax under section 501A of the Taxes Act 1988 (inserted by section 91 of this Act); and
  - (b) Part 2 makes provision for and in connection with first-year allowances under Part 5 of that Act (mineral extraction allowances) in respect of expenditure incurred by a company wholly for the purposes of such a trade.
- (3) The amendments made by that Schedule have effect in relation to expenditure incurred on or after 17th April 2002.

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### Computation of profits

#### 64 Adjustment on change of basis

- (1) The provisions of Schedule 22 to this Act have effect as to the adjustment or adjustments to be made for [<sup>F8</sup>corporation] tax purposes where—
- (a) there is, from one period of account to the next of a trade, profession or vocation, a change of basis in computing profits for the purposes of Case I or II of Schedule D,
  - (b) the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - (c) the new basis accords with the law and practice applicable in relation to the period of account after the change.

For the purposes of paragraphs (b) and (c) the practice applicable in any case means the accepted practice in cases of that description as to how profits should be computed for the purposes of Case I or II of Schedule D.

- (2) A “change of basis” means—
- (a) a relevant change of accounting approach, or
  - (b) a change in the tax adjustments applied.

- [<sup>F9</sup>(3) A “relevant change of accounting approach” means—
- (a) a change of accounting principle or practice that, in accordance with generally accepted accounting practice, gives rise to a prior period adjustment, or
  - (b) a change from using UK generally accepted accounting practice to using generally accepted accounting practice with respect to accounts drawn up in accordance with international accounting standards.]

- (4) A “tax adjustment” means any such adjustment as is mentioned in section 42(1) of the Finance Act 1998 (c. 36) (adjustments required or authorised by law in computing profits for tax purposes).

- (5) A “change in the tax adjustments applied”—
- (a) does not include a change made in order to comply with amending legislation not applicable to the previous period of account, but
  - (b) includes a change resulting from a change of view as to what is required or authorised by law, or as to whether any adjustment is so required or authorised.

- (6) The provisions of this section and Schedule 22 to this Act have effect in place of the provisions of section 44 of, and Schedule 6 to, the Finance Act 1998 (c. 36).

#### Textual Amendments

**F8** Word in s. 64(1) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 576](#) (with [Sch. 2](#))

**F9** [S. 64\(3\)](#) substituted (with effect in accordance with s. 81(3) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), s. [81\(1\)](#)

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## **65 Postponement of change to mark to market in certain cases**

(1) This section applies in relation to the computation in accordance with the provisions of Case I of Schedule D of the profits of the insurance business, other than life assurance business, of—

- (a) an insurance company,
- (b) a corporate member of Lloyd’s, or
- (c) a controlled foreign company.

(2) For periods of account to which this section applies nothing in—

- (a) section 70 of the Taxes Act 1988 (assessment to corporation tax on full amount of profits, etc), or
- (b) section 42 of the Finance Act 1998 (c. 36) (computation of profits to be on basis giving true and fair view),

prevents the company from computing the profits of that business on a realisation basis rather than a mark to market basis.

A “realisation basis” means not recognising a profit or loss on an asset until it is realised, and a “mark to market basis” means bringing assets into account in each period of account at a fair value.

(3) Subject to subsection (4), this section applies in relation to any period of account that—

- (a) began before 1st August 2001, and
- (b) ends before 31st July 2002.

(4) This section does not apply if—

- (a) an earlier period of account beginning on or after 1st January 2001 ended with an accounting date different from that with which the previous period of account ended,
- (b) the change of accounting date was notified—
  - (i) to the registrar of companies, or
  - (ii) in the case of a company established under the law of a country or territory outside the United Kingdom, to the corresponding authority of that country or territory,

on or after 17th April 2002, and

- (c) the purpose, or one of the purposes, for which the change was made was so that a subsequent period of account would be one to which section 64 above applies (computation of profits: adjustment on change of basis).

(5) In this section—

“controlled foreign company” has the same meaning as in Chapter 4 of Part 17 of the Taxes Act 1988; and

“corporate member of Lloyd’s” means a corporate member as defined in section 230(1) of the Finance Act 1994 (c. 9).

## **66 Election to continue postponement of mark to market**

(1) Where section 65 (postponement of change to mark to market in certain cases) applies in relation to a period of account, the company may elect that it shall continue to apply in relation to subsequent periods of account as regards assets held by it on 1st January 2002.



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Any such election must be made within twelve months after the end of the accounting period of the company current on that date.

- (2) An insurance company that carries on both long-term business and business other than long-term business may make an election under this section limited to assets held by the company otherwise than in the company's long-term insurance fund.
- (3) For the purpose of determining whether an election under this section applies to an asset in a case where—
  - (a) assets are realised by the company in an accounting period beginning on or after 1st January 2002,
  - (b) the assets are of such a kind that the particular assets realised are not readily identifiable,
  - (c) the realisation does not exhaust the company's holding, and
  - (d) some but not all of the company's holding was acquired after 1st January 2002,assets realised shall be identified with assets acquired on the same basis as that used by the company for accounting purposes, unless the basis used by the company is "last in, first out" in which case assets realised shall be identified with assets acquired on or before 1st January 2002 in priority to assets acquired after that day.
- (4) Where a company has made an election under this section and—
  - (a) an asset in relation to which the election has effect is transferred to another company ("the transferee company") in pursuance of a transfer scheme, and
  - (b) immediately after the transfer either—
    - (i) the transferee company is resident in the United Kingdom, or
    - (ii) the asset is held for the purposes of a business carried on by the transferee company in the United Kingdom through a branch or agency,this section applies as if the transferee company had made an election under this section in relation to that asset.
- (5) In this section—

"insurance business" means business that consists of the effecting or carrying out of contracts of insurance and for the purposes of this definition "contract of insurance" has the meaning given in Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

"insurance company", "long-term business" and "long-term insurance fund" have the same meaning as in Chapter 1 of Part 12 of the Taxes Act 1988 (see section 431(2) of that Act);

"transfer scheme" means—

  - (a) a scheme under section 105 of the Financial Services and Markets Act 2000 (c. 8), including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section, or
  - (b) a qualifying overseas transfer scheme.
- (6) A "qualifying overseas transfer scheme" means—
  - (a) so much of a transfer of the whole or part of the business of an overseas life insurance company carried on through a <sup>F10</sup>permanent establishment in the United Kingdom as takes place in accordance with an authorisation

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granted outside the United Kingdom for the purposes of [F11 Article 14 of the consolidated life assurance directive], or

- (b) so much of a transfer of the whole or part of the business of an insurance company other than an overseas life insurance company as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 12 of the third non-life insurance directive.

(7) In subsection (6)—

“overseas life insurance company” has the same meaning as in Chapter 2 of Part 12 of the Taxes Act 1988 (see section 431(2) of that Act);

[F12“the consolidated life assurance directive” means the Directive of the European Parliament and of the Council of 5th November 2002 concerning life assurance (No.2002/83/EC);]

“the third non-life insurance directive” means Council Directive 92/49/EEC on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC.

#### Textual Amendments

- F10** Words in s. 66(6)(a) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\)](#), regs. 1(1), **11(2)(a)(i)**
- F11** Words in s. 66(6)(a) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\)](#), regs. 1(1), **11(2)(a)(ii)**
- F12** Words in s. 66(7) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\)](#), regs. 1(1), **11(2)(b)**

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

- C1** S. 66 modified by SI 1997/473 reg. 53E (as inserted (30.1.2003) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2003 \(S.I. 2003/23\)](#), regs. 1(1), **10**

## 67 Mark to market: miscellaneous amendments

(1) In section 473 of the Taxes Act 1988 (roll-over of securities held as circulating capital)

- (a) in the opening words of subsection (2), omit “, if the securities were not such as are mentioned in subsection (1)(b) above”;
- (b) in subsection (2)(a), and in subsection (7), for “would result” substitute “results ”; and
- (c) in subsection (2)(b) for “would be” substitute “ is ”.

(2) After subsection (2) of that section insert—

“(2A) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of a period of account, are taken into account in the period of account in which the transaction mentioned in subsection (2) above occurs.

(2B) Subsection (2A) above shall be disregarded in determining for the purposes of section 66 of the Finance Act 2002 (election to continue postponement of mark to market) whether an asset was held by a person on 1st January 2002.”.

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(3) In section 81 of the Finance Act 1999 (c. 16) (acquisitions disregarded under insurance companies concession), at the end add—

“(13) If the relevant company changes from—

- (a) not recognising a profit or loss on an asset until it is realised, to
- (b) bringing assets into account in each period of account at a fair value, then, in calculating the amount of any adjustment required under Schedule 22 to the Finance Act 2002 (calculation of adjustment on change of basis), the amount to be taken into account as the cost of the asset in relation to a period of account before the change is the cost of the previous acquisition.”

(4) The provisions of this section come into force as follows—

- (a) the amendments in subsections (1) and (2) apply in relation to periods of account ending on or after 1st August 2001;
- (b) the amendment in subsection (3) applies wherever an adjustment falls to be made under Schedule 22 to the Finance Act 2002 (see Part 5 of that Schedule).

## 68 Expenditure involving crime

(1) In section 577A(1) of the Taxes Act 1988 (no deduction to be made for expenditure incurred in making a payment the making of which constitutes a criminal offence)—

- (a) after “incurred” insert “ (a) ”, and
- (b) at the end insert “, or  
(b) in making a payment outside the United Kingdom where the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence there.”

(2) This section applies in relation to expenditure incurred on or after 1st April 2002.

### *Financial instruments*

69<sup>F13</sup> .....

**Textual Amendments**

F13 s. 69 repealed (with effect in accordance with s. 83(3)) by 2002 c. 23, s. 141, Sch. 40, Pt. 3(13) Note 2

70<sup>F14</sup> .....

**Textual Amendments**

F14 S. 70 repealed (with effect in accordance with s. 83(3)) by 2002 c. 23, s. 141, Sch. 40, Pt. 3(13) Note 2

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### *Loan relationships*

## 71 Accounting method where rate of interest etc is reset

(1) After section 88 of the Finance Act 1996 (c. 8) insert—

### **“88A Accounting method where rate of interest is reset**

- (1) This section applies where—
  - (a) the conditions in subsections (2) and (3) below are satisfied in relation to an asset representing a creditor relationship of a company; and
  - (b) the object, or one of the main objects, of the company entering into or becoming a party to the creditor relationship was the securing, whether for itself or any other person, of a tax advantage (within the meaning of Chapter 1 of Part 17 of the Taxes Act 1988).
- (2) The first condition is that there is or has at any time been a change in—
  - (a) the rate of interest payable in the case of the asset;
  - (b) the amount payable to discharge the debt; or
  - (c) the time at which any payments under the asset (whether of interest or otherwise) fall due.
- (3) The second condition is that the difference between—
  - (a) the fair value of the asset immediately after the change, and
  - (b) the issue price of the asset,
 is equal to at least 5 per cent of the issue price of the asset.
- (4) On and after the day on which the conditions in subsections (2) and (3) above become satisfied in the case of an asset, the only accounting method authorised for the purposes of this Chapter for use by any company as respects a creditor relationship represented by the asset shall be an authorised mark to market basis of accounting.
- (5) Where section 90 below applies in consequence of subsection (4) above, no debit shall be brought into account under subsection (2)(c) or (3)(b) of that section.
- (6) In determining the fair value of an asset for any purpose of this section it shall be assumed that all amounts payable by the debtor will be paid in full as they fall due.”.

(2) This section has effect on and after the relevant day.

(3) Where an authorised mark to market basis of accounting—

- (a) is required by virtue of this section to be used on and after the relevant day as respects a creditor relationship of a company, but
  - (b) was not being used immediately before that day as respects the relationship,
- the asset representing the relationship shall be treated for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as having been acquired by the company for the asset’s fair value (as determined for the purposes of section 88A of that Act) on the relevant day.

(4) For the purposes of this section “the relevant day” is—

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- (a) 19th December 2001, in a case where section 88A of that Act applies by reason of a change in the rate of interest payable in the case of the asset in question; or
- (b) 24th April 2002, in any other case.

**F1572 Convertible securities etc: loan relationships**

.....

**Textual Amendments**

**F15** S. 72 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 9(2)(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(6)**

**F1673 Convertible securities etc: issuing company not to be connected company**

.....

**Textual Amendments**

**F16** S. 73 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 9(2)(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(6)**

**F1774 Convertible securities etc: debtor relationships**

.....

**Textual Amendments**

**F17** S. 74 repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(6)**

**F1875 Asset-linked loan relationships**

.....

**Textual Amendments**

**F18** Ss. 75-77 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 11(2)(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(6)**

**F1876 Asset-linked loan relationships involving guaranteed returns**

.....

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**Textual Amendments**

**F18** Ss. 75-77 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 11(2)(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(6)**

**F18<sup>77</sup> Loan relationships ceasing to be within section 93 of the Finance Act 1996**

.....

**Textual Amendments**

**F18** Ss. 75-77 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 11(2)(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 2(6)**

**F19<sup>78</sup> .....**

**Textual Amendments**

**F19** S. 78 repealed (with effect in accordance with s. 83(3)) by [2002 c. 23](#), ss. 83, 141, [Sch. 27 para. 25](#), **Sch. 40, Pt. 3(13)** Note 2

*Foreign exchange gains and losses, loan relationships and currency*

**79 Forex and exchange gains and losses from loan relationships etc**

- (1) The following provisions shall cease to have effect—
- (a) paragraph 4 of Schedule 9 to the Finance Act 1996 (c. 8) (which excludes foreign exchange gains and losses from the computation of credits and debits under the loan relationships legislation); and
  - (b) in consequence, sections 125 to 169 of the Finance Act 1993 (c. 34) (taxation of foreign exchange gains and losses).
- (2) Schedule 23 to this Act (which makes provision in relation to exchange gains and losses from loan relationships etc) shall have effect.
- (3) The amendments made by subsection (1) and by Parts 1 and 2 of Schedule 23 have effect in relation to accounting periods beginning on or after 1st October 2002.

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

**C2** S. 79(1)(b) extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\)](#), **s. 177(4)(8)(11)**

**80 Corporation tax: currency**

- (1) Schedule 24 to this Act (which makes provision in relation to corporation tax and currency) shall have effect.

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- (2) This section has effect in relation to accounting periods beginning on or after 1st October 2002.

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

C3 S. 80 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(4\)\(8\)\(11\)](#)

## 81 Transitional provision

- (1) The Treasury may by regulations make such transitional or consequential provision, or such savings (with or without modifications), as they may from time to time consider appropriate in consequence of, or otherwise in connection with, any provision of section 79 or 80 or Schedule 23 or 24 (or any repeal consequential on any such provision).
- (2) The power conferred by subsection (1) includes power—
- (a) to make different provision for different cases or different purposes;
  - (b) to amend any statutory instrument; and
  - (c) to make incidental or supplementary provision.
- (3) The provision that may be made by virtue of subsection (1) or (2) includes provision for or in connection with bringing amounts into account—
- (a) for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12), as if they were chargeable gains or allowable losses; or
  - (b) for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8), as if they were credits or debits in respect of a loan relationship or a related transaction of the company concerned.
- (4) Nothing in any provision of Schedule 23 or 24 shall prejudice the operation of this section.
- (5) Nothing in this section or in Schedule 23 or 24 limits the operation of section 16 or 17 of the Interpretation Act 1978 (c. 30) (effect of repeals).

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

C4 S. 81 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(6\)\(8\)\(11\)](#)

### *Loan relationships and other money debts*

## 82 Loan relationships: general amendments

- (1) Schedule 25 to this Act (which makes provision in relation to loan relationships) shall have effect.
- (2) The amendments made by Parts 1 and 2 of that Schedule have effect in relation to accounting periods beginning on or after 1st October 2002.

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### *Derivative contracts*

#### **83 Derivative contracts**

- (1) The following shall have effect—
  - (a) Schedule 26 to this Act (which makes provision for the taxation of derivative contracts);
  - (b) Schedule 27 to this Act (which makes minor and consequential amendments relating to the taxation of derivative contracts); and
  - (c) Schedule 28 to this Act (which contains transitional provisions etc in connection with the coming into force of this section and Schedules 26 and 27).
- (2) Sections 147 to 175 and 177 of the Finance Act 1994 (c. 9) (which make provision for the taxation of interest rate and currency contracts) shall cease to have effect.
- (3) This section has effect in relation to accounting periods beginning on or after 1st October 2002.
- (4) Subsection (3) is subject to any specific provision of Schedule 28.

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

**C5** S. 83 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(4\)\(8\)\(11\)](#)

### *Intangible fixed assets*

#### **84 Gains and losses from intangible fixed assets of company**

- (1) Schedule 29 to this Act has effect with respect to gains and losses from a company's intangible fixed assets.
- (2) Schedule 30 to this Act contains consequential amendments.

### *Insurance*

#### **85 Gains of insurance company from venture capital investment partnership**

- (1) In Chapter 3 of Part 6 of the Taxation of Chargeable Gains Act 1992 (c. 12) (insurance), after section 211 insert—

#### **“211A Gains of insurance company from venture capital investment partnership**

Schedule 7AD to this Act has effect with respect to the gains of an insurance company from a venture capital investment partnership.”

- (2) After Schedule 7AC to that Act (inserted by Part 1 of Schedule 8 to this Act) insert the Schedule 7AD set out in Schedule 31 to this Act.



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## 86 Lloyd’s underwriters

- (1) Schedule 32 to this Act (which makes provision about the taxation of Lloyd’s underwriters) has effect.
- (2) The amendments in that Schedule have effect in relation to quota share contracts (within the meaning of section 178 of the Finance Act 1993 (c. 34) or section 225 of the Finance Act 1994) entered into on or after 17th April 2002.

## 87 Life policies etc: chargeable events

- (1) Chapter 2 of Part 13 of the Taxes Act 1988 (life policies, life annuities and capital redemption policies) is amended in accordance with the following provisions of this section.
- (2) Section 541 (computation of gain in case of life policy or, as applied by section 545, capital redemption policy) is amended as follows.
- (3) In subsection (1)(c) (amounts and values to be brought into account in computing gain on an assignment) before “of any previously assigned share in the rights conferred by the policy” insert “, subject to subsection (3A) below, ”.
- (4) After subsection (3) (assignments between connected persons) insert—
  - “(3A) the amount or value of such a previously assigned share as is mentioned in paragraph (c) of subsection (1) above falls to be brought into account for the purposes of that paragraph only where that share was so assigned—
    - (a) in a year (as defined in section 546(4)) beginning on or before 5th April 2001; or
    - (b) for money or money’s worth in a year (as so defined) beginning on or after 6th April 2001.”.
- (5) Section 543 (life annuity contracts: computation of gain) is amended as follows.
- (6) In subsection (1)(b) (amounts and values to be brought into account in computing gain on an assignment) before “of any previously assigned share in the rights conferred by the contract” insert “, subject to subsection (2A) below, ”.
- (7) After subsection (2) (which applies section 541(3): assignments between connected persons) insert—
  - “(2A) The amount or value of such a previously assigned share as is mentioned in paragraph (b) of subsection (1) above falls to be brought into account for the purposes of that paragraph only where that share was so assigned—
    - (a) in a year (as defined in section 546(4)) beginning on or before 5th April 2001; or
    - (b) for money or money’s worth in a year (as so defined) beginning on or after 6th April 2001.”.
- (8) Section 546B (special provision in respect of certain section 546 excesses) is amended as follows.
- (9) In subsection (1) (application of section) after paragraph (b) add—

“This subsection is subject to subsection (1A) below.”.
- (10) After subsection (1) insert—

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“(1A) In the case of a policy which is a qualifying policy (whether or not the premiums under the policy are eligible for relief under section 266) this section applies only if—

- (a) the section 546 excess occurs within the time described in section 540(1)(b)(i); or
- (b) the policy has been converted into a paid-up policy within that time.”.

- (11) The amendments made by subsections (2) to (7) have effect in relation to any assignment on or after 6th April 2002 of the rights conferred by a policy or contract.
- (12) The amendments made by subsections (8) to (10) have effect and shall be taken always to have had effect, in relation to any policy, in relation to any year (as defined in section 546(4) of the Taxes Act 1988) beginning on or after 6th April 2001.

### *International matters*

## **88 Extension of power to give effect to double taxation arrangements**

- (1) In section 788(1) of the Taxes Act 1988 (relief by agreement with other countries: power to give effect to arrangements), for “made with the government of any territory” substitute “ made in relation to any territory ”.
- (2) The following amendments are consequential on that above—
  - (a) in sections 788(7)(a), 790(3), (5)(b), (10A)(d) and (10C), 792(1) and (3), 793A(1)(a) and (3), 795A(1)(b), 812(2), 815AA(1) and 815C(1) of the Taxes Act 1988, for “with the government of” substitute “ in relation to ”;
  - (b) in the headings (or sidenotes) to sections 788 and 815C of the Taxes Act 1988, for “countries” substitute “ territories ”;
  - (c) in section 816(1) of the Taxes Act 1988, for “government” substitute “ authorities ”;
  - (d) in section 816(2) of the Taxes Act 1988, for “government with” substitute “ authorities of the territory in relation to ”;
  - (e) in section 816(2ZA) of the Taxes Act 1988, for “government with” substitute “ authorities of the territory in relation to ”, for “is bound” substitute “ are bound ” and for “has undertaken” substitute “ have undertaken ”;
  - (f) in sections 277(1) (twice) and (3) and 278(1) of the Taxation of Chargeable Gains Act 1992 (c. 12), for “country” substitute “ territory ”.
- (3) This section applies on and after the date on which this Act is passed in relation to arrangements made before that date (as well as in relation to arrangements made on or after that date).

## **89 Controlled foreign companies: territorial exclusions from s.748 exemptions**

- (1) In section 748 of the Taxes Act 1988 (controlled foreign companies: cases where no apportionment falls to be made under section 747(3)) after subsection (5) insert—
 

“(6) This section is subject to section 748A.”.
- (2) After section 748 of the Taxes Act 1988 insert—

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### Territorial exclusions from exemption under section 748

- (1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—
    - (a) is a company incorporated in a territory to which this section applies as respects that accounting period; or
    - (b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or
    - (c) at any time in that accounting period carries on business through a branch or agency in such a territory.
  - (2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through branches or agencies in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.
  - (3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.
  - (4) Regulations under subsection (3) above—
    - (a) may make different provision for different cases or with respect to different territories; and
    - (b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.
  - (5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.”.
- (3) This section has effect in relation to accounting periods of controlled foreign companies beginning on or after the day on which this Act is passed.
- (4) In this section “accounting period” and “controlled foreign company” have the same meaning as in Chapter 4 of Part 17 of the Taxes Act 1988.

## 90 Controlled foreign companies and treaty non-resident companies

- (1) In section 747 of the Taxes Act 1988 (imputation of chargeable profits and creditable tax of controlled foreign companies), after subsection (1A) insert—

“(1B) In determining, for the purposes of any provision of this Chapter except subsection (1)(a) above, whether a company is a person resident in the United Kingdom, section 249 of the Finance Act 1994 (under which a company is treated as non-resident if it is so treated for double taxation relief purposes) shall be disregarded.”.
- (2) Subsection (1)—
  - (a) shall be deemed to have come into force on 1st April 2002, and
  - (b) does not apply to a company that—

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- (i) by virtue of section 249 of the Finance Act 1994 (c. 9) was treated as resident outside the United Kingdom, and not resident in the United Kingdom, immediately before that date, and
- (ii) has not subsequently ceased to be so treated.

*Supplementary charge in respect of ring fence trades*

## 91 Supplementary charge in respect of ring fence trades

After section 501 of the Taxes Act 1988 insert—

### “501A Supplementary charge in respect of ring fence trades

- (1) Where in any accounting period beginning on or after 17th April 2002 a company carries on a ring fence trade, a sum equal to 10 per cent of its adjusted ring fence profits for that period shall be charged on the company as if it were an amount of corporation tax chargeable on the company.
- (2) A company’s adjusted ring fence profits for an accounting period are the amount which, on the assumption mentioned in subsection (3) below, would be determined for that period (in accordance with this Chapter) as the profits of the company’s ring fence trade chargeable to corporation tax.
- (3) The assumption is that financing costs are left out of account in computing—
  - (a) the amount of the profits or loss of any ring fence trade of the company’s for each accounting period beginning on or after 17th April 2002; and
  - (b) where for any such period the whole or part of any loss relief is surrendered to the company in accordance with section 492(8), the amount of that relief or, as the case may be, that part.
- (4) For the purposes of this section, “financing costs” means the costs of debt finance.
- (5) In calculating the costs of debt finance for an accounting period the matters to be taken into account include—
  - (a) any costs giving rise to debits in respect of debtor relationships of the company under Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);
  - (b) any exchange gain or loss, within the meaning of Chapter 2 of Part 2 of the Finance Act 1993, in relation to debt finance;
  - (c) any trading profit or loss, under Chapter 2 of Part 4 of the Finance Act 1994 (interest rate and currency contracts), in relation to debt finance;
  - (d) the financing cost implicit in a payment under a finance lease; and
  - (e) any other costs arising from what would be considered in accordance with generally accepted accounting practice to be a financing transaction.
- (6) Where an amount representing the whole or part of a payment falling to be made by a company—
  - (a) falls (or would fall) to be treated as a finance charge under a finance lease for the purposes of accounts relating to that company and one

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- or more other companies and prepared in accordance with generally accepted accounting practice, but
- (b) is not so treated in the accounts of the company,
- the amount shall be treated for the purposes of this section as financing costs falling within subsection (5)(d) above.
- (7) If—
- (a) in computing the adjusted ring fence profits of a company for an accounting period, an amount falls to be left out of account by virtue of subsection (5)(d) above, but
- (b) the whole or any part of that amount is repaid,
- the repayment shall also be left out of account in computing the adjusted ring fence profits of the company for any accounting period.
- (8) In this section “finance lease” means any arrangements—
- (a) which provide for an asset to be leased or otherwise made available by a person to another person (“the lessee”), and
- (b) which, under generally accepted accounting practice,—
- (i) fall (or would fall) to be treated, in the accounts of the lessee or a person connected with the lessee, as a finance lease or a loan, or
- (ii) are comprised in arrangements which fall (or would fall) to be so treated.
- (9) For the purposes of applying subsection (8)(b) above, the lessee and any person connected with the lessee are to be treated as being companies which are incorporated in a part of the United Kingdom.
- (10) In this section “accounts”, in relation to a company, includes any accounts which—
- (a) relate to two or more companies of which that company is one, and
- (b) are drawn up in accordance with—
- (i) section 227 of the Companies Act 1985, or
- (ii) Article 235 of the Companies (Northern Ireland) Order 1986.”.

## 92 Assessment, recovery and postponement of supplementary charge

- (1) After section 501A of the Taxes Act 1988 insert—

### “501B Assessment, recovery and postponement of supplementary charge

- (1) Subject to subsection (3) below, the provisions of section 501A(1) relating to the charging of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including—
- (a) those relating to returns of information and the supply of accounts, statements and reports;
- (b) those relating to the assessing, collecting and receiving of corporation tax;
- (c) those conferring or regulating a right of appeal; and

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- (d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
- (2) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if any reference to corporation tax included a reference to a sum chargeable under section 501A(1) as if it were an amount of corporation tax.
- (3) In any regulations made under section 32 of the Finance Act 1998 (as at 17th April 2002, the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999)—
- (a) references to corporation tax do not include a reference to a sum chargeable on a company under section 501A(1) as if it were corporation tax; and
- (b) references to profits charged to corporation tax do not include a reference to adjusted ring fence profits, within the meaning of section 501A(1).
- (4) In this section “the Taxes Acts” has the same meaning as in the Management Act.”.
- (2) In section 59E of the Taxes Management Act 1970 (c. 9) (further provision as to when corporation tax is due and payable) in subsection (11) (extension of references in the section to corporation tax) after paragraph (b) add—
- “(c) to any sum chargeable on a company under section 501A(1) of the principal Act (supplementary charge in respect of ring fence trades) as if it were an amount of corporation tax chargeable on the company”.
- (3) In Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns: assessments and related matters) in paragraph 1 (meaning of “tax”) in the second sentence (amounts assessable or chargeable as if they were corporation tax) for the word “and” immediately preceding the paragraph beginning “section 747(4)(a)” substitute the following paragraph—
- “section 501A(1) of that Act (supplementary charge in respect of ring fence trades), and”.
- (4) In paragraph 8 of that Schedule (calculation of tax payable) after paragraph number 1 of the third step insert—
- “1A Any sum chargeable under section 501A(1) of that Act (supplementary charge in respect of ring fence trades).”.
- (5) Regulation 3 of the Instalment Payment Regulations (large companies) is amended as follows.
- (6) In paragraph (1) (which, subject to paragraphs (2) and (3), defines a large company) for “paragraphs (2) and (3),” substitute “ paragraphs (2) to (3A), ”.
- (7) After paragraph (3) insert—
- “(3A) Any question whether a company is, or is not, a large company as respects an accounting period beginning on or after 17th April 2002 shall, so far as not falling to be determined by reference to the company’s total liability, be

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determined as it would have been determined apart from section 501A of the Taxes Act (supplementary charge in respect of ring fence trades).”.

- (8) The amendment by this section of any provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision, whether in relation to the same or any other chargeable periods.
- (9) In this section “the Instalment Payment Regulations” means the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175).

### **93 Supplementary charge: transitional provisions**

- (1) In the case of a straddling period, that is to say, an accounting period which begins before 17th April 2002 and ends on or after that date—
- (a) sections 501A and 501B of the Taxes Act 1988 (which are inserted by sections 91 and 92) shall apply as if so much of the straddling period as falls before 17th April 2002, and so much of that period as falls on or after that date, were separate accounting periods; and
  - (b) all necessary apportionments between the two separate accounting periods shall be made in proportion to the number of days in those periods.
- (2) In the case of a straddling period, the Instalment Payment Regulations shall apply separately—
- (a) in relation to any tax chargeable on the company under section 501A(1) of the Taxes Act 1988; and
  - (b) in relation to any other tax chargeable on the company.
- (3) In their application by virtue of paragraph (a) of subsection (2), the Instalment Payment Regulations shall have effect in relation to the tax mentioned in that paragraph as if—
- (a) the deemed accounting period treated under subsection (1)(a) as beginning on 17th April 2002 were an accounting period for the purposes of those Regulations; and
  - (b) that tax were chargeable for that period.
- (4) Any reference in the Instalment Payment Regulations to the total liability of a company shall accordingly be construed—
- (a) in their application by virtue of paragraph (a) of subsection (2), as a reference to the tax mentioned in that paragraph; and
  - (b) in their application by virtue of paragraph (b) of that subsection, as a reference to the amount that would be the company’s total liability for the straddling period if the tax mentioned in paragraph (a) of that subsection were left out of account.
- (5) For the purposes of the Instalment Payment Regulations—
- (a) a company shall be regarded as a large company as respects the deemed accounting period under subsection (3)(a) if, and only if, it is a large company for those purposes as respects the straddling period; and
  - (b) any question whether a company is a large company as respects the straddling period shall be determined as it would have been determined apart from section 501A of the Taxes Act 1988.
- (6) In this section “the Instalment Payment Regulations” has the same meaning as in section 92.

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### *Deduction of tax*

#### **94 Deduction of tax: payments to exempt bodies etc**

- (1) In section 349A of the Taxes Act 1988 (exceptions to requirement to deduct tax from certain payments made by a company)—
- (a) in subsection (1)—
    - (i) after “by a company” insert “ or a local authority ”, and
    - (ii) after “the company” insert “ or authority ”,
  - (b) in subsection (6)—
    - (i) after “section” insert “ (a) ”, and
    - (ii) at the end insert “, and
    - (b) a payment by a partnership is treated as made by a local authority if any member of the partnership is a local authority”.
- (2) In section 349B of that Act (section 349A(1): conditions to be met), after subsection (2) insert—
- “(3) The third of those conditions is that the payment is made to—
- (a) a local authority;
  - (b) a health service body within the meaning of section 519A(2);
  - (c) a public office or department of the Crown to which section 829(1) applies;
  - (d) a charity (within the meaning of section 506(1));
  - (e) a body for the time being mentioned in section 507(1) (bodies that are allowed the same exemption from tax as charities the whole income of which is applied to charitable purposes);
  - (f) an Association of a description specified in section 508 (scientific research organisations);
  - (g) the United Kingdom Atomic Energy Authority;
  - (h) the National Radiological Protection Board;
  - (i) the administrator (within the meaning of section 611AA) of a scheme entitled to exemption under section 592(2) or 608(2)(a) (exempt approved schemes and former approved superannuation funds);
  - (j) the trustees of a scheme entitled to exemption under section 613(4) (Parliamentary pension funds);
  - (k) the persons entitled to receive the income of a fund entitled to exemption under section 614(3) (certain colonial, etc pension funds);
  - (l) the trustees or other persons having the management of a fund entitled to exemption under section 620(6) (retirement annuity trust schemes); or
  - (m) a person holding investments or deposits for the purposes of a scheme entitled to exemption under section 643(2) (approved personal pension schemes).
- (4) The fourth of those conditions is that—
- (a) the person to whom the payment is made is, or is the nominee of, the plan manager of a plan,



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- (b) an individual investing under the plan is entitled to exemption by virtue of regulations under section 333 (personal equity plans and individual savings accounts), and
    - (c) the plan manager receives the payment in respect of investments under the plan.
  - (5) The fifth of those conditions is that—
    - (a) the person to whom the payment is made is a society or institution with whom tax-exempt special savings accounts (within the meaning of section 326A) may be held, and
    - (b) the society or institution receives the payment in respect of investments held for the purposes of such accounts.
  - (6) The sixth of those conditions is that the person beneficially entitled to the income in respect of which the payment is made is a partnership each member of which is—
    - (a) a person or body mentioned in subsection (3) above, or
    - (b) a person or body mentioned in subsection (7) below.
  - (7) The persons and bodies referred to in subsection (6)(b) above are—
    - (a) a company resident in the United Kingdom;
    - (b) a company that—
      - (i) is not resident in the United Kingdom,
      - (ii) carries on a trade there through a branch or agency, and
      - (iii) is required to bring into account, in computing its chargeable profits (within the meaning of section 11(2)), the whole of any share of that payment that falls to it by reason of sections 114 and 115;
    - (c) the European Investment Fund.
  - (8) The Treasury may by order amend—
    - (a) subsection (3) above;
    - (b) subsection (7) above;so as to add to, restrict or otherwise alter the persons and bodies falling within that subsection.”.
- (3) In section 349C (directions disapplying section 349A(1))—
  - (a) in subsection (1)—
    - (i) after “a company” insert “ or local authority ”, and
    - (ii) after “the company” insert “ or authority ”,
  - (b) in subsection (2) for “neither” substitute “ none ”, and
  - (c) for subsection (4) substitute—
    - “(4) In this section—
      - “company” includes a partnership of which any member is a company; and
      - “local authority” includes a partnership of which any member is a local authority.”.
- (4) In section 349D (section 349A(1): consequences of reasonable but incorrect belief)—
  - (a) in subsection (1)—

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- (i) in paragraph (a) after “company” insert “ or local authority ”,
- (ii) in paragraphs (b) and (c) after “company” insert “ or authority ”, and
- (iii) in paragraph (d) for “neither” substitute “ none ”, and
- (b) for subsection (2) substitute—
  - “(2) In this section—
    - “company” includes a partnership of which any member is a company; and
    - “local authority” includes a partnership of which any member is a local authority.”.
- (5) In section 98 of the Taxes Management Act 1970 (c. 9) (special returns, etc), in subsection (4B)—
  - (a) in paragraph (a), after “a company” insert “ or local authority ”,
  - (b) in paragraph (b)—
    - (i) after “the company” insert “ or authority ”, and
    - (ii) for “either”, in each place, substitute “ one ”,
  - (c) in paragraph (c), after “the company” insert “ or authority ”, and
  - (d) in paragraph (d), for “neither” substitute “ none ”.
- (6) In that section, for subsection (4C) substitute—
  - “(4C) In subsection (4B) above—
    - “company” includes a partnership of which any member is a company; and
    - “local authority” includes a partnership of which any member is a local authority.”.
- (7) The amendments made by this section apply for the purposes of payments made on or after 1st October 2002.

## 95 Deduction of tax by persons dealing in financial instruments

- (1) Section 349 of the Taxes Act 1988 (payment of annual interest etc) is amended as follows.
- (2) In subsection (3) (cases where obligation to make interest payments net of tax does not apply), at the end insert “or
  - (i) in the case of a person who is authorised for the purposes of the Financial Services and Markets Act 2000 and whose business consists wholly or mainly of dealing in financial instruments as principal, to interest paid by that person in the ordinary course of his business.”.
- (3) After subsection (4) insert—
  - “(5) For the purposes of subsection (3)(i) above, a financial instrument includes—
    - (a) any money,
    - (b) any shares or securities,
    - (c) an option, future or contract for differences if, but only if, its underlying subject-matter is (or is primarily) a financial instrument, or financial instruments, and

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- (d) an instrument the underlying subject-matter of which is (or is primarily) creditworthiness.
- (6) For the purposes of subsection (5) above, the “underlying” subject-matter of an instrument the effect of which depends on an index or factor is the matter by reference to which the index or factor is determined.”.
- (4) This section applies in relation to the payment of interest on or after 1st October 2002.

## 96 Cross-border royalties

- (1) After section 349D of the Taxes Act 1988 insert—

### “349E Deductions under section 349(1): payment of royalties overseas

- (1) Where—
  - (a) a company makes a payment of a royalty to which section 349(1) applies, and
  - (b) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under any arrangements under section 788 (double taxation relief),  
the company may, if it thinks fit, calculate the sum to be deducted from the payment under section 349(1) by reference to the rate of income tax appropriate to the payee pursuant to the arrangements.
- (2) But, where the payee is not at that time entitled to such relief, section 350 and Schedule 16 shall have effect as if subsection (1) above never applied in relation to the payment.
- (3) Where the Board are not satisfied that the payee will be entitled to such relief in respect of one or more payments to be made by a company, they may direct the company that subsection (1) above is not to apply to the payment or payments.
- (4) A direction under subsection (3) above may be varied or revoked by a subsequent such direction.
- (5) In this section—
  - “payee”, in relation to a payment, means the person beneficially entitled to the income in respect of which the payment is made; and
  - “royalty” includes—
    - (a) any payment received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design, process or information, or
    - (b) any proceeds of sale of all or any part of any patent rights.
- (6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to this section.
- (7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6) above, has effect as if—

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- (a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3000, and
  - (b) sub-paragraphs (2) and (3) were omitted.”.
- (2) In section 350(1A) of that Act, at the end insert “(or, where the payment is one to which subsection (1) of section 349E applies, the rate referred to in that subsection)”.
- (3) In section 98 of the Taxes Management Act 1970 (c. 9) (special returns etc)—
- <sup>F20</sup>(a) .....
  - (b) after subsection (4C) insert—
    - “(4D) A payment is within this subsection if—
      - (a) it is a payment to which section 349(1) of the principal Act (requirement to deduct tax) applies,
      - (b) it is made by a company which, purporting to rely on section 349E(1) of that Act (power for companies to take account of double taxation treaty relief when paying royalties), deducts less tax from the payment than required by section 349(1) of that Act , and
      - (c) at the time the payment is made the payee (within the meaning of section 349E of that Act) is not entitled to relief in respect of the payment under any arrangements under section 788 of that Act (double taxation relief) and the company—
        - (i) does not believe that it is entitled to such relief, or
        - (ii) if it does so believe, cannot reasonably do so.”.
- (4) This section applies in relation to payments made on or after 1st October 2002.

#### **Textual Amendments**

**F20** S. 96(3)(a) repealed (with effect in accordance with Sch. 43 Pt. 5(3) Note of the amending Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 5(3)**

### *Charitable giving*

#### **97 Gifts of real property to charity**

- (1) In section 587B of the Taxes Act 1988 (gifts of shares and securities to charities) in subsection (9), in the definition of “qualifying investment”, omit the word “and” immediately preceding paragraph (d) and at the end of that paragraph insert “; and
- (e) a qualifying interest in land”.
- (2) After that subsection insert—
- “(9A) In this section a “qualifying interest in land” means—
- (a) a freehold interest in land, or
  - (b) a leasehold interest in land which is a term of years absolute, where the land in question is in the United Kingdom.
- This subsection is subject to subsections (9B) to (9D) below.

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- (9B) Where a person makes a disposal to a charity of—
- (a) the whole of his beneficial interest in such freehold or leasehold interest in land as is described in subsection (9A)(a) or (b) above, and
  - (b) any easement, servitude, right or privilege so far as benefiting that land,

the disposal falling within paragraph (b) above is to be regarded for the purposes of this section as a disposal by the person of the whole of his beneficial interest in a qualifying interest in land.

- (9C) Where a person who has a freehold or leasehold interest in land in the United Kingdom grants a lease for a term of years absolute (or, in the case of land in Scotland, grants a lease) to a charity of the whole or part of that land, the grant of that lease is to be regarded for the purposes of this section as a disposal by the person of the whole of the beneficial interest in the leasehold interest so granted.

- (9D) For the purposes of subsection (9A) above, an agreement to acquire a freehold interest and an agreement for a lease are not qualifying interests in land.

- (9E) In the application of this section to Scotland—

- (a) references to a freehold interest in land are references to the interest of the owner,
- (b) references to a leasehold interest in land which is a term of years absolute are references to a tenant's right over or interest in a property subject to a lease, and
- (c) references to an agreement for a lease do not include references to "missives of let that constitute an actual lease."

- (3) After subsection (11) of that section insert—

“(12) This section is supplemented by section 587C below.”.

- (4) In consequence of the amendments made by subsections (1) to (3), the sidenote of section 587B becomes “Gifts of shares, securities and real property to charities etc”.

- (5) After section 587B of the Taxes Act 1988 insert—

**“587C Supplementary provision for gifts of real property**

- (1) This section applies for the purposes of section 587B where a qualifying investment is a qualifying interest in land.

- (2) Where two or more persons—

- (a) are jointly beneficially entitled to the qualifying interest in land, or
- (b) are, taken together, beneficially entitled in common to the qualifying interest in land,

section 587B applies only if each of those persons disposes of the whole of his beneficial interest in the qualifying interest in land to the charity.

- (3) Relief under section 587B shall be available to each of the persons referred to in subsection (2) above, but the amount that may be allowed as respects any of them shall be only such share of the relevant amount as they may agree in the case of that person.

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- (4) No person may make a claim for a relief under subsection (2) of section 587B unless he has received a certificate given by or on behalf of the charity.
- (5) The certificate must—
  - (a) specify the description of the qualifying interest in land which is the subject of the disposal,
  - (b) specify the date of the disposal, and
  - (c) contain a statement that the charity has acquired the qualifying interest in land.
- (6) If, in the case of a disposal of a qualifying interest in land, a disqualifying event occurs at any time in the relevant period, the person (or each of the persons) who made the disposal to the charity shall be treated as never having been entitled to relief under section 587B in respect of the disposal.
- (7) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (6) above.
- (8) For the purposes of subsection (6) above a disqualifying event occurs if the person (or any one of the persons) who made the disposal or any person connected with him (or any one of them)—
  - (a) becomes entitled to an interest or right in relation to all or part of the land to which the disposal relates, or
  - (b) becomes party to an arrangement under which he enjoys some right in relation to all or part of that land,
 otherwise than for full consideration in money or money's worth.
- (9) A disqualifying event does not occur, for the purposes of subsection (6) above, if a person becomes entitled to an interest or right as mentioned in subsection (8)(a) above as a result of a disposition of property on death, whether the disposition is effected by will, under the law relating to intestacy or otherwise.
- (10) For the purposes of subsection (6) above the relevant period is the period beginning with the date of the disposal of the qualifying interest in land and ending with—
  - (a) in the case of an individual, the fifth anniversary of the 31st January next following the end of the year of assessment in which the disposal was made, and
  - (b) in the case of a company, the sixth anniversary of the end of the accounting period in which the disposal was made.
- (11) Section 839 (connected persons) applies for the purposes of this section.
- (12) This section shall be construed as one with section 587B.”.
- (6) This section has effect in relation to any disposal of a qualifying interest in land to a charity where the disposal is made—
  - (a) in the case of a disposal to the charity by an individual, on or after 6th April 2002, or
  - (b) in the case of a disposal to the charity by a company, on or after 1st April 2002.
- (7) Subsection (9E)(a) of section 587B of the Taxes Act 1988 has effect until the appointed day as if for “the interest of the owner” there were substituted “ the estate or interest

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of the proprietor of the *dominium utile* (or, in the case of property other than feudal property, of the owner) ”.

- (8) For the purposes of subsection (7) “the appointed day” means such day as may be appointed by the Scottish Ministers under section 71 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 for the purposes of the Act.

## 98 Gift aid: election to be treated as if gift made in previous tax year

- (1) A person (“the donor”) who makes a gift that is a qualifying donation within section 25 of the Finance Act 1990 (c. 29) (gift aid) may elect to be treated for the purposes of that section as if the gift were a qualifying donation made by him in the previous year of assessment.
- (2) Any such election must be made by notice in writing to an officer of the Inland Revenue—
- (a) on or before the date on which the donor delivers his return for the previous year of assessment under section 8 of the Taxes Management Act 1970 (c. 9) (personal return), and
  - (b) not later than the 31st January next following the end of that year.
- (3) No such election may be made unless in the previous year the grossed up amount of the gift would, if made in that year, be payable out of profits or gains brought into charge to income tax or capital gains tax.
- (4) The effect of an election under this section is that the provisions of section 25(6) to (9A) of the Finance Act 1990 (c. 29) have effect in relation to the donor as if the gift were a qualifying donation made in the previous year of assessment.
- (5) An election under this section does not affect the position of the recipient of the gift.
- The reference in section 25(10) of the Finance Act 1990 to the relevant year of assessment shall be construed accordingly as a reference to the year of assessment in which the gift is actually made.
- (6) This section has effect in relation to gifts made on or after 6th April 2003.

### Modifications etc. (not altering text)

- C6 S. 98 excluded (with effect in accordance with s. 83(7) of the amending Act) by [Finance Act 2004](#) (c. 12), s. 83(3)

## Films

## 99 Restriction of relief to films genuinely intended for theatrical release

- (1) Relief under the following provisions is available only for a film that is genuinely intended for theatrical release—
- (a) section 40D of the Finance (No. 2) Act 1992 (c. 48) (election to claim capital allowances for production or acquisition expenditure);
  - (b) section 41 of that Act (relief for pre-production expenditure);
  - (c) section 42 of that Act (three year write-off for production or acquisition expenditure);

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- (d) section 48 of the Finance (No. 2) Act 1997 (c. 58) (relief for expenditure on production or acquisition of film with total production expenditure of £15 million or less).
- (2) For the purposes of subsection (1)—
- (a) the relevant intention is the intention at the time the film is completed of the person then entitled to determine how the film is to be exploited;
  - (b) “theatrical release” means exhibition to the paying public at the commercial cinema; and
  - (c) a film is not regarded as genuinely intended for theatrical release unless it is intended that a significant proportion of the earnings from the film should be obtained by such exhibition.
- (3) Subject to the following provisions, this section applies to any film—
- (a) completed on or after 17th April 2002, or
  - (b) completed before 1st January 2002 but not certified by the Secretary of State before 17th April 2002,
- unless an application for certification was received by the Secretary of State before 17th April 2002.
- References in this subsection to certification are to certification of the [F21original master version of the film (within the meaning given by section 43 of the Finance (No.2) Act 1992)] under Schedule 1 to the Films Act 1985 (c. 21) as a qualifying film, tape or disc.
- (4) This section does not apply to a film completed on or after 17th April 2002 if—
- (a) it is a drama with an average production expenditure per hour of running time of the completed film greater than £500,000, and
  - (b) it was commissioned on or before 17th April 2002 and the first day of principal photography was on or before 30th June 2002.
- (5) For the purposes of subsection (4) “drama” does not include—
- (a) anything in the nature of—
    - (i) an advertisement or promotional film,
    - (ii) a discussion programme, news or current affairs programme, quiz show, panel show, variety show or similar entertainment, or
    - (iii) a training film, or
  - (b) a film of a live event or of a theatrical or artistic performance given otherwise than for the purpose of being filmed;
- but it includes a documentary involving the dramatic reconstruction of events if the dramatic content forms 50% or more of the running time.
- (6) For the purposes of this section—
- (a) a film is completed at the time when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public;
  - (b) the production expenditure on a film means the total of all expenditure on the production of the film, whenever incurred and whether or not incurred by the person claiming relief; and
  - (c) subsections (6A) and (7) of section 48 of the Finance (No. 2) Act 1997 (c. 58) (production expenditure: exclusion of deferrals and treatment of



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transactions not at arm’s length) apply as they apply for the purposes of that section.

**Textual Amendments**

**F21** Words in s. 99(3) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 28, 31\(3\)](#)

**100 Exclusion of deferrals from production expenditure**

- (1) Section 48 of the Finance (No. 2) Act 1997 (c. 58) (relief for expenditure on production or acquisition of qualifying film with total production expenditure of £15 million or less) is amended as follows.
- (2) In subsection (6) (meaning of “total production expenditure”), for “subject to subsection (7)” substitute “subject to subsections (6A) and (7) ”.
- (3) After that subsection insert—
  - “(6A) For the purposes of this section the production expenditure on a film shall be taken not to include any amount that at the time the film is completed—
    - (a) has not been paid, and
    - (b) is not the subject of an unconditional obligation to pay within four months after the date of completion.”.
- (4) This section applies to films completed on or after 17th April 2002.

For this purpose a film is completed at the time when it is first in a form in which it can reasonably be regarded as ready for copies of it to be made and distributed for presentation to the general public.

**F22 101 Restriction of relief for successive acquisitions of the same film**

.....

**Textual Amendments**

**F22** S. 101 repealed (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 para. 2\(1\)\(2\)](#), [Sch. 11 Pt. 2\(3\)](#) (with [Sch. 3 para. 2\(3\)](#))

*Miscellaneous*

**102 Distributions: reasonable commercial return for use of principal secured**

- (1) In section 209 of the Taxes Act 1988 (meaning of “distribution”) after subsection (3A) insert—
  - “(3AA) If, in the case of any security issued by a company, the amount of new consideration received by the company for the issue of the security exceeds the amount of the principal secured by the security—

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- (a) the amount of the principal so secured shall be treated for the purposes of paragraph (d) of subsection (2) above as increased to the amount of the new consideration so received; and
- (b) subsection (3A) above, so far as relating to that paragraph, shall not have effect in relation to the security;

but this subsection is subject to sections 209A and 209B.”.

(2) After that section insert—

**“209A Section 209(3AA): link to shares of company or associated company**

- (1) Subsection (3AA) of section 209 does not apply in relation to a security issued by a company (the “issuing company”) if the security is one which to a significant extent reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in one or more companies each of which is—
  - (a) the issuing company; or
  - (b) an associated company of the issuing company;
 but this subsection is subject to the following provisions of this section.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 above from applying in relation to a security if—
  - (a) the issuing company is a bank or securities house;
  - (b) the security is issued by the issuing company in the ordinary course of its business; and
  - (c) the security reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in companies falling within paragraph (a) or (b) of subsection (1) above by reason only that the security reflects fluctuations in a qualifying index.
- (3) In subsection (2)(c) above “qualifying index” means an index whose underlying subject matter includes both—
  - (a) shares in one or more companies falling within paragraph (a) or (b) of subsection (1) above, and
  - (b) shares in one or more companies falling within neither of those paragraphs,
 and which is an index such that the shares falling within paragraph (b) above represent a significant proportion of the market value of the underlying subject matter of the index.
- (4) In this section—
  - “bank” has the meaning given by section 840A;
  - “securities house” means any person—
    - (a) who is authorised for the purposes of the Financial Services and Markets Act 2000; and
    - (b) whose business consists wholly or mainly of dealing in financial instruments as principal;
 and in paragraph (b) above “financial instrument” has the meaning given by section 349(5) and (6).

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- (5) For the purposes of this section a company is an “associated company” of another at any time if at that time one has control of the other or both are under the control of the same person or persons.
- (6) For the purposes of subsection (5) above, “control”, in relation to a company, means the power of a person to secure—
  - (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
  - (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company, that the affairs of the company are conducted in accordance with his wishes.
- (7) There shall be left out of account for the purposes of subsection (6) above—
  - (a) any shares held by a company, and
  - (b) any voting power or other powers arising from shares held by a company, if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12, assets of an insurance company’s long-term insurance fund (see section 431(2)).

#### **209B Section 209(3AA): hedging arrangements**

- (1) Subsection (3AA) of section 209 does not at any time apply in relation to a security issued by a company (the “issuing company”) if at that time, or any earlier time on or after 17th April 2002, there are or have been any hedging arrangements that relate to some or all of the company’s liabilities under the security.
- (2) Subsection (1) above does not prevent subsection (3AA) of section 209 from applying in relation to a security at any time if—
  - (a) conditions 1 to 4 below are satisfied in relation to any such hedging arrangements at that time; and
  - (b) at all earlier times on or after 17th April 2002 when there have been hedging arrangements that relate to some or all of the company’s liabilities under the security, conditions 1 to 4 below were satisfied in relation to those hedging arrangements.
- (3) Where subsection (3AA) of section 209 at any time ceases to apply in relation to a security by virtue of this section, subsection (2)(d) of that section shall have effect in relation to the security as from that time as it would have had effect if subsection (3AA) had never applied in relation to the security.
- (4) Condition 1 is that the hedging arrangements do not constitute, include, or form part of, any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax or stamp duty.
- (5) Condition 2 is that the hedging arrangements are such that, where for the purposes of corporation tax a deduction in respect of the security falls to be made at any time by the issuing company, then at that time, or within a reasonable time before or after it, any amounts intended under the hedging arrangements to offset some or all of that deduction arise—

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- (a) to the issuing company; or
  - (b) to a company which is a member of the same group of companies as the issuing company.
- (6) Condition 3 is that the whole of every amount arising as mentioned in subsection (5) above is brought into charge to corporation tax—
- (a) by a company falling within paragraph (a) or (b) of that subsection, or
  - (b) by two or more companies, taken together, each of which falls within paragraph (a) or (b) of that subsection.
- (7) Condition 4 is that for the purposes of corporation tax any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable, in proportion to the amounts required to be brought into charge to corporation tax by subsection (6) above.
- (8) For the purposes of this section “hedging arrangements”, in relation to a security, means any scheme or arrangement for the purpose, or for purposes which include the purpose, of securing that an amount of income or gain accrues, or is received or receivable, whether directly or indirectly, which is intended to offset some or all of the amounts which fall to be brought into account, in accordance with generally accepted accounting practice, in respect of amounts accruing or falling to be paid in accordance with the terms of the security.
- (9) Any reference in this section to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).”.
- (3) This section has effect in relation to interest and other distributions out of assets of a company in respect of securities of the company where the interest is paid, or the distribution is made, on or after 17th April 2002.

### 103 References to accounting practice and periods of account

- (1) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts), at the appropriate places insert—

““generally accepted accounting practice” has the meaning given by section 836A.”;

““for accounting purposes” means for the purposes of accounts drawn up in accordance with generally accepted accounting practice.”;

and

““period of account”—

- (a) in relation to a person, means any period for which the person draws up accounts, and
- (b) in relation to a trade, profession, vocation or other business means any period for which accounts of the business are drawn up.”.

<sup>F23</sup>(2) .....

- (3) In section 288(1) of the Taxation of Chargeable Gains Act 1992 (interpretation), at the appropriate place insert—

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““period of account” has the meaning given by section 832(1) of the Taxes Act.”.

- (4) In the following provisions for “normal accounting practice” or “normal accountancy practice”, wherever occurring, substitute “ generally accepted accounting practice ”
- (a) in the Taxes Act 1988, sections 43A(1), 297(5B), 494AA(2), 798B(1) and 837A(2), and in Schedule 28B, paragraph 4(6B);
  - (b) in the Finance Act 1993 (c. 34), sections <sup>F24</sup>... 150(6)(c) and (11)(c), 154(11)(c), (12)(d), (13)(b), (13A)(d) and (13B)(d), 155(7), (11)(d) and (12)(b), 156(2)(e) and (4)(b) and 159(1)(b);
  - (c) in the Finance Act 1994 (c. 9), section 156(3)(a) and (4)(a);
  - (d) in the Finance Act 1996 (c. 8), <sup>F25</sup>... in Schedule 9, paragraph 14(1) and (2) and in Schedule 10, paragraph 1(3)(a) and (4);
  - (e) in the Finance Act 1997 (c. 16), in Schedule 12, paragraphs 1(1)(c) and (2)(a), 3(1) and (2), 4(5), 6(1)(a), 15(1)(c) and (2), 22, 28(5) and 30(1);
  - (f) in the Finance Act 2000 (c. 17), <sup>F26</sup>... in Schedule 15, paragraph 29(4), in Schedule 20, paragraphs 6(1), 10(1)(b) and (2)(b)(ii) and 25(1)<sup>F27</sup> ...;
  - (g) in the Capital Allowances Act 2001 (c. 2), sections 179(1)(f), 219(1) and 437;
  - (h) in the Finance Act 2001 (c. 9), in Schedule 22, paragraphs 10(1)(b) and (2)(b)(ii).
- (5) In section 42(1) of the Finance Act 1998 (c. 36) (computation of profits of trade, profession or vocation), for “on an accounting basis which gives a true and fair view” substitute “ in accordance with generally accepted accounting practice ”.
- (6) The amendments made by subsections (1) to (3) above have effect for the purposes of provisions of this Act using the expressions mentioned (including provisions inserted by amendment in other enactments) whenever those provisions are expressed to have effect or to come, or to have come, into force.

This is without prejudice to the general effect of those amendments.

#### Textual Amendments

- F23** S. 103(2) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(7\)](#)
- F24** Word in s. 103(4)(b) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F25** Words in s. 103(4)(d) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F26** Words in s. 103(4)(f) repealed (with effect in accordance with s. 723(1)(a)(b) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), s. 723, [Sch. 8 Pt. 1](#) (with [Sch. 7](#))
- F27** Words in s. 103(4)(f) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

#### <sup>F28</sup> 104 Discounted securities etc

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### Textual Amendments

**F28** S. 104 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

## 105 Financial trading stock

- (1) In section 100 of the Taxes Act 1988 (valuation of trading stock at discontinuance of trade) in subsection (1B), omit paragraph (a) (which relates to stock consisting of certain debts and is superseded by Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships)).
- (2) In Schedule 12 to the Finance Act 1988 (c. 39) (building societies: change of status)—
  - (a) in paragraph 1 (which provides that paragraphs 2 to 7 apply where there is a transfer of the whole of a building society’s business to a successor company in accordance with section 97 etc of the Building Societies Act 1986 (c. 53)) for “2” substitute “ 3 ”; and
  - (b) omit paragraph 2 (which relates to gilt-edged securities and other financial trading stock and is superseded by Chapter 2 of Part 4 of the Finance Act 1996).

## 106 Valuation of trading stock on transfer of trade

- (1) In section 100 of the Taxes Act 1988 (valuation of trading stock at discontinuance of trade), after subsection (2) insert—
  - “(3) Where trading stock falling to be valued under paragraph (a) of subsection (1) above is sold or transferred together with other assets, so much of the amount realised on the sale or, as the case may be, of the value of the consideration given for the transfer as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this section as the amount realised on the sale or, as the case may be, the value of the consideration given for the transfer, of that asset.”.
- (2) Subsection (1) applies where the sale or transfer in question takes place after the passing of this Act.

## 107 Banks etc in compulsory liquidation

- (1) Schedule 12 to the Finance (No. 2) Act 1992 (c. 48) is amended as follows.
- (2) In paragraph 3 (taxation of certain receipts under Case VI of Schedule D) omit paragraph (c) of sub-paragraph (3) (which has become unnecessary because no interest or dividends any longer fall within it).
- (3) At the end of paragraph 3, insert—
  - “(5) This paragraph and paragraph 4 below have effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter 2 of Part 4 of that Act).”.

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- (4) In paragraph 4 (relief from tax) omit sub-paragraph (3) (which provides for deductions from sums excluded from paragraph 3(2) by paragraph 3(3)(c)).
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 1st October 2002.

## 108 Manufactured dividends and interest

- (1) Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) is amended as follows.

<sup>F29</sup>(2) .....

- (3) After that sub-paragraph insert—

“(1A) An amount shall be allowable under sub-paragraph (1) above as a deduction against total income only to the extent that—

- (a) the dividend manufacturer receives the dividend on the equities which is represented by the manufactured dividend, or receives a payment which is representative of that dividend, and is chargeable to income tax on the dividend or other payment so received;
- (b) the dividend manufacturer is treated under section 730A (repos) as receiving a payment of interest in respect of the equities and is chargeable to income tax on that payment; or
- (c) a chargeable gain accrues to the dividend manufacturer as a result of a transaction whose nature is such as to give rise to the payment of a manufactured dividend by him,

but the amount allowable by virtue of paragraph (c) above is limited to so much of the chargeable gain as does not exceed the manufactured dividend paid as a result of the transaction.

- (1B) Where an amount is allowable under sub-paragraph (1) above by reference to the whole or any part of—

- (a) a dividend or other payment falling within paragraph (a) of sub-paragraph (1A) above,
- (b) a payment of interest which a person is treated as receiving, as mentioned in paragraph (b) of that sub-paragraph, or
- (c) a chargeable gain falling within paragraph (c) of that sub-paragraph, (the “utilised portion” of the dividend, other payment or chargeable gain) no other amount shall be allowable under sub-paragraph (1) above by reference to all or any of the utilised portion of the dividend, other payment or chargeable gain.”.

- (4) In paragraph 3 (manufactured interest on UK securities) in sub-paragraph (2) (tax treatment of interest manufacturer) in paragraph (c) (amount allowable as a deduction) at the end add “, but only to the extent that—

- (i) it would be so allowable if it were interest, or
- (ii) so far as not falling within sub-paragraph (i) above, it falls within sub-paragraph (2A) below”.

- (5) After that sub-paragraph insert—

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“(2A) An amount of manufactured interest falls within this sub-paragraph if and to the extent that the interest manufacturer—

- (a) receives the periodical payment of interest on the securities which is represented by the manufactured interest, or receives a payment which is representative of that periodical payment of interest, and is chargeable to income tax on the periodical payment or representative payment so received;
- (b) is treated under section 713(2)(a) or (3)(b) (accrued income scheme) as entitled to a sum in respect of a transfer of the securities and is chargeable to income tax on that sum; or
- (c) is treated under section 730A (repos) as receiving a payment of interest in respect of the securities and is chargeable to income tax on that payment.

(2B) Where an amount is allowable under sub-paragraph (2)(c) above by reference to the whole or any part of—

- (a) a periodical payment of interest, or a payment representative of such a payment, falling within paragraph (a) of sub-paragraph (2A) above,
- (b) a sum falling within paragraph (b) of that sub-paragraph, or
- (c) a payment of interest which a person is treated as receiving, as mentioned in paragraph (c) of that sub-paragraph,

(the “utilised portion” of the interest, sum or other payment) no other amount shall be allowable under sub-paragraph (2)(c) above by reference to all or any of the utilised portion of the interest, sum or other payment.”.

(6) The amendments made by subsections (2) and (3) have effect in relation to manufactured dividends paid on or after 17th April 2002.

(7) The amendments made by subsections (4) and (5) have effect in relation to manufactured interest paid on or after 17th April 2002.

#### Textual Amendments

**F29** S. 108(2) repealed (with effect in accordance with Sch. 24 para. 2(7)(9) of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(16)

## 109 Venture capital trusts

(1) Schedule 33 to this Act has effect.

(2) In that Schedule—

Part 1 enables regulations to make provision for cases where a venture capital trust is being wound up,

Part 2 enables regulations to make provision for cases where there is a merger of two or more venture capital trusts,

Part 3 enables regulations to make provision about the time allowed for venture capital trusts to invest money raised from issues (other than initial issues) of ordinary share capital, and

Part 4 contains supplementary provisions.



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## PART 4

### STAMP DUTY AND STAMP DUTY RESERVE TAX

#### *Stamp duty*

#### **110 Land in disadvantaged areas**

- (1) In subsection (1) of section 92 of the Finance Act 2001 (c. 9) (stamp duty: exemption for land in disadvantaged areas), for the words before paragraph (a) substitute “*Noad valorem* stamp duty shall be chargeable on—”.
- (2) After subsection (6) of that section insert—

“(6A) This section and Schedule 30 to this Act have effect subject to section 92A.”
- (3) After that section insert—

#### **“92A Restriction of exemption in the case of residential property etc**

- (1) Regulations may provide for an exemption conferred by section 92 or by Schedule 30 to this Act not to apply in cases specified by reference to either or both of the following—
  - (a) whether the land in question is residential property;
  - (b) the amount or value of the consideration.
- (2) Regulations may contain provision corresponding to or modifying that made by Schedule 30 to this Act in the case of—
  - (a) a building or land only part of which falls within subsection (1)(a) or (b) of section 92B (meaning of “residential property”), or
  - (b) an interest in or right over land that subsists only partly as mentioned in subsection (1)(c) of that section.
- (3) Where by virtue of regulations under this section the availability of an exemption depends on the land in question not being, or not being entirely, residential property, the certification under section 92(2) must include a statement that the land is not residential property or, as the case may be, that it is not residential property to the extent stated.
- (4) Where by virtue of regulations under this section the availability of an exemption depends on the amount or value of the consideration not exceeding a specified amount, the instrument in question must be certified at that amount (or at a lower amount).

The reference here to an instrument being certified at an amount shall be construed in accordance with paragraph 6 of Schedule 13 to the Finance Act 1999 (as if the reference were contained in paragraph 4 of that Schedule).
- (5) The power to make regulations under this section is exercisable by the Treasury.
- (6) Regulations under this section—
  - (a) may make different provision for different cases, and

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

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

### **92B Meaning of “residential property”**

(1) In section 92A “residential property” means—

- (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use;
- (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land);
- (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).

(2) For the purposes of subsection (1) use of a building as—

- (a) residential accommodation for school pupils,
- (b) residential accommodation for students, other than accommodation falling within subsection (3)(b),
- (c) residential accommodation for members of any of the armed forces, or
- (d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (3),

is use of a building as a dwelling.

(3) For the purposes of subsection (1) use of a building as—

- (a) a home or other institution providing residential accommodation for children,
- (b) a hall of residence for students in further or higher education,
- (c) 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,
- (d) a hospital or hospice,
- (e) a prison or similar establishment, or
- (f) a hotel or inn or similar establishment,

is not use of a building as a dwelling.

(4) Where a building is used in a manner specified in subsection (3), no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use.

(5) Where a building that is not in use is suitable for at least one of the uses specified in subsection (2) and at least one of those specified in subsection (3)

- (a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same subsection,

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- no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use;
- (b) otherwise, the building shall be treated for those purposes as suitable for use as a dwelling.
- (6) Regulations under section 92A may provide that, where there is a single contract for the conveyance, transfer or lease of land comprising or including six or more separate dwellings, none of that land counts as residential property for the purposes of the regulations.
- (7) The Treasury may by order amend this section so as to change or clarify the cases where use of a building is, or is not, use of a building as a dwelling for the purposes of subsection (1).
- (8) An order under subsection (7) may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (9) An order under subsection (7) must be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section “building” includes part of a building.”.
- (4) In paragraph 1(1) of Schedule 30 to the Finance Act 2001 (c. 9) (stamp duty reduced for land partly in a disadvantaged area), for the words from “stamp duty” to “1999” substitute “ *ad valorem stamp duty* ”.
- (5) In sub-paragraph (1) of paragraph 3 of that Schedule (certification of instruments for stamp duty purposes)—
- (a) for the words from “a transaction” to “shall be disregarded” substitute “ 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 ”;
- (b) at the end of the sub-paragraph insert—
- “This is without prejudice to section 92A(4) (instrument must be certified where exemption depends on amount or value of consideration).”.
- (6) Regulations under section 92A of the Finance Act 2001 (inserted by subsection (3) above) may contain provision revoking the Variation of Stamp Duties Regulations 2001 (S.I. 2001/3746) (which provide for section 92(1) of, and paragraph 1 of Schedule 30 to, that Act not to apply in cases where the consideration for the conveyance etc exceeds £150,000).

## 111 Withdrawal of group relief

- (1) This section applies where—
- (a) an instrument (“the relevant instrument”) transferring land in the United Kingdom from one company (“the transferor company”) to another (“the transferee company”) has been stamped on the basis that group relief applies,
- (b) before the end of the period of [<sup>F30</sup>three years] beginning with the date on which the instrument was executed the transferee company ceases to be a member of the same group as the transferor company, and

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- (c) at the time when [<sup>F31</sup>the transferee company ceases] to be a member of the same group as the transferor company [<sup>F32</sup>it or a relevant associated company holds] an estate or interest in land—
- (i) that was transferred [<sup>F33</sup>to the transferee company] by the relevant instrument, or
  - (ii) that is derived from an estate or interest that was so transferred, [<sup>F34</sup>and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which group relief was not claimed].
- (2) In those circumstances—
- (a) group relief in relation to the relevant instrument, or an appropriate proportion of it, is withdrawn, and
  - (b) the stamp duty that would have been payable on stamping the relevant instrument but for group relief if the estate or interest in land transferred by that instrument had been transferred at market value, or an appropriate proportion of the duty that would have been so paid, is payable by the transferee company within 30 days after that company ceases to be a member of the same group as the transferor company.
- (3) In subsection (2)(a) and (b) “an appropriate proportion” means an appropriate proportion having regard to what was transferred [<sup>F35</sup>to the transferee company] by the relevant instrument and [<sup>F36</sup>what is held by that company or, as the case may be, that company and any relevant associated companies, at the time it or they cease to be members] of the same group as the transferor company.
- (4) In this section “group relief” means relief under any of the following provisions—
- (a) section 42 of the Finance Act 1930 (c. 28) or section 11 of the Finance Act (Northern Ireland) 1954 (c. 23 (N.I.)) (transfer of property between associated bodies corporate);
  - (b) section 151 of the Finance Act 1995 (c. 4) (leases etc between associated bodies corporate).
- [<sup>F37</sup>(4A) In this section “relevant associated company”, in relation to the transferee company, means a company that—
- (a) is a member of the same group as the transferee company immediately before that company ceases to be a member of the same group as the transferor company, and
  - (b) ceases to be a member of the same group as the transferor company in consequence of the transferee company so ceasing.]
- (5) In this section—
- (a) references to the transfer of land include the grant or surrender of an estate or interest in or over land;
  - (b) “company” includes any body corporate; and
  - (c) references to a company being in the same group as another company are to the companies being associated bodies corporate within the meaning of the relevant group relief provision.
- (6) Schedule 34 to this Act contains provisions supplementing this section.
- (7) Where the relevant instrument transfers land in the United Kingdom together with other property, the provisions of this section and of Schedule 34 apply as if there were

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two separate instruments, one relating to land in the United Kingdom and the other relating to other property.

- (8) This section applies where the relevant instrument is executed after 23rd April 2002.
- (9) But this section does not apply to an instrument giving effect to a contract made on or before 17th April 2002, unless—
- (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (10) This section shall be deemed to have come into force on 24th April 2002.

#### Textual Amendments

- F30** Words in s. 111(1)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(2\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F31** Words in s. 111(1)(c) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(3\)\(a\)\(i\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F32** Words in s. 111(1)(c) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(3\)\(a\)\(ii\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F33** Words in s. 111(1)(c)(i) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(3\)\(b\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F34** Words in s. 111(1)(c) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(3\)\(c\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F35** Words in s. 111(3) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(4\)\(a\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F36** Words in s. 111(3) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(4\)\(b\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F37** S. 111(4A) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(5\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))

## 112 Restriction of relief for company acquisitions

- (1) Section 76 of the Finance Act 1986 (c. 41) (relief where company acquires the whole or part of the undertaking of another company) is amended as follows.
- (2) In subsection (2) for “the condition mentioned in subsection (3) below” substitute “the first and second conditions (as defined below)”.
- (3) In subsection (3) for “The condition” substitute “The first condition”.
- (4) After subsection (3) insert—
- “(3A) The second condition applies only in relation to an instrument transferring land in the United Kingdom and is that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part.
- (3B) Where an instrument transfers land in the United Kingdom together with other property, the provisions of this section apply as if there were two separate

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instruments, one relating to land in the United Kingdom and the other relating to other property.”.

- (5) In subsection (5) for “subsection (2) above” (twice) substitute “ this section ”.
- (6) After subsection (6) insert—
- “(6A) For the purposes of subsection (3A) above—
- (a) companies are associated if one has control of the other or both are controlled by the same person or persons, and
- (b) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.
- The references in paragraph (a) above to control shall be construed in accordance with section 416 of the Taxes Act 1988.”.
- (7) This section applies to instruments executed after 23rd April 2002.
- (8) But this section does not apply to an instrument giving effect to a contract made on or before 17th April 2002, unless—
- (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
- (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (9) This section shall be deemed to have come into force on 24th April 2002.

### 113 Withdrawal of relief for company acquisitions

- (1) This section applies where—
- (a) an instrument (“the relevant instrument”) transferring land in the United Kingdom from one company to another company (“the acquiring company”) has been stamped on the basis that relief under section 76 of the Finance Act 1986 (c. 41) (“section 76 relief”) applies,
- (b) before the end of the period of [<sup>F38</sup>three years] beginning with the date on which the instrument was executed control of the acquiring company changes, and
- (c) at the time control of that company changes the acquiring company [<sup>F39</sup>or a relevant associated company] holds an estate or interest in land—
- (i) that was transferred [<sup>F40</sup>to the acquiring company] by the relevant instrument, or
- (ii) that is derived from an estate or interest so transferred, [<sup>F41</sup>and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which section 76 relief was not claimed].
- (2) In those circumstances—
- (a) section 76 relief in relation to the relevant instrument, or an appropriate proportion of it, is withdrawn, and
- (b) the additional stamp duty that would have been payable on stamping the relevant instrument but for section 76 relief if the estate or interest in land transferred by that instrument had been transferred at market value, or an

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appropriate proportion of that additional duty, is payable by the acquiring company within 30 days after control of that company changes.

- (3) In subsection (2)(a) and (b) “an appropriate proportion” means an appropriate proportion having regard to what was transferred by the relevant instrument and [F42 what is held by that company or, as the case may be, by that company and any relevant associated companies] at the time control of it changes.
- [F43(3A) In this section “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.]
- (4) In this section—
- (a) references to the transfer of land include the grant or surrender of an estate or interest in or over land;
  - (b) “control” shall be construed in accordance with section 416 of the Taxes Act 1988; and
  - (c) references to control of a company changing are to the company becoming controlled—
    - (i) by a different person,
    - (ii) by a different number of persons, or
    - (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
- (5) Schedule 35 to this Act contains provisions supplementing this section.
- (6) Where the relevant instrument transfers land in the United Kingdom together with other property, the provisions of this section and of Schedule 35 apply as if there were two separate instruments, one relating to land in the United Kingdom and the other relating to other property.
- (7) This section applies where the relevant instrument is executed after 23rd April 2002.
- (8) But this section does not apply to an instrument giving effect to a contract made on or before 17th April 2002, unless—
- (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (9) This section shall be deemed to have come into force on 24th April 2002.

#### Textual Amendments

- F38** Words in s. 113(1)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(2\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))
- F39** Words in s. 113(1)(c) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(3\)\(a\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))
- F40** Words in s. 113(1)(c)(i) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(3\)\(b\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))

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- F41** Words in s. 113(1)(c) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(3\)\(c\)\(9\)](#) (with s. 127(7)(8))
- F42** Words in s. 113(3) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(4\)\(9\)](#) (with s. 127(7)(8))
- F43** S. 113(3A) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(5\)\(9\)](#) (with s. 127(7)(8))

## 114 Penalties for late stamping

- (1) Section 15B of the Stamp Act 1891 (c. 39) (late stamping: penalties) is amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (a) (penalty where instrument not stamped within 30 days of execution), after “is executed in the United Kingdom” insert “ or relates to land in the United Kingdom ”;
  - (b) in paragraph (b) (penalty where instrument not stamped within 30 days of instrument being first received in the United Kingdom), after “is executed outside the United Kingdom” insert “ and does not relate to land in the United Kingdom ”.
- (3) After that subsection insert—
 

“(1A) For the purposes of subsection (1) every instrument that (whether or not it also relates to any other transaction) relates to a transaction which to any extent involves land in the United Kingdom is an instrument relating to land in the United Kingdom.”.
- (4) This section applies in relation to instruments executed on or after the day on which this Act is passed.

## 115 Contracts for the sale of an estate or interest in land chargeable as conveyances

- (1) This section applies to a contract or agreement for the sale of an estate or interest in land in the United Kingdom where—
  - (a) the amount or value of the consideration exceeds £10 million, or
  - (b) the instrument forms part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds £10 million.
- (2) If, in the case of such a contract or agreement that is not otherwise chargeable to stamp duty, a conveyance or transfer made in conformity with the contract or agreement is not presented to the Commissioners for stamping with the *ad valorem* duty chargeable on it—
  - (a) within the period of 90 days after the execution of the contract or agreement, or
  - (b) within such longer period as the Commissioners may think reasonable in the circumstances of the case,

the contract or agreement shall be chargeable with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate or interest contracted or agreed to be sold.
- (3) The Commissioners—



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- (a) may refuse to allow a longer period unless they are provided with a copy of the contract or agreement and such other evidence as they may reasonably require as to the facts and circumstances relevant to their decision,
  - (b) may allow a longer period subject to compliance with such conditions as they think fit, and
  - (c) shall not allow any longer period if it appears to them that the whole, or substantially the whole, of the intended consideration has been paid or transferred.
- (4) Where an instrument to which this section applies is presented for stamping before the end of the period mentioned in subsection (2)—
- (a) any adjudication to the effect that stamp duty is not chargeable does not affect the operation of this section, and
  - (b) the fact that duty may be chargeable under this section may be denoted on the instrument in such manner as the Commissioners think fit.
- (5) Where an instrument is chargeable with duty under this section—
- (a) section 14(4) of the Stamp Act 1891 (c. 39) (inadmissibility of unstamped instruments) does not apply in relation to it until after the end of the period mentioned in subsection (2) above, and
  - (b) sections 15A and 15B of that Act (late stamping: interest and penalties), apply in relation to it as if it had been executed at the end of that period.
- (6) The *ad valorem* duty paid upon a contract or agreement under this section shall be repaid by the Commissioners if the contract or agreement is afterwards rescinded or annulled or is for any other reason not substantially performed or carried into effect.
- (7) Schedule 36 contains provisions supplementing this section.
- (8) This section and that Schedule apply to contracts or agreements executed after the day on which this Act is passed.

## **116 Abolition of duty on instruments relating to goodwill**

- (1) No stamp duty is chargeable on an instrument for the sale, transfer or other disposition of goodwill.
- (2) Schedule 37 to this Act contains provisions supplementing this section.
- (3) This section and that Schedule shall be construed as one with the Stamp Act 1891 (c. 39).
- (4) This section applies to instruments executed on or after 23rd April 2002.
- (5) This section shall be deemed to have come into force on that date.

*Stamp duty and stamp duty reserve tax*

## **<sup>F44</sup>117 Power to extend exceptions relating to recognised exchanges**

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### Textual Amendments

**F44** S. 117 repealed (11.8.2005) by Finance (No. 2) Act 2005 (c. 22), s. 50(6), Sch. 11 Pt. 3(2); S.I. 2005/2007, art. 2

## PART 5

### OTHER TAXES

#### *Inheritance tax*

### 118 IHT: rate bands

(1) For the Table in Schedule 1 to the Inheritance Tax Act 1984 (c. 51) substitute—

#### “Table of Rates of Tax

| <i>Portion of value</i> |                        | <i>Rate of tax</i> |
|-------------------------|------------------------|--------------------|
| <b>Lower limit (£)</b>  | <b>Upper limit (£)</b> | <b>Per cent.</b>   |
| 0                       | 250,000                | Nil                |
| 250,000                 |                        | 40”                |

(2) Subsection (1) shall apply to any chargeable transfer made on or after 6th April 2002; and section 8(1) of that Act (indexation of rate bands) shall not have effect as respects any difference between the retail prices index for the month of September 2000 and that for the month of September 2001.

### 119 IHT: powers over, or exercisable in relation to, settled property or a settlement

(1) The Inheritance Tax Act 1984 is amended in accordance with the following provisions of this section.

(2) After section 47 (meaning of “reversionary interest”) insert—

#### “47A Settlement power

In this Act “settlement power” means any power over, or exercisable (whether directly or indirectly) in relation to, settled property or a settlement.”.

(3) After section 55 (reversionary interest acquired by beneficiary) insert—

#### “55A Purchased settlement powers

(1) Where a person makes a disposition by which he acquires a settlement power for consideration in money or money’s worth—

- (a) section 10(1) above shall not apply to the disposition;
- (b) the person shall be taken for the purposes of this Act to make a transfer of value;

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- (c) the value transferred shall be determined without bringing into account the value of anything which the person acquires by the disposition; and
    - (d) sections 18 and 23 to 27 above shall not apply in relation to that transfer of value.
  - (2) For the purposes of this section, a person acquires a settlement power if he becomes entitled—
    - (a) to a settlement power,
    - (b) to exercise, or to secure or prevent the exercise of, a settlement power (whether directly or indirectly), or
    - (c) to restrict, or secure a restriction on, the exercise of a settlement power (whether directly or indirectly),as a result of transactions which include a disposition (whether to him or another) of a settlement power or of any power of a kind described in paragraph (b) or (c) above which is exercisable in relation to a settlement power.”.
- (4) In section 272 (general interpretation)—
  - (a) insert the following definition at the appropriate place—

““settlement power” has the meaning given by section 47A above;”;

and
  - (b) in the definition of “property”, at the end insert “ but does not include a settlement power ”.
- (5) In consequence of the amendments made by this section, the title of Chapter 2 of Part 3 of the Inheritance Tax Act 1984 (c. 51) becomes “Interests in possession, reversionary interests and settlement powers”.
- (6) The amendments made by this section have effect in relation to transfers of value on or after 17th April 2002.
- (7) The amendments made by subsections (2) and (4) shall also be deemed always to have had effect (subject to and in accordance with the other provisions of the Inheritance Tax Act 1984) for the purpose of determining the value, immediately before his death, of the estate of any person who died before 17th April 2002, for the purposes of the transfer of value which that person is treated by section 4(1) of that Act as having made immediately before his death.

## **120 IHT: variation of dispositions taking effect on death**

- (1) In section 142 of the Inheritance Tax Act 1984 (alteration of dispositions taking effect on death), for subsection (2) (election to treat subsequent variation of dispositions taking effect on death as if effected by deceased) substitute—
  - “(2) Subsection (1) above shall not apply to a variation unless the instrument contains a statement, made by all the relevant persons, to the effect that they intend the subsection to apply to the variation.
- (2A) For the purposes of subsection (2) above the relevant persons are—
  - (a) the person or persons making the instrument, and

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- (b) where the variation results in additional tax being payable, the personal representatives.

Personal representatives may decline to make a statement under subsection (2) above only if no, or no sufficient, assets are held by them in that capacity for discharging the additional tax.”

- (2) After section 218 of that Act insert—

**“218A Instruments varying dispositions taking effect on death**

- (1) Where—

- (a) an instrument is made varying any of the dispositions of the property comprised in the estate of a deceased person immediately before his death,
- (b) the instrument contains a statement under subsection (2) of section 142 above, and
- (c) the variation results in additional tax being payable,
- the relevant persons (within the meaning of that subsection) shall, within six months after the day on which the instrument is made, deliver a copy of it to the Board and notify them of the amount of the additional tax.

- (2) To the extent that any of the relevant persons comply with the requirements of this section, the others are discharged from the duty to comply with them.”

- (3) In section 245A of that Act (failure to provide information etc)—

- (a) after subsection (1) insert—

“(1A) A person who fails to comply with the requirements of section 218A above shall be liable—

- (a) to a penalty not exceeding £100; and
- (b) to a further penalty not exceeding £60 for every day after the day on which the failure has been declared by a court or the Special Commissioners and before the day on which the requirements are complied with.”

- (b) in subsection (4), insert “ (1A)(b), ” after “subsection (1)(b),” and after paragraph (a) insert—

“(aa) he complies with the requirements of section 218A above.”.

- (4) This section applies in relation to instruments made on or after 1st August 2002.

*Air passenger duty*

**121 Air passenger duty: extension of area to which EEA rates apply**

- (1) Section 30 of the Finance Act 1994 (c. 9) (the rate of duty) is amended as follows.
- (2) In subsection (2) (rate where journey ends at a place in the defined area and in an EEA State etc) omit the word “or” immediately preceding paragraph (b) and at the end of that paragraph add “or
- (c) any qualifying territory (so long as not falling within paragraph (a) above),”.

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(3) In subsection (3) (which defines the area referred to in subsection (2)) for “32 degrees E” substitute “45 degrees E”.

(4) After subsection (9) (meaning of “EEA State”) insert—

“(9A) In this section “qualifying territory” means each of the following territories—

|                |           |                 |
|----------------|-----------|-----------------|
| Bulgaria       | Latvia    | Slovak Republic |
| Cyprus         | Lithuania | Slovenia        |
| Czech Republic | Malta     | Switzerland     |
| Estonia        | Poland    | Turkey.         |
| Hungary        | Romania   |                 |

(9B) The Treasury may by order amend the definition of “qualifying territory” in subsection (9A) above by adding, removing, or varying the description of, any territory.”.

(5) This section applies to any carriage of a passenger on an aircraft which begins on or after 1st November 2002.

#### *Landfill tax*

### **122 Landfill tax: rate**

(1) In section 42 of the Finance Act 1996 (c. 8) (amount of landfill tax), in subsections (1)(a) and (2) for “£12” substitute “£13”.

(2) This section has effect in relation to taxable disposals made, or treated as made, on or after 1st April 2002.

#### *Climate change levy*

### **123 Climate change levy: electricity produced in combined heat and power station**

(1) In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), after paragraph 20 insert—

#### **“Exemption: electricity produced in combined heat and power stations**

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

- (a) the supply is not one that is deemed to be made under paragraph 23(3),
- (b) the supply is made under a contract that contains a CHP declaration given by the supplier,
- (c) prescribed conditions are fulfilled, and
- (d) the supplier, and each other person (if any) who is a generator of any CHP electricity allocated by the supplier to supplies under the contract, has in a written notice given to the Commissioners

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agreed that he will fulfil those conditions so far as they may apply to him.

- (2) Sub-paragraph (1) does not apply in relation to a supply to a person of electricity produced in a wholly or partly exempt combined heat and power station where the supply is made to that person from the station.
- (3) In this paragraph “CHP declaration” means a declaration that, in each averaging period, the amount of electricity supplied by exempt CHP supplies made by the supplier in the period will not exceed the difference between—
  - (a) the total amount of CHP electricity that during that period is either acquired or generated by the supplier, and
  - (b) so much of that total amount as is allocated by the supplier otherwise than to exempt CHP supplies made by him in the period.

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

- (4) For the purposes of this paragraph and paragraph 20B, electricity is “CHP electricity” if—
  - (a) the electricity was—
    - (i) produced in a fully exempt combined heat and power station, or
    - (ii) produced in a partly exempt combined heat and power station and originally supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded,
  - (b) the electricity is not renewable source electricity (within the meaning of paragraph 19), and
  - (c) prescribed conditions are fulfilled.
- (5) The conditions that may be prescribed under sub-paragraph (1)(c) include, in particular, conditions in connection with—
  - (a) the giving of effect to CHP declarations;
  - (b) the supply of information;
  - (c) the inspection of records and, for that purpose, the production of records in legible form and entry into premises;
  - (d) monitoring by the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, of the application of provisions of, or made under, this paragraph;
  - (e) the doing of things to or by a person authorised by the Authority or the Director General (as well as the doing of things to or by the Authority or the Director General);
  - (f) things being done at times or in ways specified by the Authority, the Director General or such an authorised person.
- (6) A condition prescribed under sub-paragraph (1)(c) may be one that is required to be fulfilled throughout a period, including a period ending after the time when a supply whose exemption turns on the fulfilment of the condition is treated as being made.

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- (7) The conditions that may be prescribed under sub-paragraph (4)(c) include in particular conditions in connection with any of the matters mentioned in paragraphs (b) to (f) of sub-paragraph (5).
- (8) Each of—
- (a) the Gas and Electricity Markets Authority, and
  - (b) the Director General of Electricity Supply for Northern Ireland,
- shall supply the Commissioners with such information (whether or not obtained under this paragraph), and otherwise give the Commissioners such co-operation, as the Commissioners may require in connection with the application of this paragraph (whether generally or in relation to any particular case).
- (9) Paragraph 19(10) (disclosure of information) applies in relation to sub-paragraph (8) above as it applies in relation to paragraph 19(8).

#### **Exemption under paragraph 20A: averaging periods**

- 20B (1) This paragraph applies where a person (“the supplier”) makes supplies of electricity on the basis that they are exempt under paragraph 20A (“exempt CHP supplies”).
- (2) The rules about balancing and averaging periods are—
- (a) a balancing period is a period of three months;
  - (b) when a balancing period ends, a new one begins;
  - (c) the first balancing period and the first averaging period begin at the same time;
  - (d) unless the supplier specifies an earlier time, that time is the time when he is treated as making the first of the exempt CHP supplies;
  - (e) when an averaging period ends, a new one begins;
  - (f) an averaging period ends once it has run for two years (but may end sooner under paragraph (g) or sub-paragraph (4)(a) or (5)(a));
  - (g) if the supplier stops making exempt CHP supplies, the end of the balancing period in which he makes the last exempt CHP supply is also the end of the averaging period in which the balancing period falls.
- (3) At the end of each balancing period calculate—
- (a) the total of—
    - (i) the quantity of CHP electricity that the supplier acquired or generated in that period, and
    - (ii) any balancing credit carried forward to that balancing period; and
  - (b) the total of—
    - (i) the quantity of electricity supplied by exempt CHP supplies made by him in that period, and
    - (ii) any balancing debit carried forward to that balancing period.
- (4) If the total mentioned in sub-paragraph (3)(a) exceeds that mentioned in sub-paragraph (3)(b)—

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- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) a balancing credit equal to the difference between the two totals is carried forward to the next balancing period.
- (5) If the totals mentioned in paragraphs (a) and (b) of sub-paragraph (3) are the same—
- (a) the averaging period within which the balancing period fell ends at the end of the balancing period, and
  - (b) no balancing credit or debit is carried forward to the next balancing period.
- (6) Sub-paragraphs (7) and (8) apply if the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a).
- (7) Where the end of the balancing period is by virtue of sub-paragraph (2) (g) the end of an averaging period, the supplier is liable to account to the Commissioners for an amount equal to the amount that would be payable by way of levy on a taxable supply that—
- (a) is made at the end of the balancing period, and
  - (b) is a supply of a quantity of electricity equal to the difference between the two totals.
- For the purposes of this Schedule, the amount for which the supplier is liable to account shall be treated as an amount of levy for which he is liable to account for an accounting period ending at the end of the balancing period.
- (8) Where sub-paragraph (7) does not apply, a balancing debit equal to the difference between the two totals is carried forward to the next balancing period.”.
- (2) Subsection (1) has effect in relation to supplies of electricity made on or after such day as the Treasury may by order made by statutory instrument appoint.

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**Commencement Information**

**I7** S. 123(1) has effect as specified by [The Finance Act 2002, section 123, \(Appointed Day\) Order 2003 \(S.I. 2003/603\)](#), [art. 2](#)

## 124 Climate change levy: certification requirement

In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), after paragraph 149 insert—

### “Certification of electricity from fully or partly exempt combined heat and power station

- 149A (1) The Commissioners may by regulations make provision for the Gas and Electricity Markets Authority, or the Director General of Electricity Supply for Northern Ireland, to certify as respects any quantity of electricity that—
- (a) the electricity has been produced in a fully exempt combined heat and power station;



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- (b) the electricity has been produced in a partly exempt combined heat and power station and supplied from the station without causing the limit referred to in paragraph 16(2) to be exceeded.
- (2) Regulations under this paragraph may provide that for any purposes of this Schedule (or any regulations made under it)—
- (a) electricity is not to be regarded as having been produced as specified in sub-paragraph (1)(a) unless it has been certified under that provision;
  - (b) electricity is not to be regarded as having been produced and supplied as specified in sub-paragraph (1)(b) unless it has been certified under that provision.
- (3) Regulations under this paragraph may in particular provide that the supply of any electricity does not qualify for the exemption under paragraph 16(2) unless the electricity is certified as specified in sub-paragraph (1)(b).
- (4) Regulations under this paragraph may also make provision for determining whether electricity is produced and supplied as specified in sub-paragraph (1)(b).”.

## 125 Climate change levy: exemption for renewable sources

- (1) In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), in paragraph 20(7), (exemption under paragraph 19: liability to account)—
- (a) for the words from “(2)(c)” to “2 years” substitute “ (2)(g) ”,
  - (b) after paragraph (a) insert “and”, and
  - (c) omit paragraph (c) and the preceding “and”.
- (2) This section has effect in relation to averaging periods under paragraph 20 of that Schedule which end on or after the day on which this Act is passed.

## 126 Climate change levy: electricity produced from coal mine methane

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), in paragraph 19 (exemption: renewable source electricity), after sub-paragraph (4) there is inserted—
- “(4A) For the purposes of this paragraph, coal mine methane shall be regarded as a renewable source.”.
- (2) This section has effect in relation to supplies of electricity made on or after such day as the Treasury may by order made by statutory instrument appoint.

### Commencement Information

- 18** S. 126(1) has effect as specified by [The Finance Act 2002, section 126, \(Appointed Day\) Order 2003 \(S.I. 2003/2622\)](#), [art. 2](#)

## 127 Climate change levy: incorrect certificates

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), in sub-paragraph (2)(a) of paragraph 101 (civil penalties: incorrect notifications etc)—

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- (a) in sub-paragraph (ii) for “18 and 21, or” substitute “ 15, 18 and 21, ”;
- (b) before the word “and” at the end of sub-paragraph (iii) insert—

“, or

(iv) a reduced-rate supply (or reduced-rate supplies),”.

- (2) This section applies in relation to certificates given in respect of any supplies made on or after 24th April 2002.

## 128 Climate change levy: invoices incorrectly showing levy due

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), immediately before paragraph 142 insert—

### “Invoices incorrectly showing levy due

141A (1) This paragraph applies where—

- (a) a person issues an invoice showing an amount as levy chargeable on a supply, and
- (b) no levy is chargeable on the supply, or the amount chargeable is less than the amount shown.

(2) The person shall be liable to a penalty unless he satisfies the Commissioners or, on appeal, a tribunal that there is a reasonable excuse for the inclusion in the invoice of the false information.

(3) The amount of the penalty is £50 or, if more, the following amount—

- (a) where no levy is chargeable, the amount shown as chargeable;
- (b) where an amount of levy is chargeable, the difference between that amount and the amount shown as chargeable.

(4) It is irrelevant for the purposes of sub-paragraph (1) whether or not the supply shown on the invoice actually takes place or has taken place.

(5) A reference in this paragraph to an invoice is a reference to any kind of invoice (and not just a climate change levy accounting document).”.

- (2) This section applies only in relation to invoices issued on or after the day on which this Act is passed.

### *Aggregates levy*

## 129 Aggregates levy: transitional relief for Northern Ireland

- (1) After section 30 of the Finance Act 2001 (c. 9) (credit for aggregates levy) insert—

### “30A Transitional tax credit in Northern Ireland

- (1) The Commissioners may by regulations make provision of the kind described in section 30(2) above (entitlement to tax credit) in relation to cases where aggregate is used in Northern Ireland for a prescribed purpose—

- (a) on or after the commencement date, and

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(b) before 1st April 2007.

(2) In relation to the use of aggregate in the year ending with a date shown in the first column of the following table, the amount of any tax credit to which a person would otherwise be entitled by virtue of the regulations shall be reduced by the percentage of that amount shown opposite that date in the second column.

| <i>Year ending</i> | <i>Reduction in tax credit</i> |
|--------------------|--------------------------------|
| 31st March 2004    | 20%                            |
| 31st March 2005    | 40%                            |
| 31st March 2006    | 60%                            |
| 31st March 2007    | 80%                            |

(3) Subsections (3) to (5) of section 30 above apply to regulations under this section as they apply to regulations under that section.”.

(2) In section 17(6) of that Act (certain tax credits to be disregarded in determining whether aggregate has already been charged to levy), in paragraph (a) after “section 30(1)(c)” insert “ or 30A ”.

### **130 Aggregates levy: amendments to provisions exempting spoil etc**

- (1) In section 17(3) of the Finance Act 2001 (c. 9) (aggregate that is exempt)—
- (a) in paragraph (e) (by-products of extracting china clay or ball clay), after “or other by-products” insert “, not including the overburden,”;
  - (b) after that paragraph insert—
    - “(f) it consists wholly of the spoil from any process by which—
      - (i) coal, lignite, slate or shale, or
      - (ii) a substance listed in section 18(3) below,has been separated from other rock after being extracted or won with that other rock;”.
- (2) Omit section 17(4)(b) of that Act (aggregate exempt if it consists, or is part of anything consisting, wholly or mainly of spoil from the separation of coal from other rock after extraction).
- (3) This section shall be deemed to have come into force on 1st April 2002.

### **131 Aggregates levy: crushing and cutting rock**

- (1) In section 17(3) of the Finance Act 2001 (exempt aggregate), omit paragraph (a) (exemption for rock that has not been subjected to an industrial crushing process).
- (2) In section 18(2)(a) of that Act (exemption for production of dimension stone), for “dimension stone” substitute “ stone with one or more flat surfaces ”.
- (3) The following amendments to that Act are consequential on that made by subsection (1)—
- (a) in section 20(1) (originating sites), omit—
    - (i) the words “and is not rock” in paragraphs (a) and (b), and

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- (ii) paragraph (c);
  - (b) in section 21 (operators of sites), omit subsection (2)(b);
  - (c) in section 24 (the register), omit subsections (6)(b) and (8)(a).
- (4) This section shall be deemed to have come into force on 1st April 2002.

### **132 Aggregates levy: miscellaneous amendments**

- (1) Schedule 38 to this Act, which makes amendments to provisions in Part 2 of the Finance Act 2001 (aggregates levy), has effect.
- (2) In section 197(2) of the Finance Act 1996 (c. 8) (enactments for which interest rates are set under section 197), in paragraph (h) (aggregates levy provisions) in sub-paragraph (ii) for “paragraph 8(3)(a)” substitute “ paragraphs 6 and 8(3)(a) ”.
- (3) This section shall be deemed to have come into force on 1st April 2002.

### **133 Aggregates levy: amendments to provisions about civil penalties**

- (1) Part 2 of Schedule 6 to the Finance Act 2001 (c. 9) (aggregates levy: civil penalties) is amended as follows.
- (2) In sub-paragraph (1) of paragraph 7 (evasion)—
  - (a) at the end of paragraph (a), insert “and”;
  - (b) omit paragraph (b) (by virtue of which only registered persons or persons who are registrable, or would be but for an exemption, are liable to the penalty);
  - (c) omit the words from “equal to the amount” to the end.
- (3) After that sub-paragraph insert—
 

“(1A) The amount of the penalty shall be—

  - (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.”.
- (4) In sub-paragraphs (3) and (4) of paragraph 7, for “sub-paragraph (1)” substitute “ sub-paragraph (1A) ”.
- (5) After paragraph 9 insert—

#### **9A “Incorrect records etc evidencing claim for tax credit**

- (1) This paragraph applies where—
  - (a) a claim is made for a tax credit in such a case as is mentioned in—
    - (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.

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- (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.”.
- (6) This section shall be deemed to have come into force on 1st May 2002.

## PART 6

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Recovery of taxes etc due in other member States*

#### **134 Recovery of taxes etc due in other member States**

- (1) Schedule 39 to this Act has effect with respect to the recovery in the United Kingdom of amounts in respect of which a request for enforcement has been made in accordance with the Mutual Assistance Recovery Directive by an authority in another member State.
- (2) The “Mutual Assistance Recovery Directive” means Council Directive [76/308/EEC](#), as amended by
  - [<sup>F45</sup>(a)] Council Directive [2001/44/EC](#)
  - [<sup>F46</sup>(b)] the Act of Accession 2003.]
- [<sup>F47</sup>(2A)] In subsection (2) “the Act of Accession 2003” means the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.]
- (3) No obligation of secrecy imposed by statute or otherwise precludes a tax authority in the United Kingdom—

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- (a) from disclosing information to another tax authority in the United Kingdom in connection with a request for enforcement made by the competent authority of another member State;
  - (b) from disclosing information that is required to be disclosed to the competent authority of another member State by virtue of the Mutual Assistance Recovery Directive;
  - (c) from disclosing information for the purposes of a request made by the tax authority under that Directive for the enforcement in another member State of an amount claimed by the authority in the United Kingdom.
- (4) In subsection (3) “tax authority in the United Kingdom” means—
- (a) the Commissioners of Customs and Excise,
  - (b) the Commissioners of Inland Revenue, or
  - (c) in relation to agricultural levies of the European Community within the meaning of section 6 of the European Communities Act 1972 (c. 72), any relevant Minister within the meaning of that section.
- (5) Subsection (3)(a) does not apply in relation to disclosure by the Commissioners of Inland Revenue to a relevant Minister.
- (6) The Treasury may by regulations make such provision as appears to them appropriate for the purpose of giving effect to any future amendments of the Mutual Assistance Recovery Directive.
- The regulations may amend, replace or repeal any of the provisions of subsections (1) to (4) above or of Schedule 39.
- (7) Regulations under subsection (6) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

#### **Textual Amendments**

- F45** Words in s. 134(2) renumbered as s. 134(2)(a) (27.6.2005) by [The Recovery of Taxes etc Due in Other Member States \(Amendment of Section 134 of the Finance Act 2002\) Regulations 2005 \(S.I. 2005/1479\)](#), regs. 1, **2(2)(a)**
- F46** S. 134(2)(b) inserted (27.6.2005) by [The Recovery of Taxes etc Due in Other Member States \(Amendment of Section 134 of the Finance Act 2002\) Regulations 2005 \(S.I. 2005/1479\)](#), regs. 1, **2(2)(b)**
- F47** S. 134(2A) inserted (27.6.2005) by [The Recovery of Taxes etc Due in Other Member States \(Amendment of Section 134 of the Finance Act 2002\) Regulations 2005 \(S.I. 2005/1479\)](#), regs. 1, **2(3)**

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

- C7** S. 134 applied (with modifications) (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. **322**

### *Mandatory e-filing*

#### **135 Mandatory e-filing**

- (1) [<sup>F48</sup>The Commissioners for Her Majesty’s Revenue and Customs] (“the Commissioners”) may make regulations requiring the use of electronic communications for the delivery by specified persons of specified information

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required or authorised to be delivered by or under legislation relating to a taxation matter.

- (2) Regulations under this section may make provision—
- (a) as to the electronic form to be taken by information delivered to the [F49Revenue and Customs] using electronic communications;
  - (b) requiring persons to prepare and keep records of information delivered to [F49Revenue and Customs] by means of electronic communications;
  - (c) for the production of the contents of records kept in accordance with the regulations;
  - (d) as to conditions that must be complied with in connection with the use of electronic communications for the delivery of information;
  - (e) for treating information as not having been delivered unless conditions imposed by any of the regulations are satisfied;
  - (f) for determining the time at which and person by whom information is to be taken to have been delivered;
  - (g) for authenticating whatever is delivered.
- (3) Regulations under this section may also make provision (which may include provision for the application of conclusive or other presumptions) as to the manner of proving for any purpose—
- (a) whether any use of electronic communications is to be taken as having resulted in the delivery of information;
  - (b) the time of delivery of any information for the delivery of which electronic communications have been used;
  - (c) the person by whom information delivered by means of electronic communications was delivered;
  - (d) the contents of anything so delivered;
  - (e) the contents of any records;
  - (f) any other matter for which provision may be made by regulations under this section.
- (4) Regulations under this section may—
- (a) allow any authorisation or requirement for which the regulations may provide to be given or imposed by means of a specific or general direction given by the Commissioners;
  - (b) provide that the conditions of any such authorisation or requirement are to be taken to be satisfied only where the [F49Revenue and Customs] are satisfied as to specified matters;
  - (c) allow a person to refuse to accept delivery of information in an electronic form or by means of electronic communications except in such circumstances as may be specified in or determined under the regulations;
  - (d) allow or require use to be made of intermediaries in connection with—
    - (i) the delivery of information by means of electronic communications;  
or
    - (ii) the authentication or security of anything transmitted by any such means.
- (5) Regulations under this section may contain provision—
- (a) requiring the [F49Revenue and Customs] to notify persons appearing to them to be, or to have become, a person of a specified description and accordingly

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- required to use electronic communications for any purpose in accordance with the regulations,
- (b) enabling a person so notified to have the question whether he is a person of such a description determined in the same way as an appeal.
- (6) Regulations under this section may provide—
- (a) that information delivered by means of electronic communications must meet standards of accuracy and completeness set by specific or general directions given by the Commissioners, and
- (b) that failure to meet those standards may be treated—
- (i) as a failure to deliver the information, or
- (ii) as a failure to comply with the requirements of the regulations.
- (7) The power to make provision by regulations under this section includes power—
- (a) to provide for a contravention of, or any failure to comply with, the regulations to attract a penalty of a specified amount not exceeding £3,000;
- (b) to provide that specified enactments relating to penalties imposed for the purposes of any taxation matter (including enactments relating to assessments, review and appeal) apply, with or without modifications, in relation to penalties under the regulations;
- (c) to make different provision for different cases;
- (d) to make such incidental, supplemental, consequential and transitional provision in connection with any provision contained in any of the regulations as the Commissioners think fit.
- (8) References in this section to the delivery of information include references to any of the following (however referred to)—
- (a) the production or furnishing to a person of any information, account, record or document;
- (b) the giving, making, issue or surrender to, or service on, any person of any notice, notification, statement, declaration, certificate or direction;
- (c) the imposition on any person of any requirement or the issue to any person of any request;
- (d) the making of any return, claim, election or application;
- (e) the amendment or withdrawal of anything mentioned in paragraphs (a) to (d) above.
- (9) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section—
- [<sup>F50</sup>“ the Revenue and Customs ” means—
- (a) the Commissioners,
- (b) any officer of Revenue and Customs, and
- (c) any other person who for the purposes of electronic communications is acting under the authority of the Commissioners;]
- “legislation” means any enactment, Community legislation or subordinate legislation;
- “specified” means specified by or under regulations under this section;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30);



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[<sup>F51</sup>“taxation matter” means any taxation matter for which the Commissioners are responsible and to which section 7 of the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters) applies.]

#### Textual Amendments

- F48** Words in s. 135(1) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), s. 53(1), [Sch. 4 para. 95\(1\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)
- F49** Words in s. 135(2)-(5) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), s. 53(1), [Sch. 4 para. 95\(1\)\(b\)](#); S.I. 2005/1126, art. 2(2)(h)
- F50** Words in s. 135(10) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), s. 53(1), [Sch. 4 para. 95\(1\)\(c\)](#); S.I. 2005/1126, art. 2(2)(h)
- F51** Words in s. 135(10) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), s. 53(1), [Sch. 2 para. 12\(1\)](#); S.I. 2005/1126, art. 2(2)(d)

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

- C8** S. 135(8) applied by SI 2001/1004 reg. 90A(2) (as inserted (6.4.2004) by [The Social Security \(Contributions, Categorisation of Earners and Intermediaries\) \(Amendment\) Regulations 2004](#) (S.I. 2004/770), regs. 1(1), [23](#))

### 136 Use of electronic communications under other provisions

- (1) Any power to make subordinate legislation for or in connection with the delivery of information conferred in relation to a taxation matter on—
- the Commissioners of Inland Revenue, or
  - the Treasury,
- includes power to make any such provision in relation to the delivery of that information as could be made in exercise of the power conferred by section 135.
- (2) Provision made in exercise of the powers conferred by section 135 or subsection (1) above has effect notwithstanding so much of any enactment or subordinate legislation as would otherwise—
- allow information to be delivered otherwise than by means of electronic communications, or
  - preclude the use of an intermediary in connection with its delivery.
- (3) Expressions used in this section and section 135 have the same meaning in this section as in that section.
- (4) Nothing in this section shall be read as restricting the generality of the power conferred by section 135.

#### *Lorry road-user charge*

### 137 Lorry road-user charge

- (1) A tax, to be known as lorry road-user charge, shall be charged in respect of use of roads by lorries.

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- (2) The persons by whom lorry road-user charge shall be payable, the rates at which it shall be charged, and the lorries, roads and use in respect of which it shall be charged, shall be such as Parliament may determine.
- (3) The amount of lorry road-user charge charged in respect of use of any roads by a lorry shall be calculated, in such manner as Parliament may determine, by reference to the distance travelled on those roads by the lorry.
- [<sup>F52</sup>(4) Lorry road-user charge—
- (a) shall be under the care and management of the Commissioners of Customs and Excise, and
  - (b) shall be administered and enforced in accordance with such provisions as Parliament may determine.]
- [<sup>F53</sup>(5) All money and securities for money collected or received for or on account of lorry road-user charge shall—
- (a) if collected or received in Great Britain, be placed to the general account of the Commissioners of Customs and Excise kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979;
  - (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.]
- [<sup>F54</sup>(7) A Minister of the Crown or government department may—
- (a) incur expenditure in connection with preparations for lorry road-user charge (including any fuel credit to be paid in respect of fuelling of lorries chargeable in respect of lorry road-user charge);
  - (b) enter into contracts in respect of the development or provision of equipment, systems or services to be used in connection with lorry road-user charge (including any fuel credit).]

#### Textual Amendments

**F52** S. 137(4) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. 292(2)

**F53** S. 137(5) substituted for s. 137(5)(6) (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. 292(3)

**F54** S. 137(7) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), s. 100

### *Registers of UK gilts*

#### **138 Authority of Bank of England to discharge functions in place of Bank of Ireland**

- (1) The Bank of England has authority, in the event of the Bank of Ireland ceasing to perform any of its functions in relation to United Kingdom government stock, to discharge any of the Bank of Ireland's functions in relation to such stock in place of the Bank of Ireland.
- (2) The enactments relating to United Kingdom government stock have effect in relation to anything done in the circumstances mentioned in subsection (1) for the purposes of discharging any such functions—
- (a) as if any reference to the Bank of Ireland were a reference to the Bank of England, and

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- (b) as if any reference to an officer of the Bank of Ireland were a reference to the corresponding officer of the Bank of England.
- (3) In particular, sections 59 and 66 of the National Debt Act 1870 (c. 71) (provisions protecting the Bank and its officers from liability) apply to the Bank of England and to officers of that Bank in relation to anything done in the circumstances mentioned in subsection (1) above for the purposes of discharging any functions of the Bank of Ireland in relation to United Kingdom government stock.
- (4) In this section—
  - “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30);
  - “United Kingdom government stock” means stock or bonds of any of the descriptions included in Part 1 of Schedule 11 to the Finance Act 1942 (c. 21) (whether on or after the passing of this Act).
- (5) This section shall be deemed always to have had effect.

### **139 Closure of UK gilts registers kept in Ireland**

- (1) The Treasury may by order made by statutory instrument provide—
  - (a) that no further stock or bonds may be registered in either of the Irish gilts registers on or after such day as the order may appoint (“the appointed day”), and
  - (b) for the transfer to the English gilts register of the entries subsisting in each of those registers at the beginning of the appointed day.
- (2) The power conferred by subsection (1)(b) includes power to make provision in relation to stock and bonds which were not registered in either of the Irish gilts registers on the appointed day, but which should have been.
- (3) An order under this section may contain such consequential, incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient, including provision amending, repealing or revoking any enactment.
- (4) In subsection (3) “enactment” means any enactment contained in—
  - (a) an Act, whenever passed, or
  - (b) an instrument, whenever made, under an Act, whenever passed.
- (5) In this section—
  - “the English gilts register” is the register required to be kept at the office of the Chief Registrar of the Bank of England under section 47 of the Finance Act 1942 (c. 21) (registration of government stock); and
  - “the Irish gilts registers” are—
    - (a) the register required to be kept in Belfast under that section, and
    - (b) the register required to be kept in Dublin under that section.
- (6) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.

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## 140 Administration of UK gilts

- (1) In section 47 of the Finance Act 1942 (transfer and registration of government stock)
- (a) for subsection (1)(b) (power to provide for the keeping of stock and bond registers by the Banks of England and Ireland) substitute—
- “(b) for the administration of such stock and bonds (including the registration of holders) by such one or more persons as the Treasury may appoint in accordance with the regulations and the closure of any register;”
- and
- (b) after subsection (1E) insert—
- “(1EA) Persons appointed in accordance with regulations under subsection (1)(b) shall be appointed on such terms (including terms as to the making of payments by the Treasury) as the Treasury consider appropriate, and the persons who may be so appointed include the Bank of England.”.
- (2) The Treasury may by order made by statutory instrument make such consequential, incidental, supplementary and transitional provision as appears to the Treasury to be necessary or expedient in consequence of the amendments made by subsection (1), including provision amending, repealing or revoking any enactment.
- (3) In subsection (2) “enactment” means any enactment contained in—
- (a) an Act, whenever passed, or
- (b) an instrument, whenever made, under an Act, whenever passed.
- (4) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Sums payable by the Treasury by virtue of section 47(1EA) of the Finance Act 1942 (c. 21) (as inserted by subsection (1) above) shall be met out of the National Loans Fund with recourse to the Consolidated Fund.
- (6) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

### Commencement Information

**I9** S. 140 in force at 11.3.2004 by S.I. 2004/689, art. 2

## *Supplementary*

## 141 Repeals

- (1) The enactments mentioned in Schedule 40 to this Act (which include provisions that are spent or of no practical utility) are repealed to the extent specified.
- (2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

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## **142 Interpretation**

In this Act “the Taxes Act 1988” means the Income and Corporation Taxes Act 1988 (c. 1).

## **143 Short title**

This Act may be cited as the Finance Act 2002.

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## SCHEDULES

### SCHEDULE 1

Section 4

#### BEER FROM SMALL BREWERIES: REDUCED RATE OF DUTY

- 1 (1) Section 36 of the Alcoholic Liquor Duties Act 1979 (c. 4) (beer: charge of excise duty) is amended as follows.
- (2) In subsection (1), for “at the rate of £11.89 per hectolitre per cent of alcohol in the beer” substitute “at the rates specified in subsection (1AA) below”.
- (3) After subsection (1), insert—
- “(1AA) The rates at which the duty shall be charged are—
- (a) in the case of beer that is not small brewery beer, £11.89 per hectolitre per cent of alcohol in the beer;
  - (b) in the case of small brewery beer produced in a singleton brewery, the rate per hectolitre per cent of alcohol in the beer that is given by section 36D below;
  - (c) in the case of small brewery beer produced in a co-operated brewery, the rate per hectolitre per cent of alcohol in the beer that is given by section 36F below.”.
- 2 In that Act, after that section (and before the heading “*Reliefs from excise duty*”) insert—

*“Reduced rates of excise duty*

#### **36A Beer from small breweries: introductory**

- (1) For the purposes of section 36(1AA) above (but subject to subsection (2) below)—
- (a) whether beer produced in a singleton brewery is “small brewery beer” is determined in accordance with section 36C below, and
  - (b) whether beer produced in a co-operated brewery is “small brewery beer” is determined in accordance with section 36E below.
- (2) Beer is not small brewery beer if it is produced by a person on any premises in circumstances in which he is required to be, but is not, registered under section 47 below in respect of those premises.

#### **36B Interpretation of provisions relating to small brewery beer**

- (1) The following provisions of this section have effect for the purposes of section 36(1AA) above, section 36A above, this section and sections 36C to 36F below.

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- (2) A brewery is a “singleton brewery” at any particular time in a calendar year if it is not a co-operated brewery at that time.
- (3) A brewery is a “co-operated brewery” at any particular time in a calendar year if—
  - (a) a person who produces beer in the brewery at that time or any earlier time in that year, or
  - (b) a person connected with such a person,  
also produces beer in any other brewery at that time or any earlier time in that year.
- (4) “Brewery” means premises (whether or not in the United Kingdom) on which beer is produced and that are situated physically apart from any other premises on which beer is produced.
- (5) “The standard beer duty rate” means the rate of duty specified by section 36(1AA)(a) above.
- (6) References to “the grossed-up amount” of an estimate of the amount of a brewery’s production in a calendar year are to the amount given by—

$$\frac{E}{(365-N)} \times 365$$

where—

E is the amount of the estimate, and

N is the number of days (if any) in the calendar year before the brewery begins to be used as beer-production premises.

- (7) References to a brewery being used as beer-production premises are, in the case of a brewery in the United Kingdom, to there being at least one person who is required to be registered under section 47 below in respect of the brewery.
- (8) Any question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988.

### **36C Meaning of “small brewery beer”: beer from singleton breweries**

- (1) This section applies to beer produced in a brewery at a time in a calendar year (“the current year”) when the brewery is a singleton brewery.
- (2) The beer is “small brewery beer” if the following conditions are satisfied; but this is subject to subsections (9) and (10) below.
- (3) The first condition is that either—
  - (a) no beer was produced in the brewery in the previous calendar year (“the previous year”), or
  - (b) the amount of beer produced in the brewery in the previous year was not more than 30,000 hectolitres.

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- (4) For the purposes of subsection (3)(b) above, where the brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the previous year in the brewery shall be taken to have been—

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

where—

A is the amount of beer actually produced in the previous year in the brewery, and

D is the number of days in that part of the previous year.

- (5) The second condition is that the amount of the estimate under subsection (9) below of the brewery's production in the current year is not more than 30,000 hectolitres.
- (6) The third condition is that if the brewery begins to be used as beer-production premises part-way through the current year, the grossed-up amount of that estimate is not more than 30,000 hectolitres.
- (7) The fourth condition is that less than half of the beer produced in the brewery in the previous year was produced under licence.
- (8) The fifth condition is that the beer is not produced under licence.
- (9) Beer produced in the brewery in the current year before the person who first produces beer in the brewery in that year has made a reasonable estimate of the amount of beer that will be produced in the brewery in that year is not small brewery beer.
- (10) Beer produced in the brewery in the current year after the amount of beer produced in the brewery in the current year has reached 30,000 hectolitres is not small brewery beer.
- (11) Subsection (10) above is without prejudice to section 167(4) of the Customs and Excise Management Act 1979 (recovery of duty unpaid by reason of untrue document or statement).

### **36D Rate of duty for small brewery beer from singleton breweries**

- (1) This section applies to small brewery beer produced in a brewery at a time in a calendar year ("the current year") when the brewery is a singleton brewery.
- (2) The rate of duty in the case of that beer ("the brewery rate") is determined in accordance with this section.
- (3) Subsection (4) below applies if—
- (a) beer was produced in the brewery in the previous calendar year ("the previous year") and the amount produced in the brewery in that year was not more than 5,000 hectolitres, or
  - (b) no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate under section 36C(9) above of



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the brewery's production in the current year is not more than 5,000 hectolitres.

- (4) If this subsection applies, "the brewery rate" is 50% of the standard beer duty rate at the time concerned; but this is subject to rounding under subsection (7) below.
- (5) Subsection (6) below applies if—
- (a) beer was produced in the brewery in the previous year and the amount produced in the brewery in that year was more than 5,000 hectolitres but not more than 30,000 hectolitres, or
  - (b) no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate under section 36C(9) above of the brewery's production in the current year is more than 5,000 hectolitres but not more than 30,000 hectolitres.
- (6) If this subsection applies, "the brewery rate" is, subject to rounding under subsection (7) below, given by—

$$\frac{P-2,500}{P} \times \text{the standard beer duty rate at the time c}$$

where—

if this subsection applies by reason of subsection (5)(a) above, P is the amount, in hectolitres, of beer produced in the brewery in the previous year, and

if this subsection applies by reason of subsection (5)(b) above, P is the grossed-up amount (expressed in hectolitres) mentioned in subsection (5)(b).

- (7) Where a rate given by subsection (4) or (6) above would (apart from this subsection) not be a whole number of pennies, the rate given by that subsection shall be taken to be the rate actually given by that subsection rounded up to the nearest penny.
- (8) Where the brewery was in use as beer-production premises during part only of the previous year, for the purposes of subsections (3)(a), (5)(a) and (6) above the amount of beer produced in the brewery in the previous year shall be taken to have been—

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

where—

A is the amount of beer actually produced in the previous year in the brewery, and

D is the number of days in that part of the previous year.

### **36E Meaning of "small brewery beer": beer from co-operated breweries**

- (1) This section applies to beer produced in a brewery at a time in a calendar year ("the current year") when the brewery is a co-operated brewery.

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- (2) The beer is “small brewery beer” if the following conditions are satisfied; but this is subject to subsections (10) and (11) below.
- (3) In this section—
- “the group” means the group of breweries consisting of—
- (a) the co-operated brewery, and
  - (b) every brewery (other than the co-operated brewery) in which beer is produced at the time mentioned in subsection (1) above, or at any earlier time in the current year, by—
    - (i) a person who produces beer in the co-operated brewery at the time so mentioned or at any earlier time in the current year, or
    - (ii) a person connected with such a person;
- “group brewery” means a brewery that is in the group;
- “the previous year” means the calendar year immediately preceding the current year.
- (4) The first condition is that either—
- (a) no beer was produced in the previous year in the group, or
  - (b) the amount given by  $PY + GE$  is not more than 30,000 hectolitres, where—
 

PY is the amount of beer produced in the previous year in the group, and

GE is the aggregate of the grossed-up amount of each estimate that—

    - (i) is an estimate for the purposes of subsection (10) below of the amount of the production in the current year in a group brewery in which no beer was produced in the previous year, and
    - (ii) is made no later than the time mentioned in subsection (1) above.
- (5) For the purposes of subsection (4)(b) above, where a group brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the previous year in that brewery shall be taken to have been—

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

where—

A is the amount of beer actually produced in the previous year in that brewery, and

D is the number of days in that part of the previous year.

- (6) The second condition is that the aggregate of each estimate that—
- (a) is an estimate for the purposes of subsection (10) below of the amount of a group brewery’s production in the current year, and
  - (b) is made no later than the time mentioned in subsection (1) above, is not more than 30,000 hectolitres.

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- (7) The third condition is that if any group brewery begins to be used as beer-production premises part-way through the current year, the aggregate of the grossed-up amount of each estimate that—
  - (a) is an estimate for the purposes of subsection (10) below of the amount of a group brewery's production in the current year, and
  - (b) is made no later than the time mentioned in subsection (1) above, is not more than 30,000 hectolitres.
- (8) The fourth condition is that less than half of the beer produced in the previous year in each group brewery was produced under licence.
- (9) The fifth condition is that the beer is not produced under licence.
- (10) Beer produced in the co-operated brewery at an unestimated time is not small brewery beer; and here “unestimated time” means a time in the current year when there is a group brewery for which there does not exist a reasonable estimate, made by the person who first produces beer in that brewery in that year, of the amount of beer that will be produced in that brewery in that year.
- (11) Beer produced in the co-operated brewery in the current year after the amount of beer produced in the group in the current year has reached 30,000 hectolitres is not small brewery beer.
- (12) Subsection (11) above is without prejudice to section 167(4) of the Customs and Excise Management Act 1979 (recovery of duty unpaid by reason of untrue document or statement).

### **36F Rate of duty for small brewery beer from co-operated breweries**

- (1) This section applies to small brewery beer produced in a brewery at a time in a calendar year (“the current year”) when the brewery is a co-operated brewery.
- (2) The rate of duty in the case of that beer (“the brewery rate”) is determined in accordance with this section.
- (3) In this section—

“the group” means the group of breweries consisting of—

  - (a) the co-operated brewery, and
  - (b) every brewery (other than the co-operated brewery) in which beer is produced at the time mentioned in subsection (1) above, or at any earlier time in the current year, by—
    - (i) a person who produces beer in the co-operated brewery at the time so mentioned or at any earlier time in the current year, or
    - (ii) a person connected with such a person;

“group brewery” means a brewery that is in the group;

“the previous year” means the calendar year immediately preceding the current year;

“the notional previous year's production” has the meaning given by subsection (4) below.

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- (4) In this section “the notional previous year’s production” means the amount, in hectolitres, given by  $PY + GE$  where—

PY is the amount of beer produced in the group in the previous year, and

GE is the aggregate of the grossed-up amount of each estimate that—

(a) is an estimate for the purposes of section 36E(10) above of the amount of the production in the current year in a group brewery in which no beer was produced in the previous year, and

(b) is made no later than the time mentioned in subsection (1) above.

- (5) Where a group brewery was in use as beer-production premises during part only of the previous year, in calculating PY for the purposes of subsection (4) above the amount of beer produced in that brewery in the previous year shall be taken to have been—

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

where—

A is the amount of beer actually produced in the previous year in that brewery, and

D is the number of days in that part of the previous year.

- (6) Subsection (7) below applies if—

(a) beer was produced in at least one group brewery in the previous year and the notional previous year’s production is not more than 5,000 hectolitres, or

(b) no beer was produced in the group in the previous year and the aggregate of each estimate that—

(i) is an estimate for the purposes of section 36E(10) above of the amount of a group brewery’s production in the current year, and

(ii) is made no later than the time mentioned in subsection (1) above,

is not more than 5,000 hectolitres.

- (7) If this subsection applies, “the brewery rate” is 50% of the standard rate at the time mentioned in subsection (1) above; but this is subject to rounding under subsection (10) below.

- (8) Subsection (9) below applies if—

(a) beer was produced in at least one group brewery in the previous year and the notional previous year’s production is more than 5,000 hectolitres but not more than 30,000 hectolitres, or

(b) no beer was produced in the group in the previous year and the aggregate mentioned in subsection (6)(b) above is more than 5,000 hectolitres but not more than 30,000 hectolitres.

- (9) If this subsection applies, “the brewery rate” is, subject to rounding under subsection (10) below, given by—

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$$\frac{P-2,500}{P} \times \text{the standard rate}$$

where—

if this subsection applies by reason of subsection (8)(a) above, P is the previous year's notional production,

if this subsection applies by reason of subsection (8)(b) above, P is the amount, in hectolitres, of the aggregate mentioned in subsection (6)(b) above, and

“the standard rate” means the standard beer duty rate at the time mentioned in subsection (1) above.

- (10) Where a rate given by subsection (7) or (9) above would (apart from this subsection) not be a whole number of pennies, the rate given by that subsection shall be taken to be the rate actually given by that subsection rounded up to the nearest penny.

### **36G Assessments where incorrectly low rate of duty applied**

- (1) Subsection (3) below applies if—
- (a) duty is charged by section 36 above on any beer, and
  - (b) it appears at the excise duty point that the beer is small brewery beer for the purposes of section 36(1AA) above, but
  - (c) it turns out that the beer was not small brewery beer for those purposes (because, for example, circumstances were not as they appeared at that point or they subsequently changed).
- (2) Subsection (3) below also applies if—
- (a) duty is charged by section 36 above on any beer that is small brewery beer for the purposes of section 36(1AA) above, and
  - (b) the rate of duty that at the excise duty point appeared to be the correct rate turns out to have been lower than the correct rate (because, for example, circumstances were not as they appeared at that point or they subsequently changed).
- (3) In any such case the Commissioners—
- (a) may assess the amount that is the difference between—
    - (i) the actual amount of the duty charged on the beer by section 36 above, and
    - (ii) the lower amount that, at the excise duty point, appeared to be the amount charged,as being excise duty due from the person liable to pay the duty charged on the beer by section 36 above, and
  - (b) may notify him or his representative accordingly.
- (4) Where two or more persons are liable to pay the duty charged on the beer—
- (a) the reference in subsection (3)(a) above to the person liable to pay the duty is to any one or more of those persons, and

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- (b) the reference in subsection (3)(b) above to notifying the person liable or his representative is to notifying each person assessed or his representative.

### **36H Power to vary reduced rate provisions**

- (1) The Treasury may by order made by statutory instrument make provision amending this Act for the purpose of causing excise duty to be charged on a description of beer—
  - (a) at a reduced rate instead of at the standard rate;
  - (b) at the standard rate instead of at a reduced rate;
  - (c) at a different reduced rate.
- (2) In this section—
  - “reduced rate” means a rate lower than the standard rate, and
  - “the standard rate” means the rate specified by section 36(1AA) (a) above.
- (3) An order under subsection (1) above may—
  - (a) make different provision for different cases;
  - (b) make such consequential amendments in this Act and other enactments as appear to the Treasury to be necessary or expedient;
  - (c) make such other consequential provision, and such incidental and transitional provision, as appears to the Treasury to be necessary or expedient.
- (4) A statutory instrument by which there is made an order under subsection (1) above shall be laid before the House of Commons after being made.

Unless the instrument is approved by the House of Commons before the expiration of 28 days beginning with the date on which the instrument was made, the order shall cease to have effect on the expiration of that period.

Where the order so ceases to have effect, that does not prejudice—

- (a) anything previously done under the order, or
- (b) the making of a new order.

In reckoning any such period of 28 days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.”.

#### **Commencement Information**

**I10** Sch. 1 para. 2 wholly in force; Sch. 1 para. 2 in force for specified purposes at 1.6.2002, otherwise Sch. 1 para. 2 in force at 24.7.2002, see. s. 4

- 3 In section 49(1) of the Alcoholic Liquor Duties Act 1979 (c. 4) (beer regulations), after paragraph (j) insert—
  - “(k) requiring the production of certificates as to matters relating to beer imported into the United Kingdom and the beer’s production and producer, whether as alternative conditions for charging the duty on

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the beer at a rate lower than that specified by section 36(1AA)(a) above or as evidence that conditions for charging the duty at such a rate are satisfied.”.

- 4 (1) The Finance Act 1994 (c. 9) is amended as follows.
- (2) In section 12A(3)(bb) (recovery of amounts assessed under the Alcoholic Liquor Duties Act 1979), for “or 11” substitute “, 11 or 36G”.
- (3) In section 12B(2) (meaning of “relevant time” in section 12A), after paragraph (eb) insert—
- “(ec) in the case of an assessment under section 36G of that Act, the the time at which the requirement to pay the duty took effect (which time, in a case where there was an excise duty point for the beer fixed under section 1 of the Finance (No. 2) Act 1992, is that excise duty point);”.
- (4) In section 14(1)(ba) (review of assessments), for “or 11” substitute “, 11 or 36G”.

## SCHEDULE 2

Section 5

### HYDROCARBON OIL DUTIES: MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO BIODIESEL

#### *Introduction*

- 1 The Hydrocarbon Oil Duties Act 1979 (c. 5) is amended as follows.

#### *Biodiesel and bioblend not to be treated as fuel substitute*

- 2 In section 6A(1) (fuel substitutes: charge of duty) after “which is not hydrocarbon oil” insert “, biodiesel or bioblend”.

#### *Exclusion of bioblend from rebates on heavy oil*

- 3 In section 11 (rebate on heavy oil), after subsection (5) insert—
- “(6) No rebate shall be allowed under this section in respect of bioblend.”.

#### *Repayment of duty in case of biodiesel used otherwise than as road fuel*

- 4 (1) After section 17 insert—

##### **“17A Biodiesel used otherwise than as road fuel**

- (1) If, on an application made for the purposes of this section, it is shown to the satisfaction of the Commissioners that within the period for which the application is made any quantity of biodiesel has been used by the applicant as mentioned in subsection (2) below, then, subject as provided below, the applicant shall be entitled to obtain from the Commissioners repayment of the amount specified below.

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- (2) A person is entitled to repayment under this section in respect of biodiesel used by him—
- (a) otherwise than as road fuel,
  - (b) otherwise than by mixing the biodiesel with—
    - (i) hydrocarbon oil, or
    - (ii) a mixture containing hydrocarbon oil, and
  - (c) otherwise than in the form of a mixture containing biodiesel and hydrocarbon oil.
- (3) For the purposes of subsection (2)(a) above, use “as road fuel” means use—
- (a) as fuel for the engine provided for propelling a road vehicle or for an engine that draws its fuel from the same supply as such an engine, or
  - (b) as an additive or extender in any substance so used.
- (4) The amount of the repayment is the amount of the excise duty which has been paid in respect of the quantity of biodiesel used less the amount of £0.0313 a litre.
- (5) The Commissioners may require an applicant for repayment under this section—
- (a) to state such facts concerning the biodiesel that is the subject of the claim, or the use to which it was put, as they may think necessary to deal with the application;
  - (b) to furnish them in such form as they may require with proof of any statement so made;
  - (c) to retain such records as the Commissioners may require relating to the use of biodiesel; and
  - (d) to permit an officer to inspect any premises, plant or vehicle on or in which the biodiesel in respect of which repayment is claimed is used.
- (6) If the applicant fails to comply with any such requirement, the Commissioners may reject the claim.”.
- (2) In paragraph 3 of Schedule 4 (regulations about claims for repayments), after “section 9(4), 17,” insert “ 17A, ”.

*Mixing biodiesel and rebated heavy oil*

- 5 (1) In section 20AAA (mixing of rebated oil), after subsection (2A) insert—
- “(2B) Where a mixture is produced in contravention of Part 2B of Schedule 2A to this Act, a duty of excise shall be charged on the mixture.”.
- (2) In section 20AAA(3) (producer of mixture liable to pay duty), for “or (2A)” substitute “, (2A) or (2B) ”.
- (3) After Part 2A of Schedule 2A (mixing of rebated oil) insert—



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## “PART 2B

### BIODIESEL

#### **Mixing biodiesel with rebated heavy oil**

7B (1) A mixture is produced in contravention of this paragraph if it is produced by mixing—

- (a) biodiesel or a substance containing biodiesel, and
- (b) rebated heavy oil.

(2) In sub-paragraph (1)(b) above “rebated heavy oil” means heavy oil in respect of which a rebate has been allowed under section 11 of this Act.”.

(4) In paragraph 9(1A) of that Schedule (rates of duty for mixtures of heavy oil), after “subsection (2A)” insert “ or (2B) ”.

(5) In paragraph 10(1) of that Schedule (credit for duty paid on ingredients of mixture), after “section 6” insert “ , 6AA, 6AB or 6A ”.

(6) In section 20AAB (mixing of rebated oil: supplementary), in subsection (1)(a) for “or (2A)” substitute “ , (2A) or (2B) ”.

(7) In section 22 (prohibition on use of petrol substitutes on which duty has not been paid), after subsection (1) insert—

“(1AA) Where any person—

- (a) puts any biodiesel to a chargeable use (within the meaning of section 6AA above), and
- (b) knows or has reasonable cause to believe that there is duty charged under section 6AA above on that biodiesel which has not been paid and is not lawfully deferred,

his putting the biodiesel to that use shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties), and any goods in respect of which any person contravenes this subsection shall be liable to forfeiture.”.

(8) In section 22(1A) (section 10 of the Finance Act 1994 does not apply), after “subsection (1)” insert “ or (1AA) ”.

#### *Interpretation*

6 In section 27(1) (interpretation) at the appropriate places insert—

““bioblend” has the meaning given by section 6AB(2) above;”,

and

““biodiesel” has the meaning given by section 2AA above;”.

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## PROSPECTIVE

*Provision in relation to bioblend corresponding to that made by section 6 of the Finance Act 1998 in relation to section 6 of the Hydrocarbon Oil Duties Act 1979*

- 7 (1) In section 6AB (which charges excise duty on bioblend and is inserted by section 5 of this Act), in subsection (1), omit the words from “and delivered” to the end.
- (2) For subsection (6) of that section substitute—
- “(6) Where—
- (a) imported bioblend is removed to relevant premises,
  - (b) the bioblend undergoes a production process at those premises or any other relevant premises, and
  - (c) any duty charged on the importation of the bioblend has not become payable at any time before the production time,
- the duty charged on importation shall not become payable at any time after the production time.
- (7) In subsection (6) above—
- “the production time” means the time at which the bioblend undergoes the production process; and
- “relevant premises” means—
- (a) a refinery,
  - (b) other premises used for the production of hydrocarbon oil, or
  - (c) premises of such description as may be specified in regulations made by the Commissioners.
- (8) For the purposes of subsection (6) above, bioblend undergoes a production process if—
- (a) hydrocarbon oil, or bioblend, of any description, or biodiesel, is obtained from it, or
  - (b) it is subjected to any process of purification or blending.”.

## SCHEDULE 3

Section 6

## HYDROCARBON OIL DUTIES: REBATED HEAVY OIL ETC

## PART 1

## REGULATING TRADERS IN REBATED HEAVY OIL

- 1 In the Hydrocarbon Oil Duties Act 1979 (c. 5), after section 23 insert—

**“23A Regulation of traders in controlled oil**

- (1) If a revenue trader who is not a registered excise dealer and shipper—
- (a) buys or sells controlled oil in the course of a trade or business, or

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- (b) in the course of a trade or business deals in controlled oil, his buying or selling, or dealing in, the oil shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).
- (2) Subsection (1) above does not apply to the buying of oil by a revenue trader if—
  - (a) the oil is for use by the trader, and
  - (b) that use does not involve selling or dealing in hydrocarbon oil.
- (3) Subsection (1) above does not apply to the selling of oil by a revenue trader if—
  - (a) that oil was for use by the trader,
  - (b) that use did not involve selling or dealing in hydrocarbon oil,
  - (c) that use came to an end before the oil was used, and
  - (d) the oil is sold after the use ends.
- (4) Where a revenue trader who is not a registered excise dealer and shipper is entitled to the possession of any controlled oil, the oil is liable to forfeiture.
- (5) Subsection (4) above does not apply to oil if—
  - (a) that oil is for use by the revenue trader, and
  - (b) that use does not involve selling or dealing in hydrocarbon oil.
- (6) Subsection (4) above does not apply to oil if—
  - (a) the oil was for use by the revenue trader,
  - (b) that use did not involve selling or dealing in hydrocarbon oil,
  - (c) that use has come to an end,
  - (d) that use came to an end before the oil was used, and
  - (e) the oil is being held pending sale or other disposal.
- (7) Where oil is liable to forfeiture by virtue of subsection (4) above—
  - (a) anything mixed with the oil,
  - (b) any container in which the oil (and anything mixed with it) is kept, and
  - (c) any equipment kept for dispensing the contents of any such container,is liable to forfeiture.

### **23B Power to provide for exceptions to section 23A**

- (1) The Commissioners may by regulations make provision for—
  - (a) exceptions to section 23A(1) above in addition to those allowed by section 23A(2) and (3) above;
  - (b) exceptions to section 23A(4) above in addition to those allowed by section 23A(5) and (6) above;
  - (c) exceptions to section 23A(7) above.
- (2) Regulations under subsection (1) above may provide for exceptions allowed by such regulations to have effect subject to conditions—
  - (a) specified by such regulations;
  - (b) specified by the Commissioners under such regulations.”.

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### Commencement Information

**III** Sch. 3 para. 1 in force at 24.7.2002 for specified purposes, see s. 6(3)(4); Sch. 3 para. 1 in force at 1.4.2003 in so far as not already in force by [S.I. 2002/3056](#), [art. 2](#)

- 2 In section 100H(1) of the Customs and Excise Management Act 1979 (c. 2) (particular provision that may be made by registered excise dealers and shippers regulations), after paragraph (n) insert—
- “(p) authorised by section 24AA of the Hydrocarbon Oil Duties Act 1979 (regulation of traders in controlled oil).”
- 3 In the Hydrocarbon Oil Duties Act 1979 (c. 5), after section 24 insert—

### **“24AA Registered excise dealers and shippers regulations: special provision for traders in controlled oil**

(1) For the purposes of section 100H(1)(p) of the Management Act (registered excise dealers and shippers regulations may, in particular, make provision authorised by this section), this section authorises provision—

- (a) requiring traders in controlled oil to notify prescribed information;
- (b) requiring traders in controlled oil to make prescribed returns;
- (c) authorising a trader in controlled oil to carry out or arrange for the carrying out of any prescribed activity falling within section 100H(1)(b) of the Management Act in relation to controlled oil, but subject to prescribed conditions or restrictions;
- (d) requiring a trader in controlled oil to give security by prescribed means for amounts that may become due from him by way of repayment of rebate;
- (e) for taking into account, in determining whether a trader in controlled oil has—
  - (i) contravened any provision of registered excise dealers and shippers regulations, or
  - (ii) failed to comply with any prescribed condition, restriction or requirement,

the extent to which the trader has followed guidance issued by the Commissioners (including guidance issued after the making of provision under this paragraph referring to it).

(2) In this section—

“prescribed” has the meaning given by section 100H(3) of the Management Act;

“trader in controlled oil” means a registered excise dealer and shipper carrying on a trade or business that consists of or includes the dealing in, buying or selling of controlled oil.”

- 4 (1) Section 27 of the Hydrocarbon Oil Duties Act 1979 (c. 5) (interpretation) is amended as follows.
- (2) In subsection (1) insert (at the appropriate place)—

““controlled oil” means hydrocarbon oil in respect of which a rebate has been allowed under section 11(1)(b), (ba) or (c) or 13AA;”.

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(3) In the Table set out in subsection (3) (expressions used in the Act that have a meaning given by another Act included in the Customs and Excise Acts 1979), under the heading "Management Act" insert (at the appropriate places)—

““registered excise dealer and shipper””,

and

““revenue trader””.

## PART 2

### MINOR AMENDMENTS RELATING TO REBATES

- 5 The Hydrocarbon Oil Duties Act 1979 is amended as follows.
- 6 In section 12(1) (no rebate allowed on heavy oil intended for use in a road vehicle), after “no rebate” insert “ under section 11 above ”.
- 7 In section 12(2) (oil not to be used in road vehicles if rebate has been allowed under section 11(1) or 13AA(1)), for “section 11(1)” substitute “ section 11 ”.
- 8 In section 24(2) (regulations made for the purposes of section 12 or 13AA), for “under subsection (2) of that section” substitute “ under subsection (2) of section 12, or subsection (3) of section 13AA, ”.
- 9 In section 27(1) (interpretation), in the definition of “rebate”, after “section 11,” insert “ 13AA, ”.

## SCHEDULE 4

Section 12

### POOL BETTING DUTY ETC

## PART 1

### AMENDMENTS OF THE BETTING AND GAMING DUTIES ACT 1981

- 1 The Betting and Gaming Duties Act 1981 (c. 63) is amended as follows.
- 2 For sections 6 to 8 (pool betting duty: charge, rate and payment) substitute—

*“Pool betting duty*

#### **6 The duty**

A duty of excise to be known as pool betting duty shall be charged in accordance with sections 7 to 8C.

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## **7 Duty charged on net pool betting receipts**

- (1) If the amount of a person's net pool betting receipts for an accounting period is greater than zero, pool betting duty is charged on those receipts.
- (2) The amount of that duty is 15 per cent of the amount of the receipts.

### **7A Calculating net pool betting receipts**

For the purposes of section 7, the amount of a person's net pool betting receipts for an accounting period is—

### **7B Net pool betting receipts: meaning of “dutable pool bet”**

- (1) For the purposes of a calculation under section 7A of the amount of a person's net pool betting receipts for any accounting period, a bet (wherever made) is a “dutable pool bet” if—
  - (a) the bet is made by way of pool betting, and
  - (b) the following conditions are satisfied.
- (2) The first condition is that—
  - (a) the bet is made by means of a totalisator situated in the United Kingdom and that person is the operator, or
  - (b) the bet is made otherwise than by means of a totalisator and that person is the promoter and is in the United Kingdom.
- (3) The second condition is that the bet is not—
  - (a) made by way of sponsored pool betting,
  - (b) made as mentioned in section 4(3), or
  - (c) made for community benefit.
- (4) The third condition is that if the bet was made before 31st March 2002, at least one event to which it relates takes place on or after that date.

### **7C Net pool betting receipts: calculating stake money**

- (1) This section applies for the purpose of calculating S in a calculation under section 7A.
- (2) Any payment that entitles a person to make a bet shall, if he makes the bet, be treated as stake money on the bet.
- (3) All payments made—
  - (a) for or on account of or in connection with bets that are dutable pool bets for the purposes of the calculation,
  - (b) in addition to the stake money, and
  - (c) by the persons making the bets,
 shall be treated as amounts due in respect of the bets except in so far as the contrary is proved by the person whose net pool betting receipts are being calculated.

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## **7D Net pool betting receipts: when stakes etc fall due**

- (1) Subsections (2) to (5) apply for the purpose of calculating S in a calculation under section 7A but have effect subject to any regulations under subsection (6).
- (2) Where—
  - (a) a person makes a bet, and
  - (b) the bet relates to a single event, or to two or more events all taking place on the same day,any sum due to a person in respect of the bet shall be treated as falling due on the day on which the event or events take place.
- (3) Where—
  - (a) a person makes a bet, and
  - (b) subsection (2) does not apply,any sum due to a person in respect of the bet shall (subject to subsection (5)) be treated as falling due when the bet is made.
- (4) Subsections (2) and (3) have effect in relation to a sum irrespective of when it is actually paid or required to be paid (even where a sum that those subsections require to be treated as falling due on or after 31st March 2002 was actually paid, or required to be paid, before that date).
- (5) As respects a bet made before 31st March 2002 that relates to events at least one of which takes place before that date and at least one of which takes place on or after that date, any sum paid on or after that date in respect of the bet shall be treated as falling due when it is paid.
- (6) The Commissioners may by regulations make provision as to when any sum due to a person in respect of a bet is to be treated as falling due for the purpose of calculating S in a calculation under section 7A.
- (7) Provision made by regulations under subsection (6) may not provide for a sum due to a person in respect of a bet to be treated as falling due—
  - (a) earlier than when the bet is made, or
  - (b) later than when the bet is determined.
- (8) Regulations made under subsection (6) may—
  - (a) make provision that applies generally or only in relation to a specified description of bet;
  - (b) make different provision for different purposes;
  - (c) make provision relating to bets made before the regulations are made (including bets made before the passing of the Finance Act 2002);
  - (d) make transitional provision.

## **7E Net pool betting receipts: expenses and profits**

- (1) Subsections (2) and (3) apply for the purpose of calculating E in a calculation under section 7A.

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- (2) The expenses and profits falling within this subsection are (subject to subsection (3))—
- (a) those of the person whose net pool betting receipts are being calculated, and
  - (b) those of any other person concerned with or benefiting from the promotion of the betting concerned.
- (3) Expenses and profits do not fall within subsection (2) so far as they are—
- (a) provided out of amounts due, in respect of bets that are dutiable pool bets for the purposes of the calculation, to the person whose net pool betting receipts are being calculated, or
  - (b) referable to matters other than—
    - (i) the promotion or management of the betting concerned, or
    - (ii) activities ancillary to, or connected with, such promotion or management.
- (4) The Commissioners may by regulations make provision as to the accounting period to which expenses and profits falling within subsection (2) are to be treated as attributable for the purpose of calculating E in a calculation under section 7A.
- (5) Regulations made under subsection (4) may—
- (a) make provision that applies generally or only in relation to a specified description of bet;
  - (b) make different provision for different purposes;
  - (c) make provision applying in respect of expenses incurred, and profits accruing, before the regulations are made (including any incurred or accruing before the passing of the Finance Act 2002);
  - (d) make transitional provision.

#### **7F Net pool betting receipts: calculating winnings**

- (1) Subsections (2) to (5) apply for the purpose of calculating W in a calculation under section 7A.
- (2) 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.
- (3) The return of a stake shall be treated as a payment by way of winnings.
- (4) Only payments of money shall be taken into account.
- (5) Where a bet made before 31st March 2002 relates to events at least one of which takes place before that date and at least one of which takes place on or after that date, no account shall be taken of any payment by way of winnings on the bet.
- (6) The Commissioners may by regulations make provision as to when amounts paid by way of winnings are to be treated as being paid for the purposes of calculating W in a calculation under section 7A.
- (7) Regulations made under subsection (6) may—



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- (a) make provision that applies generally or only in relation to a specified description of bet;
- (b) make different provision for different purposes;
- (c) make provision applying in respect of amounts paid before the regulations are made (including amounts paid before the passing of the Finance Act 2002);
- (d) make transitional provision.

## **8 Payment and recovery**

- (1) Pool betting duty charged on a person's net pool betting receipts for an accounting period—
  - (a) becomes due at the end of the period,
  - (b) shall be paid by the person, and
  - (c) shall, subject to any regulations under subsection (3) and any directions under paragraph 3 of Schedule 1 to this Act, be paid when it becomes due.
- (2) Pool betting duty that is due to be paid may be recovered from the following persons as if they were jointly and severally liable to pay the duty—
  - (a) the person on whose net pool betting receipts the duty is charged ("the primary payer");
  - (b) a person responsible for the management of any business in the course of which any bets have been made that are dutiable pool bets for the purposes of calculations under section 7A of the amount of the primary payer's net pool betting receipts for any accounting period;
  - (c) a person responsible for the management of any totalisator used for the purposes of any such business;
  - (d) where a person within any of paragraphs (a) to (c) is a company, a director.
- (3) The Commissioners may by regulations—
  - (a) make provision as to when pool betting duty is to be paid (including provision repealing paragraph 3 of Schedule 1 to this Act and the reference to that paragraph in subsection (1)(c));
  - (b) make provision as to how pool betting duty is to be paid.
- (4) Regulations made under subsection (3) may—
  - (a) make provision that 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.

### **8A Meaning of "bet made for community benefit" in sections 6 to 8**

- (1) For the purposes of sections 6 to 8 (but subject to any direction under subsection (3)), a bet is made "for community benefit" if—
  - (a) the promoter of the betting concerned is a community society or is bound to pay all benefits accruing from the betting to such a society, and

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- (b) the person making the bet knows, when making it, that the purpose of the betting is to benefit such a society.
- (2) In the case of a bet made by means of a totalisator, the reference in subsection (1) to the promoter of the betting concerned is a reference to the operator.
- (3) The Commissioners may direct that any bet specified by the direction, or of a description so specified, is not a bet made for community benefit.
- (4) The power conferred by subsection (3) may not be exercised unless the Commissioners consider that an unreasonably large part of the amounts paid in respect of the bets concerned will, or may, be applied otherwise than—
  - (a) in the payment of winnings, or
  - (b) for the benefit of a community society.
- (5) In this section “community society” means—
  - (a) a society established and conducted for charitable purposes only, or
  - (b) a society established and conducted wholly or mainly for the support of athletic sports or athletic games and not established or conducted for purposes of private gain.
- (6) In this section “society” includes any club, institution, organisation or association of persons, by whatever name called.

#### **8B Meaning of “accounting period” in sections 6 to 8**

- (1) For the purposes of sections 6 to 8—
  - (a) each period that ends with the last Saturday in a calendar month, and begins with the Sunday immediately following the previous such Saturday, is an accounting period, but
  - (b) the Commissioners may by regulations make provision for some other specified period to be an accounting period.
- (2) Regulations made under subsection (1)(b) may—
  - (a) make provision that 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.

#### **8C Meaning of “bet” in sections 6 to 8A**

- (1) For the purposes of sections 6 to 8A, “bet” does not include the taking of a ticket or chance in a lottery.
- (2) Where payments are made for the chance of winning any money or money’s worth on terms under which the persons making the payments have a power of selection that may (directly or indirectly) determine the winner, those payments shall be treated as bets for the purposes of sections 6 to 8A notwithstanding that the power is not exercised.
- (3) Subsection (2) has effect subject to section 12(3).

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- (4) Where any payment entitles a person to take part in a transaction that is, on his part only, not a bet made by way of pool betting by reason of his not in fact making any stake as if the transaction were such a bet, the transaction shall be treated as such a bet for the purposes of pool betting duty (and section 7C(3) shall apply to any such payment).”

#### Commencement Information

**I12** Sch. 4 para. 2 wholly in force; Sch. 4 para. 2 in force at 31.3.2002 for specified purposes, otherwise in force at 24.7.2002, see s. 12(5)(7)(a)(8)

- 3 In section 2(2) (bets to which section 2(1) does not apply)—  
(a) in paragraph (b), after “bet,” insert “ or ”, and  
(b) omit paragraph (d) and the word “or” preceding it.
- 4 In section 4(6) (bets to which subsections (1) to (3) do not apply), for the words from “do not apply” to the end substitute “ do not apply to on-course bets. ”.
- 5 In section 9(2) (bets to which section applies), omit “or coupon betting” (in both places).
- 6 In section 9(3) (bets to which section does not apply)—  
(a) in paragraph (a), omit “or coupon betting”,  
(b) for sub-paragraphs (i) to (iv) of paragraph (a) substitute—  
“(i) the bet is not made by means of a totalisator, and  
(ii) the promoter is in the Isle of Man; or”,  
and  
(c) in paragraph (aa)(i), omit “or coupon betting”.

#### Commencement Information

**I13** Sch. 4 para. 6 wholly in force; Sch. 4 para. 6(b) in force at 31.3.2002; Sch. 4 para. 6(a)(c) in force at 24.4.2002, see s. 12(5)(6)

- 7 For section 9(6) substitute—  
“(6) Section 8C(1) to (3) above shall have effect for the purposes of subsections (2)(a) and (5) above as it has effect for the purposes of sections 6 to 8A above.”.
- 8 Omit section 11 (definition of coupon betting).
- 9 In section 12(3) (interpretation of sections 1 to 10 etc), omit “(except in sections 6, 7, 8, 9(2)(a) and 9(5) in their application to coupon betting)”.
- 10 (1) Schedule 1 (administration etc of betting duties) is amended as follows.  
(2) In paragraph 1, in the definition of “pool betting business”, at the end insert “ or would or might involve such sums becoming so payable if receipts from bets made for community benefit (as defined by section 8A of this Act) were not excluded from that duty. ”.  
(3) After paragraph 2 insert—

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- “2A(1) Pool betting duty shall be under the care and management of the Commissioners.
- (2) Without prejudice to any other provision of this Schedule, the Commissioners may make regulations providing for any matter for which provision appears to them to be necessary for the administration or enforcement of pool betting duty or for the protection of the revenue from pool betting duty.
- (3) Regulations under sub-paragraph (2) above may in particular—
- (a) provide for payments on account of pool betting duty which may become chargeable to be made in advance;
  - (b) provide for the giving of security by means of a deposit or otherwise for duty due or to become due.”.

(4) In paragraph 3, omit “shall be under the care and management of the Commissioners, and”.

(5) In paragraph 4(2), for “sub-paragraphs (3) and (4)” substitute “ sub-paragraph (3) ”.

(6) Omit paragraph 4(4) to (6).

(7) In paragraph 5(1), for “made entry or given notice in accordance with paragraph 4(2) or (4)” substitute “ made entry in accordance with paragraph 4(2) ”.

(8) Renumber paragraph (b) of paragraph 5(2) as paragraph 5(3).

(9) In what remains of paragraph 5(2) after that renumbering, for the words from “paragraph 12(3) below, except that” to the end substitute “ sub-paragraph (3) below. ”.

(10) In paragraph 6(2), omit paragraph (b).

(11) Omit paragraphs 8 and 12.

(12) In paragraph 13(1)(b), after “any of paragraphs 2,” insert “ 2A, ”.

(13) In paragraph 14(1), omit the words after paragraph (b).

(14) In paragraph 15(4), for “the said Schedule 1” substitute “ Schedule 1 to the Betting, Gaming and Lotteries Act 1963 ”.

#### **Commencement Information**

**I14** Sch. 6 para. 10 wholly in force; Sch. 6 para. 10(1)(2)(5)-(11)(13)(14) in force at 24.4.2002; Sch. 6 para. 10(3)(4)(12) in force at 24.7.2002, see s. 12(6)(7)(b)

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## PART 2

### MINOR AMENDMENTS AND TRANSITIONAL PROVISIONS

#### *Amendment in the Excise Duties (Surcharges or Rebates) Act 1979*

- 11 In section 1(3) of the Excise Duties (Surcharges or Rebates) Act 1979 (c. 8) (liability to duty other than pool betting duty adjusted if order under section in force when duty becomes due), omit the words from “, except that if the duty is pool betting duty” to the end.

#### *Amendments in Schedule 5 to the Finance Act 1994*

- 12 (1) Paragraph 6 of Schedule 5 to the Finance Act 1994 (c. 9) (decisions under the Betting and Gaming Duties Act 1981 that are subject to review and appeal) is amended as follows.
- (2) In sub-paragraph (2)(a) (decisions in connection with requiring security for duty)—
- (a) after “regulations under paragraph 2” insert “ or 2A ”, and
- (b) after “in relation to general betting duty” insert “ or pool betting duty ”.
- (3) After sub-paragraph (2) insert—
- “(3) Any decision consisting in the giving of a direction under section 8A(3) of the Betting and Gaming Duties Act 1981 (pool betting duty: direction that bet is not made for community benefit).”

#### **Commencement Information**

**I15** Sch. 4 para. 12 wholly in force; Sch. 4 para. 12(1)(3) in force at 24.4.2002; Sch. 4 para. 12(2) in force at 24.7.2002, see. s. 12(6)(7)(b)

#### *Duty charged before 31st March 2002*

- 13 (1) If—
- (a) stake money is paid before 31st March 2002 in respect of a bet to which this paragraph applies, and
- (b) pool betting duty charged on that money before that date is not paid before 24th April 2002,
- that duty ceases on 24th April 2002 to be charged on that money.
- (2) If—
- (a) stake money is paid before 31st March 2002 in respect of such a bet, and
- (b) pool betting duty charged on that money before that date is paid before 24th April 2002,
- the person who paid that duty becomes entitled on 24th April 2002 to a credit equal to the amount of the duty.
- (3) Effect is given to such a credit by setting it (until fully utilised) against pool betting duty that the person is liable to pay in respect of accounting periods for the purposes of pool betting duty that begin on or after 31st March 2002 (taking earlier such periods before later ones).

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- (4) Such a credit does not—
- (a) carry interest,
  - (b) affect the payability of the duty mentioned in sub-paragraph (2), or
  - (c) entitle any person to any payment in respect of the credit.
- (5) This paragraph applies to a bet if—
- (a) it is a dutiable pool bet for the purposes of a calculation, under the section 7A of the Betting and Gaming Duties Act 1981 inserted by this Schedule, of the amount of a person's net pool betting receipts for any accounting period, and
  - (b) it is made before 31st March 2002 but all the events to which it relates take place on or after that date.

*Notifications under paragraph 4(4) of Schedule 1 to that Act of premises used in connection with coupon betting*

- 14 Any notification under paragraph 4(4) of Schedule 1 to the Betting and Gaming Duties Act 1981 (c. 63) (duty to notify premises used for purposes of pool betting business in connection only with coupon betting) that is effective immediately before 24th April 2002 shall on and after that date have effect (until withdrawn) as a notification made on 31st March 2002 under paragraph 4(3) of that Schedule (duty to notify premises used for purposes of betting business in connection only with general betting).

## SCHEDULE 5

Section 19

### VEHICLE EXCISE DUTY: REGISTERED VEHICLES ETC

- 1 The Vehicle Excise and Registration Act 1994 (c. 22) is amended as follows.

#### Commencement Information

**I16** Sch. 5 para. 1 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 1 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

- 2 For section 1(1) substitute—
- “(1) A duty of excise (“vehicle excise duty”) shall be charged in respect of every mechanically propelled vehicle that—
- (a) is registered under this Act (see section 21), or
  - (b) is not so registered but is used, or kept, on a public road in the United Kingdom.
- (1A) Vehicle excise duty shall also be charged in respect of every thing (whether or not it is a vehicle) that has been, but has ceased to be, a mechanically propelled vehicle and—
- (a) is registered under this Act, or
  - (b) is not so registered but is used, or kept, on a public road in the United Kingdom.
- (1B) In the following provisions of this Act “vehicle” means—

*Status: Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.*

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- (a) a mechanically propelled vehicle, or
  - (b) any thing (whether or not it is a vehicle) that has been, but has ceased to be, a mechanically propelled vehicle.
- (1C) Vehicle excise duty charged in respect of a vehicle by subsection (1)(a) or (1A)(a) shall be paid on a licence to be taken out—
- (a) by the person in whose name the vehicle is registered under this Act, or
  - (b) if that person is not the person keeping the vehicle, by either of those persons.
- (1D) Vehicle excise duty charged in respect of a vehicle by subsection (1)(b) or (1A)(b) shall be paid on a licence to be taken out by the person keeping the vehicle.”.

#### Commencement Information

**117** Sch. 5 para. 2 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 2 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

- 3 For section 2(2) to (4) (rates where duty charged in respect of keeping but not use) substitute—
- “(2) Subsection (1) applies subject to the following provisions of this section.
- (3) Where vehicle excise duty is charged by section 1(1)(b) or (1A)(b) in respect of the keeping of a vehicle on a road (and not in respect of its use), duty in respect of such keeping is chargeable by reference to the general rate currently specified in paragraph 1(2) of Schedule 1.
- (4) Subsections (5) and (6) apply where—
- (a) vehicle excise duty is charged by section 1(1)(a) or (1A)(a) in respect of a vehicle, and
  - (b) were the vehicle not registered under this Act, duty would not be charged by section 1(1)(b) or (1A)(b) in respect of the use of the vehicle on a road.
- (5) Where one or more use licences have previously been issued for the vehicle, the duty charged by section 1(1)(a) or (1A)(a) is chargeable by reference to the annual rate currently applicable to a vehicle of the same description as that of the vehicle on the occasion of the issue of that licence (or the last of those licences).
- (6) In any other case, the duty charged by section 1(1)(a) or (1A)(a) is chargeable by reference to the general rate currently specified in paragraph 1(2) of Schedule 1.
- (7) In subsection (5) “use licence” means—
- (a) a vehicle licence issued for the use of a vehicle, or
  - (b) a vehicle licence that is issued by reason of a vehicle being registered under this Act but which would have been issued for the use of the vehicle if the vehicle had not been registered under this Act.”.

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#### Commencement Information

**I18** Sch. 5 para. 3 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 3 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

4 For section 7(4) (vehicle licence valid only for vehicle for which it is issued) substitute—

“(4) A vehicle licence is issued for the vehicle specified in the application for the licence (and for no other).”.

#### Commencement Information

**I19** Sch. 5 para. 4 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 4 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

5 After section 7 insert—

#### “7A Supplement payable on late renewal of vehicle licence

(1) Regulations may make provision for a supplement of a prescribed amount to be payable in prescribed cases where—

- (a) a vehicle licence taken out for a vehicle expires, and
- (b) no vehicle licence is issued for the vehicle—
  - (i) before the end of such period beginning with the expiry of the expired licence as may be prescribed, and
  - (ii) for a period beginning with that expiry.

(2) A supplement under this section—

- (a) shall be payable by such person, or jointly and severally by such persons, as may be prescribed;
- (b) shall become payable at such time as may be prescribed;
- (c) may be of an amount that varies according to the length of the period between—
  - (i) the expiry of the licence by reason of whose non-renewal the supplement becomes payable, and
  - (ii) the time at which the supplement is paid or that licence is renewed.

(3) A supplement under this section that has become payable—

- (a) is in addition to any vehicle excise duty charged in respect of the vehicle concerned;
- (b) does not cease to be payable by reason of a vehicle licence being taken out for the vehicle after the supplement has become payable;
- (c) may, without prejudice to section 6 or 7B(2) and (3) or any other provision of this Act, be recovered as a debt due to the Crown.

(4) In this section—

- (a) references to the expiry of a vehicle licence include a reference to—
  - (i) its surrender, and



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- (ii) its being treated as no longer in force for the purposes of subsection (2) of section 31A by subsection (4) of that section;
  - (b) “prescribed” means prescribed by, or determined in accordance with, regulations;
  - (c) “regulations” means regulations made by the Secretary of State with the consent of the Treasury.
- (5) No regulations to which subsection (6) applies shall be made under this section unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (6) This subsection applies to regulations under this section that—
- (a) provide for a supplement to be payable in a case where one would not otherwise be payable,
  - (b) increase the amount of a supplement,
  - (c) provide for a supplement to become payable earlier than it would otherwise be payable, or
  - (d) provide for a supplement to be payable by a person by whom the supplement would not otherwise be payable.

## **7B Late-renewal supplements: further provisions**

- (1) The Secretary of State may by regulations make provision for notifying the person in whose name a vehicle is registered under this Act about—
- (a) any supplement under section 7A that may or has become payable on non-renewal of a vehicle licence for the vehicle;
  - (b) when failure to renew a vehicle licence may result in the person being guilty of an offence under section 31A.
- (2) The Secretary of State may by regulations make provision—
- (a) for assessing an amount of supplement due under section 7A from any person and for notifying that amount to that person or any person acting in a representative capacity in relation to that person;
  - (b) for an amount assessed and notified under such regulations to be deemed to be an amount of vehicle excise duty due from the person assessed and recoverable accordingly;
  - (c) for review of decisions under such regulations and for appeals with respect to such decisions or decisions on such reviews.
- (3) Regulations under subsection (2) may, in particular, make provision that, subject to any modifications that the Secretary of State considers appropriate, corresponds or is similar to—
- (a) any provision made by sections 12A and 12B of the Finance Act 1994 (assessments related to excise duty matters), or
  - (b) any provision made by sections 14 to 16 of that Act (customs and excise reviews and appeals).
- (4) Sums received by way of supplements under section 7A shall be paid into the Consolidated Fund.”

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#### Commencement Information

**I20** Sch. 5 para. 5 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 5 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

6 (1) In section 22 (registration regulations), in subsection (1D) (power to require details about unlicensed vehicles), after paragraph (a) insert—

“(aa) who does not renew a vehicle licence for a vehicle registered under this Act in his name,”.

(2) After that subsection insert—

“(1DA) For the purposes of subsection (1D)(aa) a person shall be regarded as not renewing a vehicle licence for a vehicle registered in his name if—

- (a) a vehicle for which a vehicle licence is in force is registered in his name, and
- (b) he does not, at such time as may be prescribed by the regulations or within such period as may be so prescribed, take out a vehicle licence to have effect from the expiry of the vehicle licence mentioned in paragraph (a).”.

#### Commencement Information

**I21** Sch. 5 para. 6 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 6 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

7 In section 29(7) (rate of duty by reference to which penalty is calculated), for “section 2(2) to (4)” substitute “section 2(3) to (6)”.

#### Commencement Information

**I22** Sch. 5 para. 7 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 7 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

8 After section 31 insert—

*“Offence of being registered keeper of unlicensed vehicle*

#### **31A Offence by registered keeper where vehicle unlicensed**

- (1) If a vehicle registered under this Act is unlicensed, the person in whose name the vehicle is registered is guilty of an offence.
- (2) For the purposes of this section a vehicle is unlicensed if no vehicle licence or trade licence is in force for or in respect of the vehicle.
- (3) Subsection (1) does not apply to a vehicle if—
  - (a) it is an exempt vehicle in respect of which regulations under this Act require a nil licence to be in force and a nil licence is in force in respect of the vehicle, or

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- (b) it is an exempt vehicle that is not one in respect of which regulations under this Act require a nil licence to be in force.
- (4) Where a vehicle for which a vehicle licence is in force is transferred by the holder of the licence to another person, the licence is to be treated for the purposes of subsection (2) as no longer in force unless it is delivered to the other person with the vehicle.
- (5) Where—
  - (a) an application is made for a vehicle licence for any period, and
  - (b) a temporary licence is issued pursuant to the application,subsection (4) does not apply to the licence applied for if, on a transfer of the vehicle during the currency of the temporary licence, the temporary licence is delivered with the vehicle to the transferee.

### **31B Exceptions to section 31A**

- (1) A person (“the registered keeper”) in whose name an unlicensed vehicle is registered at any particular time (“the relevant time”) does not commit an offence under section 31A at that time if any of the following conditions are satisfied.
- (2) The first condition is that the registered keeper—
  - (a) is not at the relevant time the person keeping the vehicle, and
  - (b) if previously he was the person keeping the vehicle, he has by the relevant time complied with any requirements under section 22(1)
  - (d)—
    - (i) that are prescribed for the purposes of this condition, and
    - (ii) that he is required to have complied with by the relevant or any earlier time.
- (3) The second condition is that—
  - (a) the registered keeper is at the relevant time the person keeping the vehicle,
  - (b) at the relevant time the vehicle is neither kept nor used on a public road, and
  - (c) the registered keeper has by the relevant time complied with any requirements under section 22(1D)—
    - (i) that are prescribed for the purposes of this condition, and
    - (ii) that he is required to have complied with by the relevant or any earlier time.
- (4) The third condition is that—
  - (a) the vehicle has been stolen before the relevant time,
  - (b) the vehicle has not been recovered by the relevant time, and
  - (c) any requirements under subsection (6) that, in connection with the theft, are required to have been complied with by the relevant or any earlier time have been complied with by the relevant time.
- (5) The fourth condition is that the relevant time falls within a period (“the grace days”)—

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- (a) beginning with the expiry of the last vehicle licence to be in force for the vehicle, and
  - (b) of a prescribed length,
- and a vehicle licence for the vehicle is taken out within the grace days for a period beginning with the grace days.
- (6) The Secretary of State may by regulations make provision for the purposes of subsection (4)(c) as to the persons to whom, the times at which and the manner in which the theft of a vehicle is to be notified.
  - (7) The Secretary of State may by regulations make provision amending this section for the purpose of providing for further exceptions to section 31A(1) (or varying or revoking any such further exceptions).
  - (8) A person accused of an offence under section 31A(1) is not entitled to the benefit of an exception conferred by or under this section unless evidence is adduced that is sufficient to raise an issue with respect to that exception, but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply.
  - (9) In this section—
    - (a) references to the expiry of a vehicle licence include a reference to—
      - (i) its surrender, and
      - (ii) its being treated as no longer in force for the purposes of subsection (2) of section 31A by subsection (4) of that section;
    - (b) “prescribed” means prescribed by regulations made by the Secretary of State.

### **31C Penalties for offences under section 31A**

- (1) A person guilty of an offence under section 31A(1) is liable on summary conviction to—
  - (a) an excise penalty of—
    - (i) level 3 on the standard scale, or
    - (ii) five times the amount of vehicle excise duty chargeable in respect of the vehicle concerned,
 whichever is the greater; and
  - (b) if subsection (3) applies to him, an excise penalty (in addition to any under paragraph (a)) of an amount that complies with subsection (2).
- (2) An amount complies with this subsection if it—
  - (a) is not less than the greater of—
    - (i) the maximum of the penalty to which the person is liable under subsection (1)(a), and
    - (ii) the amount of the supplement (if any) that became payable by him by reason of non-renewal of the vehicle licence for the vehicle that last expired before the commission of the offence; and
  - (b) is not more than the greatest of—

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- (i) the maximum of the penalty to which the person is liable under subsection (1)(a),
  - (ii) the amount mentioned in paragraph (a)(ii), and
  - (iii) ten times the amount of vehicle excise duty chargeable in respect of the vehicle.
- (3) This subsection applies to the person if—
- (a) he was, at the time proceedings for the offence were commenced, the person in whose name the vehicle concerned was registered under this Act, and
  - (b) that vehicle was unlicensed throughout the period beginning with the commission of the offence and ending with the commencement of those proceedings.
- (4) The amount of vehicle excise duty chargeable in respect of a vehicle is to be taken for the purposes of subsections (1) and (2) to be an amount equal to the annual rate of duty applicable to the vehicle at the date on which the offence was committed.
- (5) Where in the case of a vehicle kept (but not used) on a public road that annual rate differs from the annual rate by reference to which the vehicle was at that date chargeable under section 2(3) to (6), the amount of the vehicle excise duty chargeable in respect of the vehicle is to be taken for those purposes to be an amount equal to the latter rate.
- (6) In the case of a conviction for a continuing offence, the offence is to be taken for the purposes of subsections (4) and (5) to have been committed on the date or latest date to which the conviction relates.
- (7) In this section, references to the expiry of a vehicle licence include a reference to—
- (a) its surrender, and
  - (b) its being treated as no longer in force for the purposes of subsection (2) of section 31A by subsection (4) of that section.

*Offences under sections 29 and 31A: supplementary”.*

#### **Commencement Information**

**I23** Sch. 5 para. 8 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 8 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

- 9 (1) In section 32 (sections 29 to 31: supplementary), in subsection (1) (discharges to be treated as convictions)—
- (a) in the words before paragraph (a), after “section 29” insert “ or 31A ”, and
  - (b) in the words after paragraph (c), after “sections 29 to 31” insert “ or (as the case may be) sections 31A to 31C ”.
- (2) In the heading of that section, for “31” substitute “ 31C ”.

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#### Commencement Information

**I24** Sch. 5 para. 9 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 9 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

10 In section 33(3)(b) (offences of not exhibiting licence are without prejudice to offences of not having a licence), after “sections 29” insert “, 31A”.

#### Commencement Information

**I25** Sch. 5 para. 10 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 10 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

11 In section 34(4) (rate of duty by reference to which penalty is calculated), for “section 2(2) to (4)” substitute “ section 2(3) to (6) ”.

#### Commencement Information

**I26** Sch. 5 para. 11 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 11 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

12 In section 47 (proceedings in England and Wales or Northern Ireland), in each of subsections (1) and (2)(a) (who may prosecute and time limit), after “section 29,” insert “ 31A, ”.

#### Commencement Information

**I27** Sch. 5 para. 12 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 12 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

13 In section 48(3)(a) (proceedings in Scotland: time limit), after “section 29,” insert “ 31A, ”.

#### Commencement Information

**I28** Sch. 5 para. 13 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 13 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

14 In section 53 (burden of proof of certain matters in proceedings for certain offences), after “section 29,” insert “ 31A, ”.

#### Commencement Information

**I29** Sch. 5 para. 14 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 14 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

15 In section 54 (single witness sufficient in Scottish proceedings), after “section 29” insert “ , 31A ”.

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**Commencement Information**

**I30** Sch. 5 para. 15 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 15 in force at 19.12.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

16 In section 57 (regulations), after subsection (7) insert—

“(7A) Subsection (7) does not apply to a statutory instrument containing regulations under section 7A to which subsection (6) of that section applies.”.

**Commencement Information**

**I31** Sch. 5 para. 16 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 16 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#)

17 In section 62(1) (definitions), for the definition of “vehicle” substitute—

““vehicle” shall be construed in accordance with section 1(1B);”.

**Commencement Information**

**I32** Sch. 5 para. 17 in force at 24.7.2002 for specified purposes, see s. 19(2)(3); Sch. 5 para. 17 in force at 30.11.2003 in so far as not already in force by [S.I. 2003/3086](#), [art. 2](#); Sch. 5 para. 17 in force at 24.7.2002 for specified purposes, see s. 19(2)(3)

<sup>F55</sup>SCHEDULE 6

Section 37

**Textual Amendments**

**F55** Sch. 6 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)

SCHEDULE 7

Section 43

CHARGEABLE GAINS: ROLL-OVER OF DEGROUPING CHARGE: MODIFICATION OF ENACTMENTS

The following Schedule is inserted after Schedule 7AA to the Taxation of Chargeable Gains Act 1992 (c. 12)—

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## “SCHEDULE 7AB

### ROLL-OVER OF DEGROUPING CHARGE: MODIFICATION OF ENACTMENTS

#### **Introductory**

- 1 (1) This Schedule sets out how sections 152 and 153 and other related enactments are modified for the purposes of section 179B (roll-over of degrouping charge on business assets).
- (2) In the enactments as so modified—
- “company A” and “company B” have the same meanings as in section 179;
  - “relevant asset” means the asset mentioned in section 179B(1);
  - “deemed sale” means the sale of the relevant asset that is treated as taking place by virtue of section 179(3) or (6);
  - “deemed sale consideration” means the amount for which company A is treated as having sold the relevant asset;
  - “time of accrual” means—
    - (a) in a case where section 179(3) applies, the time at which, by virtue of section 179(4), the gain or loss accruing on the deemed sale is treated as accruing to company A;
    - (b) in a case where section 179(6) applies, the latest time at which the company satisfies the conditions in section 179(7).

#### **Section 152**

- 2 (1) For subsection (1) of section 152 (roll-over relief) substitute—
- (“) If—
- (a) company B was carrying on a trade at the time when it disposed of the relevant asset to company A,
  - (b) the relevant asset was used, and used only, for the purposes of that trade throughout the period when it was owned by company B,
  - (c) an amount that is not less than the deemed sale consideration is applied by company A in acquiring other assets, or an interest in other assets (“the new assets”),
  - (d) on acquisition the new assets are taken into use, and used only, for the purposes of a trade carried on by company A,
  - (e) both the relevant asset and the new assets are within the classes of assets listed in section 155, and
  - (f) company A makes a claim as respects the amount applied as mentioned in paragraph (c),
- company A shall be treated for the purposes of this Act as if the deemed sale consideration were (if otherwise of a greater amount) reduced to such amount as would secure that neither a gain nor a loss accrues to the company in respect of the deemed sale.
- (1A) Where subsection (1) applies, company A shall be treated for the purposes of this Act as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the same amount as the amount of the reduction under that subsection.



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- (1B) Subsection (1) does not affect the value at which company A is treated by virtue of section 179 as having reacquired the relevant asset.
- (1C) Subsection (1A) does not affect the treatment for the purposes of this Act of the other party to the transaction involving the new assets. "
- (2) In subsection (2) of that section (application of subsection (1) where old assets held on 6th April 1965)—
- (a) for "subsection (1)(a)" substitute "subsection (1)";
  - (b) for "subsection (1)(b)" substitute "subsection (1A)".
- (3) In subsection (3) of that section (reinvestment period), for "after the disposal of, or of the interest in, the old assets" substitute "after the time of accrual".
- (4) In subsection (5) of that section (new assets must be acquired for purposes of trade), for "the trade" substitute "the trade carried on by company A".
- (5) In subsection (6) of that section (apportionment where part of building etc not used for purposes of trade), omit "or disposal" and insert at the end "or of the deemed sale consideration".
- (6) After that subsection insert—
- (“) In subsection (6) “period of ownership”, in relation to the relevant asset, means the period during which the asset was owned by company B. "
- (7) In subsection (7) of that section (apportionment where old assets not used for purposes of trade throughout period of ownership)—
- (a) for the words from the beginning to “period of ownership” substitute “If the relevant asset was not used for the purposes of the trade carried on by company B throughout the period during which it was owned by that company”;
  - (b) for the words from “or disposal” to the end substitute “of the asset or of the deemed sale consideration”.
- (8) In subsection (9) of that section (“period of ownership” does not include period before 31st March 1982), for ““period of ownership” does not” substitute “the references to the period during which the relevant asset was owned by company B do not”.
- (9) In subsection (11) of that section (apportionment of consideration for assets not all of which are subject of claim), omit “or disposal” and insert at the end “; and similarly in relation to the deemed sale consideration”.

### **Section 153**

- 3 For subsection (1) of section 153 (assets only partly replaced) substitute—
- (“) If—
- (a) an amount that is less than the deemed sale consideration is applied by company A in acquiring other assets, or an interest in other assets (“the new assets”),
  - (b) the difference between the deemed sale consideration and the amount so applied (“the shortfall”) is less than the amount of the gain (whether all chargeable gain or not) accruing on the deemed sale,
  - (c) the conditions in paragraphs (a), (b), (d) and (e) of section 152(1) are satisfied,
- and

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(d) company A makes a claim as respects the amount applied as mentioned in paragraph (a) above,

company A shall be treated for the purposes of this Act as if the amount of the gain accruing as mentioned in paragraph (b) above were reduced to the same amount as the shortfall (with a proportionate reduction, if not all of that gain is chargeable gain, in the amount of the chargeable gain).

(1A) Where subsection (1) applies, company A shall be treated for the purposes of this Act as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under that subsection.

(1B) Subsection (1) does not affect the value at which company A is treated by virtue of section 179 as having reacquired the relevant asset.

(1C) Subsection (1A) does not affect the treatment for the purposes of this Act of the other party to the transaction involving the new assets. "

### **Section 153A**

- 4 (1) In subsection (1) of section 153A (provisional application of sections 152 and 153)—
- (a) for the words from “a person” to “takes place” substitute “company A declares, in its return for the chargeable period in which the time of accrual falls”;
  - (b) for “the trade” substitute “a trade carried on by company A”;
  - (c) for “the whole or any specified part of the consideration” substitute “an amount equal to the deemed sale consideration or any specified part of that amount”.
- (2) In subsection (5) of that section (meaning of “relevant day”), for paragraphs (a) and (b) substitute “the fourth anniversary of the last day of the accounting period of company A in which the time of accrual falls”.

### **Section 155**

- 5 In section 155 (relevant classes of assets), in Head A of Class 1, after paragraph 2 insert — “In Head A “the trade” means—
- (a) for the purposes of determining whether the relevant asset is within this head, the trade carried on by company B;
  - (b) for the purposes of determining whether the new assets are within this head, the trade carried on by company A. "

### **Section 159**

- 6 (1) In subsection (1) of section 159 (new assets must be chargeable assets), for the words from “in the case of a person” to the second “in relation to him” substitute “if the relevant asset (or, as the case may be, the property mentioned in section 179(3)(b)) is a chargeable asset in relation to company A at the time of accrual, unless the new assets are chargeable assets in relation to that company”.
- (2) In subsection (2) of that section (subsection (1) not to apply where new assets acquired by UK resident after disposal of old ones)—
- (a) for paragraph (a) substitute—
  - (“ company A acquires the new assets after the time of accrual, and ”;

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- (b) in paragraph (b) for “the person” substitute “that company”.
- (3) In subsection (3) of that section (subsection (2) not to apply in certain cases where new assets acquired by dual resident), for “the person” substitute “company A”.
- (4) In subsection (6) of that section (definitions)—
  - (a) in paragraph (a) for “ “the old assets” and “the new assets” have the same meanings” substitute “ “the new assets” has the same meaning”;
  - (b) omit paragraph (b).
- (5) Omit subsection (7) of that section (acquisitions before 14th March 1989).

### **Section 175**

- 7 (1) In subsection (2) of section 175 (single-trade rule for group members not to apply in case of dual resident investing company)—
  - (a) for “the consideration for the disposal of the old assets” substitute “the amount of the deemed sale consideration”;
  - (b) for “ “the old assets” and “the new assets” have the same meanings” substitute “ “the new assets” has the same meaning”.
- (2) In subsection (2A) of that section (claim by two group members to be treated as same person for roll-over purposes), for paragraph (a) substitute—
  - (“ company A is a member of a group of companies at the time of accrual, ”.
- (3) In subsection (2AA) of that section (conditions for claim under subsection (2A))—
  - (a) in paragraph (a) for the words from the beginning to “chargeable assets” substitute “that company A is resident in the United Kingdom at the time of accrual, or the relevant asset (or, as the case may be, the property mentioned in section 179(3)(b)) is a chargeable asset”
  - (b) in paragraph (b) for “the assets” substitute “the new assets (within the meaning of section 152)”.
- (4) Immediately before subsection (2B) of that section (roll-over relief for group member not itself carrying on trade) insert—
  - (“ Section 152 or 153 shall apply where—
    - (a) company B was not carrying on a trade at the time when it disposed of the relevant asset to company A, but was a member of a group of companies at that time, and
    - (b) immediately before that time the relevant asset was used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carried on a trade, as if company B had been carrying on that trade. ”.
- (5) In subsection (2B) of that section—
  - (a) omit paragraph (a);
  - (b) in paragraph (b), for “those purposes” substitute “the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade”.
- (6) Omit subsection (4) of that section (acquisitions before 20th March 1990).

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### **Section 185**

- 8 (1) In subsection (3) of section 185 (no roll-over relief in certain cases where company acquires new assets after becoming non-resident)—
- (a) omit “the company”;
  - (b) for paragraph (a) substitute—
  - (“ the time of accrual falls before the relevant time; and ”;
  - (c) insert “the company” at the beginning of paragraph (b).
- (2) In subsection (5) of that section (definitions), in paragraph (c) for “ “the old assets” and “the new assets” have the same meanings” substitute “ “the new assets” has the same meaning”.

### **Section 198**

- 9 (1) For subsection (1) of section 198 (replacement of business assets used in connection with oil fields) substitute—
- (“ If at the time of accrual the relevant asset (or, as the case may be, the property mentioned in section 179(3)(b)) was used by company A for the purposes of a ring fence trade carried on by it, section 152 or 153 shall not apply unless the new assets are on acquisition taken into use, and used only, for the purposes of that trade. ”.
- (2) In subsection (3) of that section (new asset conclusively presumed to be depreciating asset), for “in relation to any of the consideration on a material disposal” substitute “in a case falling within subsection (1) above”.
- (3) In subsection (5) of that section (definitions), omit paragraph (a).

### **Schedule 22 to the Finance Act 2000**

- 10 In sub-paragraph (2) of paragraph 67 of Schedule 22 to the Finance Act 2000 (c. 17) (no roll-over relief for tonnage tax assets)—
- (a) after “the disposal”, in the first and third places, insert “or deemed sale”;
  - (b) in paragraph (a) after “Asset No.1” insert “or, as the case may be, the deemed sale consideration”.

## SCHEDULE 8

Section 44(2)

### CHARGEABLE GAINS: EXEMPTIONS IN CASE OF SUBSTANTIAL SHAREHOLDING

#### PART 1

#### NEW SCHEDULE 7AC TO THE TAXATION OF CHARGEABLE GAINS ACT 1992

- 1 The following Schedule is inserted after Schedule 7AB to the Taxation of Chargeable Gains Act 1992 (c. 12)—

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## “SCHEDULE 7AC

### EXEMPTIONS FOR DISPOSALS BY COMPANIES WITH SUBSTANTIAL SHAREHOLDING

#### PART 1

##### THE EXEMPTIONS

###### ***The main exemption***

- 1 (1) A gain accruing to a company (“the investing company”) on a disposal of shares or an interest in shares in another company (“the company invested in”) is not a chargeable gain if the requirements of this Schedule are met.
- (2) The requirements are set out in—
  - Part 2 (the substantial shareholding requirement), and
  - Part 3 (requirements to be met in relation to the investing company and the company invested in).
- (3) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

###### ***Subsidiary exemption: disposal of asset related to shares where main exemption conditions met***

- 2 (1) A gain accruing to a company (“company A”) on a disposal of an asset related to shares in another company (“company B”) is not a chargeable gain if either of the following conditions is met.
- (2) The first condition is that—
  - (a) immediately before the disposal company A holds shares or an interest in shares in company B, and
  - (b) any gain accruing to company A on a disposal at that time of the shares or interest would, by virtue of paragraph 1, not be a chargeable gain.
- (3) The second condition is that—
  - (a) immediately before the disposal company A does not hold shares or an interest in shares in company B but is a member of a group and another member of that group does hold shares or an interest in shares in company B, and
  - (b) if company A, rather than that other company, held the shares or interest, any gain accruing to company A on a disposal at that time of the shares or interest would, by virtue of paragraph 1, not be a chargeable gain.
- (4) Where assets of a company are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, this paragraph applies as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of,

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the company (acquisitions from or disposals to him by the company being disregarded accordingly).

- (5) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

***Subsidiary exemption: disposal of shares or related asset where main exemption conditions previously met***

- 3 (1) A gain accruing to a company (“company A”) on a disposal of shares, or an interest in shares or an asset related to shares, in another company (“company B”) is not a chargeable gain if the following conditions are met.

- (2) The conditions are—

- (a) that at the time of the disposal company A meets the requirement in paragraph 7 (the substantial shareholding requirement) in relation to company B;
- (b) that a chargeable gain or allowable loss would, apart from this paragraph, accrue to company A on the disposal (but see sub-paragraph (3) below);
- (c) that at the time of the disposal—
  - (i) company A is resident in the United Kingdom, or
  - (ii) any chargeable gain accruing to company A on the disposal would, by virtue of section 10(3), form part of that company’s chargeable profits for corporation tax purposes;
- (d) that there was a time within the period of two years ending with the disposal (“the relevant period”) when, if—
  - (i) company A, or
  - (ii) a company that at any time in the relevant period was a member of the same group as company A,
 

had disposed of shares or an interest in shares in company B that it then held, a gain accruing would, by virtue of paragraph 1, not have been a chargeable gain; and
- (e) that, if at the time of the disposal the requirements of paragraph 19 (requirements relating to company invested in) are not met in relation to company B, there was a time within the relevant period when company B was controlled by—
  - (i) company A, or
  - (ii) company A together with any persons connected with it, or
  - (iii) a company that at any time in the relevant period was a member of the same group as company A, or
  - (iv) any such company together with any persons connected with it.

- (3) Sub-paragraph (1) does not apply if—

- (a) the condition in sub-paragraph (2)(b) is met but would not be met but for a failure to meet the requirement in paragraph 18(1)(b) (requirement as to investing company to be met immediately after the disposal), and
- (b) the failure to meet that requirement is not due to—
  - (i) the fact that company A has been wound up or dissolved, or

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- (ii) where the winding up or dissolution takes place as soon as is reasonably practicable in the circumstances, the fact that company A is about to be wound up or dissolved.
- (4) In determining for the purpose of sub-paragraph (2)(d) whether a gain accruing on the hypothetical disposal referred to would have been a chargeable gain, the requirements of paragraph 18(1)(b) and of paragraph 19(1)(b) (requirement as to company invested in to be met immediately after the disposal) shall be assumed to be met.
- (5) Where—
- (a) immediately before the disposal company B holds an asset,
  - (b) the expenditure allowable in computing any gain or loss on that asset, were it to be disposed of by company B immediately before that disposal, would fall to be reduced because of a claim to relief under section 165 (gifts relief) in relation to an earlier disposal, and
  - (c) that earlier disposal took place within the relevant period,
- sub-paragraph (1) does not prevent a gain accruing to company A on the disposal from being a chargeable gain but any loss so accruing is not an allowable loss.
- (6) Where assets of company B are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, sub-paragraph (5)(a) applies as if the assets were vested in the company.
- (7) In determining “the relevant period” for the purposes of sub-paragraph (2)(d) or (e) or sub-paragraph (5)(c), section 28 (time of disposal under contract) applies with the omission of subsection (2) (postponement of time of disposal in case of conditional contract).
- (8) The exemption conferred by this paragraph does not apply in the circumstances specified in paragraph 5 or the cases specified in paragraph 6.

***Application of exemptions in priority to provisions deeming there to be no disposal etc***

- 4 (1) For the purposes of determining whether an exemption conferred by this Schedule applies, the question whether there is a disposal shall be determined without regard to—
- (a) section 116(10) (reorganisation, conversion of securities, etc treated as not involving disposal),
  - (b) section 127 (share reorganisations etc treated as not involving disposal), or
  - (c) section 192(2)(a) (distribution not treated as capital distribution).
- (2) Sub-paragraph (1) does not apply to a disposal of shares if the effect of its applying would be that relief attributable to the shares under Schedule 15 to the Finance Act 2000 (corporate venturing scheme) would be withdrawn or reduced under paragraph 46 of that Schedule (withdrawal or reduction of investment relief on disposal of shares).
- (3) Where or to the extent that an exemption conferred by this Schedule does apply—

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- (a) the provisions mentioned in sub-paragraph (1)(a) and (b) do not apply in relation to the disposal, and
  - (b) the provision mentioned in sub-paragraph (1)(c) does not apply in relation to the subject matter of the disposal.
- (4) Where section 127 is disapplied by sub-paragraph (3)(a) in a case in which that section would otherwise have applied in relation to the disposal by virtue of paragraph 84 of Schedule 15 to the Finance Act 2000 (corporate venturing scheme: share exchanges), paragraph 85 of that Schedule (attribution of relief to new shares) does not apply.
- (5) In this paragraph any reference to section 127 includes a reference to that provision as applied by any enactment relating to corporation tax.

***Circumstances in which exemptions do not apply***

- 5 (1) Where in pursuance of arrangements to which this paragraph applies—
- (a) an untaxed gain accrues to a company (“company A”) on a disposal of shares, or an interest in shares or an asset related to shares, in another company (“company B”), and
  - (b) before the accrual of that gain—
    - (i) company A acquired control of company B, or the same person or persons acquired control of both companies, or
    - (ii) there was a significant change of trading activities affecting company B at a time when it was controlled by company A, or when both companies were controlled by the same person or persons,
 none of the exemptions in this Schedule applies to the disposal.
- (2) This paragraph applies to arrangements from which the sole or main benefit that (but for this paragraph) could be expected to arise is that the gain on the disposal would, by virtue of this Schedule, not be a chargeable gain.
- (3) For the purposes of sub-paragraph (1)(a) a gain is “untaxed” if the gain, or all of it but a part that is not substantial, represents profits that have not been brought into account (in the United Kingdom or elsewhere) for the purposes of tax on profits for a period ending on or before the date of the disposal.
- (4) The reference in sub-paragraph (3) to profits being brought into account for the purposes of tax on profits includes a reference to the case where—
- (a) an amount in respect of those profits is apportioned to a company resident in the United Kingdom by virtue of subsection (3) of section 747 of the Taxes Act 1988 (imputation of chargeable profits etc of controlled foreign companies), and
  - (b) a sum is chargeable on that company in respect of that amount by virtue of subsection (4) of that section for an accounting period of that company ending on or before the date of the disposal.
- (5) For the purposes of sub-paragraph (1)(b)(ii) there is a “significant change of trading activities affecting company B” if—
- (a) there is a major change in the nature or conduct of a trade carried on by company B or a 51% subsidiary of company B, or



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- (b) there is a major change in the scale of the activities of a trade carried on by company B or a 51% subsidiary of company B, or
- (c) company B or a 51% subsidiary of company B begins to carry on a trade.

(6) In this paragraph—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;

“major change in the nature or conduct of a trade” has the same meaning as in section 768 of the Taxes Act (change of ownership of company: disallowance of trading losses);

“profits” means income or gains (including unrealised income or gains).

### ***Other cases excluded from exemptions***

6 (1) The exemptions conferred by this Schedule do not apply—

- (a) to a disposal that by virtue of any enactment relating to chargeable gains is deemed to be for a consideration such that no gain or loss accrues to the person making the disposal,
- (b) to a disposal a gain on which would, by virtue of any enactment not contained in this Schedule, not be a chargeable gain, or
- (c) to a deemed disposal under section 440(1) or (2) of the Taxes Act (deemed disposal on transfer of asset of insurance company from one category to another).

(2) The hypothetical disposal referred to in paragraph 2(2)(b) or (3)(b) or paragraph 3(2)(d) shall be assumed not to be a disposal within subparagraph (1)(a), (b) or (c) above.

## **PART 2 THE SUBSTANTIAL SHAREHOLDING REQUIREMENT**

### ***The requirement***

7 The investing company must have held a substantial shareholding in the company invested in throughout a twelve-month period beginning not more than two years before the day on which the disposal takes place.

### ***Meaning of “substantial shareholding”***

8 (1) For the purposes of this Schedule a company holds a “substantial shareholding” in another company if it holds shares or interests in shares in that company by virtue of which—

- (a) it holds not less than 10% of the company’s ordinary share capital,
- (b) it is beneficially entitled to not less than 10% of the profits available for distribution to equity holders of the company, and
- (c) it would be beneficially entitled on a winding up to not less than 10% of the assets of the company available for distribution to equity holders.

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This is without prejudice to what is meant by “substantial” where the word appears in other contexts.

- (2) Schedule 18 to the Taxes Act 1988 (meaning of equity holder and determination of profits or assets available for distribution) applies for the purposes of sub-paragraph (1).
- (3) In that Schedule as it applies for those purposes—
  - (a) for any reference to sections 403C and 413(7) of that Act, or either of those provisions, substitute a reference to sub-paragraph (1) above;
  - (b) omit the words in paragraph 1(4) from “but” to the end;
  - (c) omit paragraph 5(3) and paragraphs 5B to 5F; and
  - (d) omit paragraph 7(1)(b).

***Aggregation of holdings of group companies***

- 9 (1) For the purposes of paragraph 7 (the substantial shareholding requirement) a company that is a member of a group is treated—
  - (a) as holding any shares or interest in shares held by any other company in the group, and
  - (b) as having the same entitlement as any such company to any rights enjoyed by virtue of holding shares or an interest in shares.
- (2) Sub-paragraph (1) is subject to paragraph 17(4) (exclusion of aggregation in case of assets of long-term insurance fund of insurance company).

***Effect of earlier no-gain/no-loss transfer***

- 10 (1) For the purposes of this Part the period for which a company has held shares is treated as extended by any earlier period during which the shares concerned, or shares from which they are derived, were held—
  - (a) by a company from which the shares concerned were transferred to the first-mentioned company on a no-gain/ no-loss transfer, or
  - (b) by a company from which the shares concerned, or shares from which they are derived, were transferred on a previous no-gain/no-loss transfer—
    - (i) to a company within paragraph (a), or
    - (ii) to another company within this paragraph.
- (2) For the purposes of sub-paragraph (1)—
  - (a) a “no-gain/no-loss transfer” means a disposal and corresponding acquisition that by virtue of any enactment relating to chargeable gains are deemed to be for a consideration such that no gain or loss accrues to the person making the disposal;
  - (b) a transfer shall be treated as if it had been a no-gain/no-loss transfer if it is a transfer to which subsection (1) of section 171 (transfers within a group) would apply but for subsection (3) of that section.
- (3) Where sub-paragraph (1) applies to extend the period for which a company (“company A”) is treated as having held any shares, that company shall be treated for the purposes of this Part as having had at any time the same entitlement—

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- (a) to shares, and
  - (b) to any rights enjoyed by virtue of holding shares,
- as the company (“company B”) that at that time held the shares concerned or, as the case may be, the shares from which they are derived.
- (4) The shares and rights to be so attributed to company A include any holding or entitlement attributed at that time to company B under paragraph 9 (aggregation of holdings of group companies).
- (5) In this paragraph, except in paragraphs (a) to (c) of sub-paragraph (6), “shares” includes an interest in shares.
- (6) For the purposes of this paragraph shares are “derived” from other shares only where—
- (a) a company becomes a co-owner of shares previously owned by it alone, or vice versa,
  - (b) a company’s interest in shares as co-owner changes (without the company ceasing to be a co-owner),
  - (c) one holding of shares is treated by virtue of section 127 as the same asset as another, or
  - (d) there is a sequence of two or more of the occurrences mentioned in paragraphs (a) to (c).

The reference in paragraph (c) to section 127 includes a reference to that provision as applied by any enactment relating to corporation tax.

### ***Effect of deemed disposal and reacquisition***

- 11 (1) For the purposes of this Part a company is not regarded as having held shares throughout a period if, at any time during that period, there is a deemed disposal and reacquisition of—
- (a) the shares concerned, or
  - (b) shares, or an interest in shares, from which those shares are derived.
- (2) For the purposes of this Part a company is not regarded as having held an interest in shares throughout a period if, at any time during that period, there is a deemed disposal and reacquisition of—
- (a) the interest concerned, or
  - (b) shares, or an interest in shares, from which that interest is derived.
- (3) In this paragraph—
- “deemed disposal and reacquisition” means a disposal and immediate reacquisition treated as taking place under any enactment relating to corporation tax;
  - “derived” has the same meaning as in paragraph 10.

### ***Effect of repurchase agreement***

- 12 (1) This paragraph applies where—
- (a) a company that holds shares in another company transfers the shares under a repurchase agreement, and

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- (b) by virtue of section 263A(1) (agreements for sale and repurchase of securities) the disposal is disregarded for the purposes of the enactments relating to chargeable gains.
- (2) During the period of the repurchase agreement—
- (a) the original owner shall be treated for the purposes of this Part as continuing to hold the shares transferred and accordingly as retaining his entitlement to any rights attached to them, and
  - (b) the interim holder shall be treated for those purposes as not holding the shares transferred and as not becoming entitled to any such rights.

This is subject to the following qualification.

- (3) If at any time before the end of the period of the repurchase agreement the original owner, or another member of the same group as the original owner, becomes the holder—
- (a) of any of the shares transferred, or
  - (b) of any shares directly or indirectly representing any of the shares transferred,
- sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares.
- (4) In this paragraph a “repurchase agreement” means an agreement under which—
- (a) a person (“the original owner”) transfers shares to another person (“the interim holder”) under an agreement to sell them, and
  - (b) the original owner or a person connected with him is required to buy them back either—
    - (i) in pursuance of an obligation to do so imposed by that agreement or by any related agreement, or
    - (ii) in consequence of the exercise of an option acquired under that agreement or any related agreement.

For the purposes of paragraph (b) agreements are related if they are entered into in pursuance of the same arrangements (regardless of the date on which either agreement is entered into).

- (5) Any reference in this paragraph to the period of a repurchase agreement is to the period beginning with the transfer of the shares by the original owner to the interim holder and ending with the repurchase of the shares in pursuance of the agreement.

### ***Effect of stock lending arrangements***

- 13 (1) This paragraph applies where—
- (a) a company that holds shares in another company transfers the shares under a stock lending arrangement, and
  - (b) by virtue of section 263B(2) (stock lending arrangements) the disposal is disregarded for the purposes of the enactments relating to chargeable gains.

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- (2) During the period of the stock lending arrangement—
- (a) the lender shall be treated for the purposes of this Part as continuing to hold the shares transferred and accordingly as retaining his entitlement to any rights attached to them, and
  - (b) the borrower shall be treated for those purposes as not holding the shares transferred and as not becoming entitled to any such rights.

This is subject to the following qualification.

- (3) If at any time before the end of the period of the stock lending arrangement the lender, or another member of the same group as the lender, becomes the holder—
- (a) of any of the shares transferred, or
  - (b) of any shares directly or indirectly representing any of the shares transferred,
- sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, in relation to the shares represented by those shares.
- (4) In this paragraph a “stock lending arrangement” means arrangements between two persons (“the borrower” and “the lender”) under which—
- (a) the lender transfers shares to the borrower otherwise than by way of sale, and
  - (b) a requirement is imposed on the borrower to transfer those shares back to the lender otherwise than by way of sale.
- (5) Any reference in this paragraph to the period of a stock lending arrangement is to the period beginning with the transfer of the shares by the lender to the borrower and ending—
- (a) with the transfer of the shares back to the lender in pursuance of the arrangement, or
  - (b) when it becomes apparent that the requirement for the borrower to make a transfer back to the lender will not be complied with.
- (6) The following provisions apply for the purposes of this paragraph as they apply for the purposes of section 263B—
- (a) subsections (5) and (6) of that section (references to transfer back of securities to include transfer of other securities of the same description);
  - (b) section 263C (references to transfer back of securities to include payment in respect of redemption).

***Effect in relation to company invested in of earlier company reconstruction etc***

- 14 (1) This paragraph applies where shares in one company (“company X”)—
- (a) are exchanged (or deemed to be exchanged) for shares in another company (“company Y”), or
  - (b) are deemed to be exchanged by virtue of section 136 for shares in company X and shares in another company (“company Y”),
- in circumstances such that, under section 127 as that section applies by virtue of section 135 or 136, the original shares and the new holding are treated as the same asset.

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- (2) Where company Y—
- (a) is the company invested in, and is accordingly the company by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) falls to be met, or
  - (b) is a company by reference to which, by virtue of this paragraph, that requirement may be met, or
  - (c) is a company by reference to which, by virtue of paragraph 15 (effect of earlier demerger) that requirement may be met,
- that requirement may instead be met, in relation to times before the exchange (or deemed exchange), by reference to company X.
- (3) If in any case that requirement can be met by virtue of this paragraph (or by virtue of this paragraph together with paragraph 15), it shall be treated as met.
- (4) In sub-paragraph (1) “original shares” and “new holding” shall be construed in accordance with sections 126, 127, 135 and 136.

***Effect in relation to company invested in of earlier demerger***

- 15 (1) This paragraph applies where shares in one company (“the subsidiary”) are transferred by another company (“the parent company”) on a demerger.
- (2) Where the subsidiary—
- (a) is the company invested in, and is accordingly the company by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) falls to be met, or
  - (b) is a company by reference to which, by virtue of this paragraph, that requirement may be met, or
  - (c) is a company by reference to which, by virtue of paragraph 14 (effect of earlier company reconstruction etc), that requirement may be met,
- that requirement may instead be met, in relation to times before the transfer, by reference to the parent company.
- (3) If in any case that requirement can be met by virtue of this paragraph (or by virtue of this paragraph together with paragraph 14), it shall be treated as met.
- (4) In this paragraph a “transfer of shares on a demerger” means a transfer such that, by virtue of section 192(2)(b), sections 126 to 130 apply as if the parent company and the subsidiary were the same company and the transfer were a reorganisation of that company’s share capital not involving a disposal or acquisition.

***Effect of investing company’s liquidation***

- 16 Where assets of the investing company, or of a company that is a member of the same group as the investing company, are vested in a liquidator under section 145 of the Insolvency Act 1986 or Article 123 of the Insolvency (Northern Ireland) Order 1989 or otherwise, this Part applies as if the assets were vested in, and the acts of the liquidator in relation to the assets were the

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acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

***Special rules for assets of insurance company’s long-term insurance fund***

17 (1) In the following two cases paragraph 8(1) (meaning of substantial shareholding) has effect as if, in paragraphs (a), (b) and (c), “30%” were substituted for “10%”.

(2) The first case is where the investing company is an insurance company and the disposal is of an asset of its long-term insurance fund.

(3) The second case is where—

- (a) the investing company is a 51% subsidiary of an insurance company, and
- (b) the insurance company holds as an asset of its long-term insurance fund shares or an interest in shares—
  - (i) in the investing company, or
  - (ii) in another company through which it owns shares in the investing company.

The reference in paragraph (b)(ii) to owning shares through another company has the same meaning as in section 838 of the Taxes Act (subsidiaries).

(4) Where the investing company is a member of a group that includes an insurance company, paragraph 9 (aggregation of holdings of group companies) does not apply in relation to shares or an interest in shares held by the insurance company as assets of its long-term insurance fund.

(5) In this paragraph “insurance company” and “long-term insurance fund” have the meanings given by section 431(2) of the Taxes Act.

**PART 3 REQUIREMENTS TO BE MET IN RELATION TO INVESTING COMPANY AND COMPANY INVESTED IN**

***Requirements relating to the investing company***

18 (1) The investing company must—

- (a) have been a sole trading company or a member of a qualifying group throughout the period (“the qualifying period”)—
  - (i) beginning with the start of the latest twelve-month period by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) is met, and
  - (ii) ending with the time of the disposal, and
- (b) be a sole trading company or a member of a qualifying group immediately after the time of the disposal.

(2) For this purpose a “qualifying group” means—

- (a) a trading group, or

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- (b) a group that would be a trading group if the activities of any group member that is not established for profit were disregarded to the extent that they are carried on otherwise than for profit.

In determining whether a company is established for profit, no account shall be taken of any object or power of the company that is only incidental to its main objects.

- (3) The requirement in sub-paragraph (1)(a) is met if the investing company was a sole trading company for some of the qualifying period and a member of a qualifying group for the remainder of that period.
- (4) The requirement in sub-paragraph (1)(a) is treated as met if at the time of the disposal—
- (a) the investing company is a member of a group, and
  - (b) there is another member of the group in relation to which that requirement would have been met if—
    - (i) the subject matter of the disposal had been transferred to it immediately before the disposal in circumstances in which section 171(1) (transfers within a group) applied, and
    - (ii) it had made the disposal.
- (5) If the disposal is by virtue of section 28(1) or (2) (asset disposed of under contract) treated as made at a time before the asset is conveyed or transferred, the requirements in sub-paragraph (1)(a) and (b) must also be complied with as they would have effect if the references in those provisions and sub-paragraph (4) to the time of the disposal were to the time of the conveyance or transfer.
- (6) In this paragraph a “sole trading company” means a trading company that is not a member of a group.

***Requirements relating to the company invested in***

- 19 (1) The company invested in must—
- (a) have been a qualifying company throughout the period—
    - (i) beginning with the start of the latest twelve-month period by reference to which the requirement of paragraph 7 (the substantial shareholding requirement) is met, and
    - (ii) ending with the time of the disposal, and
  - (b) be a qualifying company immediately after the time of the disposal.
- (2) For this purpose a “qualifying company” means a trading company or the holding company of a trading group or a trading subgroup.
- (3) If the disposal is by virtue of section 28(1) or (2) (asset disposed of under contract) treated as made at a time before the asset is conveyed or transferred, the requirements in sub-paragraph (1)(a) and (b) must also be complied with as they would have effect if the references there to the time of the disposal were to the time of the conveyance or transfer.



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### **Meaning of “trading compan”y**

- 20 (1) In this Schedule “trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) “trading activities” means activities carried on by the company—
- (a) in the course of, or for the purposes of, a trade being carried on by it,
  - (b) for the purposes of a trade that it is preparing to carry on,
  - (c) with a view to its acquiring or starting to carry on a trade, or
  - (d) with a view to its acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group or trading subgroup, and
    - (ii) if the acquiring company is a member of a group, is not a member of that group.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a 51% subsidiary of the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group.

### **Meaning of “trading grou”p**

- 21 (1) In this Schedule “trading group” means a group—
- (a) one or more of whose members carry on trading activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) “trading activities” means activities carried on by a member of the group—
- (a) in the course of, or for the purposes of, a trade being carried on by any member of the group,
  - (b) for the purposes of a trade that any member of the group is preparing to carry on,
  - (c) with a view to any member of the group acquiring or starting to carry on a trade, or
  - (d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group or trading subgroup, and

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- (ii) is not a member of the same group as the acquiring company.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
  - (a) such as would make that company a member of the same group as the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture company a member of the same group as the acquiring company.
- (5) For the purposes of this paragraph the activities of the members of the group shall be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).

**Meaning of “trading subgroup”**

- 22 (1) In this Schedule “trading subgroup” means a subgroup—
- (a) one or more of whose members carry on trading activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) “trading activities” means activities carried on by a member of the subgroup—
- (a) in the course of, or for the purposes of, a trade being carried on by any member of the subgroup,
  - (b) for the purposes of a trade that any member of the subgroup is preparing to carry on,
  - (c) with a view to any member of the subgroup acquiring or starting to carry on a trade, or
  - (d) with a view to any member of the subgroup acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group or trading subgroup, and
    - (ii) is not a member of the same group as the acquiring company.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) unless the acquisition is made, or (as the case may be) the subgroup member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a member of the same subgroup as the acquiring company, or

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- (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group.
- (5) For the purposes of this paragraph the activities of the members of the subgroup shall be treated as one business (with the result that activities are disregarded to the extent that they are intra-subgroup activities).

### ***Treatment of holdings in joint venture companies***

23 (1) This paragraph applies where a company (“the company”) has a qualifying shareholding in a joint venture company.

- (2) In determining whether the company is a trading company—
- (a) its holding of shares in the joint venture company shall be disregarded, and
  - (b) it shall be treated as carrying on an appropriate proportion—
    - (i) of the activities of the joint venture company, or
    - (ii) where the joint venture company is a holding company, of the activities of that company and its 51% subsidiaries.

This sub-paragraph does not apply if the company is a member of a group and the joint venture company is a member of the same group.

- (3) In determining whether the company is a member of a trading group or the holding company of a trading group—
- (a) every holding of shares in the joint venture company by a member of the group having a qualifying shareholding in that company shall be disregarded, and
  - (b) each member of the group having a qualifying shareholding in the joint venture company shall be treated as carrying on an appropriate proportion—
    - (i) of the activities of the joint venture company, or
    - (ii) where the joint venture company is a holding company, of the activities of that company and its 51% subsidiaries.

This sub-paragraph does not apply if the joint venture company is a member of the group.

- (4) In determining whether the company is the holding company of a trading subgroup—
- (a) every holding of shares in the joint venture company by the company and any of its 51% subsidiaries having a qualifying shareholding in the joint venture company shall be disregarded, and
  - (b) the company and each of its 51% subsidiaries having a qualifying shareholding in the joint venture company shall be treated as carrying on an appropriate proportion—
    - (i) of the activities of the joint venture company, or
    - (ii) where the joint venture company is a holding company, of the activities of that company and its 51% subsidiaries.

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This sub-paragraph does not apply if the joint venture company is a member of the same group as the company.

- (5) In sub-paragraphs (2)(b), (3)(b) and (4)(b) “an appropriate proportion” means a proportion corresponding to the percentage of the ordinary share capital of the joint venture company held by the company concerned.
- (6) In this paragraph “shares”, in relation to a joint venture company, includes securities of that company or an interest in shares in or securities of that company.
- (7) For the purposes of this paragraph the activities of a joint venture company that is a holding company and its 51% subsidiaries shall be treated as a single business (so that activities are disregarded to the extent that they are intra-group activities or, as the case may be, intra-subgroup activities).

***Meaning of “joint venture company” and “qualifying shareholding”***

- 24 (1) For the purposes of this Schedule a company is a “joint venture company” if, and only if—
- (a) it is a trading company or the holding company of a trading group or trading subgroup, and
  - (b) there are five or fewer persons who between them hold 75% or more of its ordinary share capital.

In determining whether there are five or fewer such persons as are mentioned in paragraph (b), the members of a group are treated as if they were a single company.

- (2) For the purposes of this Schedule—
- (a) a company that is not a member of a group has a “qualifying shareholding” in a joint venture company if, and only if, it holds shares or an interest in shares in the joint venture company by virtue of which it holds 10% or more of that company’s ordinary share capital;
  - (b) a company that is a member of a group has a “qualifying shareholding” in a joint venture company if, and only if—
    - (i) it holds ordinary share capital of the joint venture company, and
    - (ii) the members of the group between them hold 10% or more of the ordinary share capital of that company.

***Effect in relation to company invested in of earlier company reconstruction, demerger etc***

- 25 The provisions of—
- (a) paragraph 14 (effect of earlier company reconstruction etc), and
  - (b) paragraph 15 (effect of earlier demerger),
- have effect in relation to the requirements of paragraph 19 (requirements in relation to company invested in) as they have effect in relation to the requirement of paragraph 7 (the substantial shareholding requirement).

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## PART 4 INTERPRETATION

### **Meaning of “company”, “group” and related expressions**

26 (1) In this Schedule—

- (a) “company” has the meaning given by section 170(9); and
  - (b) references to a group, or to membership of a group, shall be construed in accordance with the provisions of section 170 read as if “51 per cent” were substituted for “75 per cent”.
- (2) References in this Schedule to a “subgroup” are to companies that would form a group but for the fact that one of them is a 51% subsidiary of another company.
- (3) In this Schedule “holding company”—
- (a) in relation to a group, means the company described in section 170 as the principal company of the group;
  - (b) in relation to a subgroup, means a company that would be the holding company of a group but for being a 51% subsidiary of another company.
- (4) In this Schedule “51% subsidiary” has the meaning given by section 838 of the Taxes Act.

In applying that section for the purposes of this Schedule, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

- (5) References in this Schedule to a “group” or “subsidiary” shall be construed with any necessary modifications where applied to a company incorporated under the law of a country or territory outside the United Kingdom.

### **Meaning of “trade”**

27 In this Schedule “trade” means anything that—

- (a) is a trade, profession or vocation, within the meaning of the Income Tax Acts, and
- (b) is conducted on a commercial basis with a view to the realisation of profits.

### **Meaning of “twelve-month period”**

28 For the purposes of this Schedule a “twelve-month period” means a period ending with the day before the first anniversary of the day with which, or in the course of which, the period began.

### **Meaning of “interest in shares”**

29 (1) References in this Schedule to an interest in shares are to an interest as a co-owner of shares.

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- (2) It does not matter whether the shares are owned jointly or in common, or whether the interests of the co-owners are equal.

***Meaning of “asset related to share”s***

- 30 (1) This paragraph explains what is meant by an asset related to shares in a company.
- (2) An asset is related to shares in a company if it is—
- (a) an option to acquire or dispose of shares or an interest in shares in that company, or
  - (b) a security to which are attached rights by virtue of which the holder is or may become entitled to acquire or dispose of (whether by conversion or exchange or otherwise)—
    - (i) shares or an interest in shares in that company, or
    - (ii) an option to acquire or dispose of shares or an interest in shares in that company, or
    - (iii) another security falling within this paragraph, or
  - (c) an option to acquire or dispose of any security within paragraph (b) or an interest in any such security, or
  - (d) an interest in, or option over, any such option or security as is mentioned in paragraph (a), (b) or (c), or
  - (e) any interest in, or option over, any such interest or option as is mentioned in paragraph (d) or this paragraph.
- (3) In determining whether a security is within sub-paragraph (2)(b), no account shall be taken—
- (a) of any rights attached to the security other than rights relating, directly or indirectly, to shares of the company in question, or
  - (b) of rights as regards which, at the time the security came into existence, there was no more than a negligible likelihood that they would in due course be exercised to a significant extent.
- (4) The references in this paragraph to an interest in a security or option have a meaning corresponding to that given by paragraph 29 in relation to an interest in shares.

***Index of defined expressions***

- 31 In this Schedule the expressions listed below are defined or otherwise explained by the provisions indicated:

PART 5 CONSEQUENTIAL PROVISIONS

***Meaning of “chargeable share”s or “chargeable asset”t***

- 32 Any exemption conferred by this Schedule shall be disregarded in determining whether shares are “chargeable shares”, or an asset is a “chargeable asset”, for the purposes of any enactment relating to corporation tax or capital gains tax.

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### ***Negligible value claims***

- 33 (1) This paragraph applies where—
- (a) a company makes a claim under section 24(2) (assets of negligible value) in relation to shares held by it, and
  - (b) by virtue of this Schedule any loss accruing to the company on a disposal of the shares at the time of the claim would not be an allowable loss.
- (2) Where this paragraph applies the company may not exercise the option under section 24(2) to specify a time earlier than the time of the claim as the time when the shares are treated as sold and reacquired by virtue of that subsection.
- (3) This paragraph applies to—
- (a) an interest in shares in a company, or
  - (b) an asset related to shares in a company,
- as it applies to shares in that company.

### ***Reorganisations etc: deemed accrual of chargeable gain or allowable loss held over on earlier transaction***

- 34 (1) The exemptions conferred by this Schedule do not apply to or affect a chargeable gain or allowable loss deemed to accrue on a disposal by virtue of section 116(10)(b) (reorganisations, conversions and reconstructions: deemed accrual of gain or loss held over on earlier transaction).
- (2) Sub-paragraph (1) does not apply where the relevant earlier transaction was a deemed disposal and reacquisition under section 92(7) of the Finance Act 1996 (convertible securities etc).

### ***Recovery of charge postponed on transfer of assets to non-resident company***

- 35 (1) This paragraph applies where—
- (a) a company disposes of an asset in circumstances falling within section 140(4) (recovery of charge postponed on transfer of assets to non-resident company), and
  - (b) by virtue of this Schedule any gain accruing to the company on the disposal would not be a chargeable gain.
- (2) Where this paragraph applies the amount by which the consideration received on the disposal would be treated as increased by virtue of section 140(4) shall instead be treated as accruing to the company, at the time of the disposal, as a chargeable gain to which this Schedule does not apply.
- (3) Any reference in section 140 to an amount being brought or taken into account under or in accordance with subsection (4) of that section includes a reference to an amount being treated, by virtue of sub-paragraph (2) above, as accruing as a chargeable gain.

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### ***Appropriation of asset to trading stock***

36 (1) Where—

- (a) an asset acquired by a company otherwise than as trading stock of a trade carried on by it is appropriated by the company for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise), and
- (b) if the company had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to the company but for an exemption conferred by this Schedule,

the company is treated for the purposes of the enactments relating to chargeable gains as if it had thereby disposed of the asset for its market value.

- (2) Section 173 (transfers within a group: trading stock) applies in relation to this paragraph as it applies in relation to section 161 (appropriations to and from stock).

### ***Recovery of held-over gain on claim for gifts relief***

37 (1) This paragraph applies where—

- (a) a company disposes of an asset,
- (b) the expenditure allowable in computing a gain or loss on that disposal falls to be reduced because of a claim for relief under section 165 (gifts relief) in relation to an earlier disposal, and
- (c) by virtue of this Schedule any gain accruing to the company on the disposal mentioned in paragraph (a) would not be a chargeable gain.

- (2) Where this paragraph applies the amount of the held-over gain, or an appropriate proportion of it, shall be treated as accruing to the company, at the time of the disposal mentioned in sub-paragraph (1)(a), as a chargeable gain to which this Schedule does not apply.

- (3) An “appropriate proportion” means a proportion determined on a just and reasonable basis having regard to the subject matter of the disposal mentioned in sub-paragraph (1)(a) and the subject matter of the earlier disposal that was the subject of the claim for relief under section 165.

- (4) In this paragraph “held-over gain” has the same meaning as in section 165.

### ***Degrouping: time when deemed sale and reacquisition treated as taking place***

38 (1) Where—

- (a) a company, as a result of ceasing at any time (“the time of degrouping”) to be a member of a group, is treated by section 179(3) as having sold and immediately reacquired an asset, and
- (b) if the company owning the asset at the time of degrouping had disposed of it immediately before that time, any gain accruing on the disposal would by virtue of this Schedule not have been a chargeable gain,



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section 179(3) shall have effect as if it provided for the deemed sale and reacquisition to be treated as taking place immediately before the time of degrouping.

(2) Where—

(a) a company, as a result of ceasing at any time (“the relevant time”) to satisfy the conditions in section 179(7), is treated by section 179(6) as having sold and immediately reacquired an asset, and

(b) if the company owning the asset at the relevant time had disposed of it immediately before that time, any gain accruing on the disposal would by virtue of this Schedule not have been a chargeable gain,

section 179(6) shall have effect as if it provided for the deemed sale and reacquisition to be treated as taking place immediately before the relevant time.

(3) Any reference in this paragraph to a disposal or other event taking place immediately before the time of degrouping or the relevant time is to its taking place immediately before that time but on the same day.

#### ***Effect of FOREX matching regulations***

39 (1) No gain or loss shall be treated as arising under the FOREX matching regulations on a disposal on which by virtue of this Schedule any gain would not be a chargeable gain.

(2) The “FOREX matching regulations” means any regulations made under Schedule 15 to the Finance Act 1993 (exchange gains and losses: alternative method of calculation).”.

## **PART 2**

### **CONSEQUENTIAL AMENDMENTS**

#### ***Degrouping: time of accrual of chargeable gain or allowable loss***

2 In section 179(4) of the Taxation of Chargeable Gains Act 1992 (c. 12) (deemed sale and reacquisition on company ceasing to be member of group: time when chargeable gain or allowable loss treated as accruing), for “which, apart from this subsection, would accrue” substitute “accruing”.

#### ***Treatment of furnished holiday lettings***

3 (1) Section 241 of the Taxation of Chargeable Gains Act 1992 (furnished holiday lettings) is amended as follows.

(2) In subsection (3) (commercial letting of furnished holiday accommodation to be treated as trade for certain purposes), for the opening words substitute—

“Subject to subsections (4) to (8) below, for the purposes of the provisions mentioned in subsection (3A) below—”.

(3) After that subsection insert—

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“(3A) The provisions referred to in subsection (3) above are—  
 sections 152 to 157 (roll-over relief on replacement of business asset),  
 section 165 (gifts relief),  
 Section 253 (relief for loans to traders),  
 Schedule A1 (taper relief),  
 Schedule 6 (retirement relief etc), and  
 Schedule 7AC (exemptions for disposals by companies with  
 substantial shareholding).”.

(4) In subsection (4) for “sections mentioned in subsection (3)” substitute “ provisions mentioned in subsection (3A) ”.

*Overseas life insurance companies*

- 4 In Schedule 7B of the Taxation of Chargeable Gains Act 1992 (c. 12) (modification of Act in relation to overseas life insurance companies), after paragraph 15 add—
- “16 In Schedule 7AC, in paragraph 3(2)(c)(ii), the words “section 11(2)(b), (c) or (d) of the Taxes Act” shall be treated as substituted for the words “section 10(3)”.”.

*Corporate venturing scheme*

- 5 In Schedule 15 to the Finance Act 2000 (c. 17) (the corporate venturing scheme), in paragraphs 84(1) and 85(1) after “(see paragraph 83” insert “ and paragraph 4 of Schedule 7AC to the Taxation of Chargeable Gains Act 1992 ”.

SCHEDULE 9

Section 45

CHARGEABLE GAINS: SHARE EXCHANGES AND COMPANY RECONSTRUCTIONS

**PART 1**

PROVISIONS REPLACING SECTIONS 135 AND 136 OF  
 THE TAXATION OF CHARGEABLE GAINS ACT 1992

*Share exchanges*

- 1 For section 135 of the Taxation of Chargeable Gains Act 1992 (exchange of securities for those in another company) substitute—

**“135 Exchange of securities for those in another company**

- (1) This section applies in the following circumstances where a company (“company B”) issues shares or debentures to a person in exchange for shares in or debentures of another company (“company A”).
- (2) The circumstances are:

*Case 1*

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Where company B holds, or in consequence of the exchange will hold, more than 25% of the ordinary share capital of company A.

*Case 2*

Where company B issues the shares or debentures in exchange for shares as the result of a general offer—

- (a) made to members of company A or any class of them (with or without exceptions for persons connected with company B), and
- (b) made in the first instance on a condition such that if it were satisfied company B would have control of company A.

*Case 3*

Where company B holds, or in consequence of the exchange will hold, the greater part of the voting power in company A.

- (3) Where this section applies, sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.
- (4) In this section “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act and also includes—
  - (a) in relation to a unit trust scheme, any rights that are treated by section 99(1)(b) of this Act (application of Act to unit trust schemes) as shares in a company, and
  - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.
- (6) This section has effect subject to section 137(1) (exchange must be for bona fide commercial reasons and not part of tax avoidance scheme).”.

*Scheme of reconstruction involving issue of securities*

- 2 For section 136 of the Taxation of Chargeable Gains Act 1992 (c. 12) (reconstruction or amalgamation involving issue of securities) substitute—

**“136 Scheme of reconstruction involving issue of securities**

- (1) This section applies where—
  - (a) an arrangement between a company (“company A”) and—
    - (i) the persons holding shares in or debentures of the company, or
    - (ii) where there are different classes of shares in or debentures of the company, the persons holding any class of those shares or debentures,

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is entered into for the purposes of, or in connection with, a scheme of reconstruction, and

- (b) under the arrangement—
  - (i) another company (“company B”) issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their relevant holdings in company A, and
  - (ii) the shares in or debentures of company A comprised in relevant holdings are retained by those persons or are cancelled or otherwise extinguished.

(2) Where this section applies—

- (a) those persons are treated as exchanging their relevant holdings in company A for the shares or debentures held by them in consequence of the arrangement, and
- (b) sections 127 to 131 (share reorganisations etc) apply with the necessary adaptations as if company A and company B were the same company and the exchange were a reorganisation of its share capital.

For this purpose shares in or debentures of company A comprised in relevant holdings that are retained are treated as if they had been cancelled and replaced by a new issue.

(3) Where a reorganisation of the share capital of company A is carried out for the purposes of the scheme of reconstruction, the provisions of subsections (1) and (2) apply in relation to the position after the reorganisation.

(4) In this section—

- (a) “scheme of reconstruction” has the meaning given by Schedule 5AA to this Act;
- (b) references to “relevant holdings” of shares in or debentures of company A are—
  - (i) where there is only one class of shares in or debentures of the company, to holdings of shares in or debentures of the company, and
  - (ii) where there are different classes of shares in or debentures of the company, to holdings of a class of shares or debentures that is involved in the scheme of reconstruction (within the meaning of paragraph 2 of Schedule 5AA);
- (c) references to shares or debentures being retained include their being retained with altered rights or in an altered form, whether as the result of reduction, consolidation, division or otherwise; and
- (d) any reference to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.

(5) This section applies in relation to a company that has no share capital as if references to shares in or debentures of the company included any interests in the company possessed by members of the company.

(6) This section has effect subject to section 137(1) (scheme of reconstruction must be for bona fide commercial reasons and not part of tax avoidance scheme).”.

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### Meaning of “scheme of reconstruction”

3 After Schedule 5A to the Taxation of Chargeable Gains Act 1992 insert—

#### “SCHEDULE 5AA

##### MEANING OF “SCHEME OF RECONSTRUCTION”

###### **Introductory**

1 In section 136 “scheme of reconstruction” means a scheme of merger, division or other restructuring that meets the first and second, and either the third or the fourth, of the following conditions.

###### **First condition: issue of ordinary share capital**

2 The first condition is that the scheme involves the issue of ordinary share capital of a company (“the successor company”) or of more than one company (“the successor companies”)—

- (a) to holders of ordinary share capital of another company (“the original company”) or, where there are different classes of ordinary share capital of that company, to holders of one or more classes of ordinary share capital of that company (the classes “involved in the scheme of reconstruction”), or
- (b) to holders of ordinary share capital of more than one other company (“the original companies”) or, where there are different classes of ordinary share capital of one or more of the original company or companies, to holders of ordinary share capital of any of those companies or of one or more classes of ordinary share capital of any of those companies (the classes “involved in the scheme of reconstruction”),

and does not involve the issue of ordinary share capital of the successor company, or (as the case may be) any of the successor companies, to anyone else.

###### **Second condition: equal entitlement to new shares**

3 (1) The second condition is that under the scheme the entitlement of any person to acquire ordinary share capital of the successor company or companies by virtue of holding relevant shares, or relevant shares of any class, is the same as that of any other person holding such shares or shares of that class.

(2) For this purpose “relevant shares” means shares comprised—

- (a) where there is one original company, in the ordinary share capital of that company or, as the case may be, in the ordinary share capital of that company of a class involved in the scheme of reconstruction;
- (b) where there is more than one original company, in the ordinary share capital of any of those companies or, as the case may be, in the ordinary share capital of any of those companies of a class involved in the scheme of reconstruction.

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***Third condition: continuity of business***

- 4 (1) The third condition is that the effect of the restructuring is—
- (a) where there is one original company, that the business or substantially the whole of the business carried on by the company is carried on—
    - (i) by a successor company which is not the original company, or
    - (ii) by two or more successor companies (which may include the original company);
  - (b) where there is more than one original company, that all or part of the business or businesses carried on by one or more of the original companies is carried on by a different company, and the whole or substantially the whole of the businesses carried on by the original companies are carried on—
    - (i) where there is one successor company, by that company (which may be one of the original companies), or
    - (ii) where there are two or more successor companies, by those companies (which may be the same as the original companies or include any of those companies).
- (2) The reference in sub-paragraph (1)(a)(ii) or (b)(ii) to the whole or substantially the whole of a business, or businesses, being carried on by two or more companies includes the case where the activities of those companies taken together embrace the whole or substantially the whole of the business, or businesses, in question.
- (3) For the purposes of this paragraph a business carried on by a company that is under the control of another company is treated as carried on by the controlling company as well as by the controlled company.

Section 840 of the Taxes Act (meaning of “control”) applies for the purposes of this sub-paragraph.

- (4) For the purposes of this paragraph the holding and management of assets that are retained by the original company, or any of the original companies, for the purpose of making a capital distribution in respect of shares in the company shall be disregarded.

In this sub-paragraph “capital distribution” has the same meaning as in section 122.

***Fourth condition: compromise or arrangement with members***

- 5 The fourth condition is that—
- (a) the scheme is carried out in pursuance of a compromise or arrangement—
    - (i) under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986, or
    - (ii) under any corresponding provision of the law of a country or territory outside the United Kingdom, and

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- (b) no part of the business of the original company, or of any of the original companies, is transferred under the scheme to any other person.

***Preliminary reorganisation of share capital to be disregarded***

- 6 Where a reorganisation of the share capital of the original company, or of any of the original companies, is carried out for the purposes of the scheme of reconstruction, the provisions of the first and second conditions apply in relation to the position after the reorganisation.

***Subsequent issue of shares or debentures to be disregarded***

- 7 An issue of shares in or debentures of the successor company, or any of the successor companies, after the latest date on which any ordinary share capital of the successor company, or any of them, is issued—
- (a) in consideration of the transfer of any business, or part of a business, under the scheme, or
  - (b) in pursuance of the compromise or arrangement mentioned in paragraph 5(a),
- shall be disregarded for the purposes of the first and second conditions.

***Interpretation***

- 8 (1) In this Schedule “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act and also includes—
- (a) in relation to a unit trust scheme, any rights that are treated by section 99(1)(b) of this Act (application of Act to unit trust schemes) as shares in a company, and
  - (b) in relation to a company that has no share capital, any interests in the company possessed by members of the company.
- (2) Any reference in this Schedule to a reorganisation of a company’s share capital is to a reorganisation within the meaning of section 126.”

**PART 2**

CONSEQUENTIAL AMENDMENTS

*Taxes Act 1988*

- 4 (1) The Taxes Act 1988 is amended as follows.
- (2) In section 299 (disposal of shares)—
- (a) in subsection (6D), as that section applies to shares issued after 31st December 1993 (enterprise investment scheme), and
  - (b) in subsection (4C), as that section applies to shares issued before 1st January 1994 (business expansion scheme),
- for “(whether or not by virtue of section 135(3) of that Act)” substitute “ (including a case where that section applies by virtue of any enactment relating to chargeable gains) ”, and for the words from “shall be construed” to the end substitute “ have the

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same meaning as in section 127 of the 1992 Act (or, as the case may be, that section as applied by virtue of the enactment concerned) ”.

- (3) In section 312(3) (interpretation of Chapter 3 of Part 7: references to disposal of shares), for “136(1)” substitute “ 136 ”.
- (4) In section 473(6) (conversion etc of securities held as circulating capital), for “136(3)” substitute “ 135(5), 136(5) ”.
- (5) In section 757 (disposal of material interests in non-qualifying offshore funds), for subsections (5) and (6) substitute—

“(5) Section 135 of the 1992 Act (exchange of securities for those in another company treated as not involving a disposal) does not apply for the purposes of this Chapter if the company that is company A for the purposes of that section is or was at a material time a non-qualifying offshore fund and the company that is company B for those purposes is not such a fund.

In a case where that section would apply apart from this subsection, the exchange in question (of shares, debentures or other interests in or of an entity that is or was at a material time a non-qualifying offshore fund) shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

- (6) Section 136 of the 1992 Act (scheme of reconstruction involving issue of securities treated as exchange not involving disposal) does not apply for the purposes of this Chapter so as to require persons to be treated as exchanging shares, debentures or other interests in or of an entity that is or was at a material time a non-qualifying offshore fund for assets that do not constitute interests in such a fund.

In a case where that section would apply apart from this subsection, the deemed exchange in question (of shares, debentures or other interests in or of an entity that is or was at a material time a non-qualifying offshore fund) shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the deemed exchange.”.

- (6) In section 758(6) (offshore funds operating equalisation arrangements: events treated as disposal), for the words from “section 135” to the end substitute “ any provision of Chapter 2 of Part 4 of that Act ”.
- (7) In section 842 (investment trusts), at the end of subsection (4) add “and “scheme of reconstruction” has the same meaning as in section 136 of that Act”.

### *Taxation of Chargeable Gains Act 1992*

- 5 (1) The Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In section 31 (distributions within a group followed by a disposal of shares), for subsection (6)(b) substitute—
  - “(b) an exchange, or deemed exchange, of shares in or debentures of a company held by company A for shares in or debentures of another company, being a company associated with company A immediately after the transaction, that is treated by virtue of section 135 or 136 as



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a reorganisation of share capital within the meaning of section 126 to which sections 127 to 131 apply with the necessary adaptations, or”.

- (3) In section 34 (transactions treated as a reorganisation of capital)—
- (a) in subsections (1)(a), (1A), (1B) and (1C)(a) for “sections 127 and 135(3)” substitute “ section 135 or 136 ”;
  - (b) in the closing words of subsection (1) for “section 135(3)” substitute “ section 135 or 136 ”; and
  - (c) in subsection (2) for the words from the beginning to “and in those subsections” substitute “ In subsections (1) to (1C) ” (the words omitted being unnecessary).
- (4) In section 102 (collective investment schemes with property divided into separate parts), in subsection (3)(b) after “135” insert “ or 136 ”.
- (5) In section 137 (restriction on application of sections 135 and 136)—
- (a) in subsection (1), for “, reconstruction or amalgamation” substitute “ or scheme of reconstruction ”; and
  - (b) in subsection (6), for “section 136(3)” substitute “ section 135(5), 136(5) ”.
- (6) In section 138(1) (procedure for clearance in advance), for “, reconstruction or amalgamation” substitute “ or scheme of reconstruction ”.
- (7) In section 139 (reconstruction involving transfer of business), for subsection (9) substitute—
- “(9) In this section “scheme of reconstruction” has the same meaning as in section 136.”.
- (8) In section 147 (quoted options treated as part of new holdings)—
- (a) in subsection (1) for “or amalgamation” substitute “, exchange or scheme of reconstruction ”; and
  - (b) in subsection (2) at the end insert “ and “scheme of reconstruction” has the same meaning as in section 136 ”.
- (9) In section 151B (venture capital trusts: supplementary), in subsection (8) for paragraph (c) substitute—
- “(c) a reference to the exchanged holding is, in relation to section 135 or 136, to the shares in the company referred to in that section as company A.”.
- (10) In section 171(3) (transfers within a group) for “by virtue of sections 127 and 135” substitute “ by section 127 as it applies by virtue of section 135 ”.
- (11) In section 211(2)(a) (transfer of long-term business of insurance company), after “scheme of reconstruction” insert “ within the meaning of that section ”.
- (12) In section 251 (debts: general provisions)—
- (a) in subsection (2) for “132 and 135” substitute “ 132, 135 and 136 ”;
  - (b) in subsection (3)—
    - (i) for “132 and 135” substitute “ 132, 135 and 136 ”, and
    - (ii) for “either section 132 or 135” substitute “ section 132, 135 or 136 ”;
  - (c) in subsection (6)(b) for the words from “unaffected” to the end substitute “ to which section 135 applies and which is unaffected by section 137(1) ”.

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- (13) In Schedule A1 (taper relief), in paragraph 18(1)(b) (special rules for assets acquired in the reconstruction of mutual businesses etc) for “subsection (3)” substitute “subsection (2)(a)”.
- (14) In Schedule 6 (retirement relief: supplementary provisions), in paragraph 2(2) for “section 135(3)” substitute “section 135 or 136”.

*Finance Act 2000*

- 6 (1) Schedule 15 to the Finance Act 2000 (c. 17) (corporate venturing scheme) is amended as follows.
- (2) In paragraph 71 (tax avoidance), in sub-paragraph (1)(b)(ii) for “reconstructions and amalgamations” substitute “schemes of reconstruction”.
- (3) In paragraph 82(1) (company reconstructions and amalgamations), in the closing words for “company reconstructions and amalgamations” substitute “share exchanges and company reconstructions”.
- (4) In paragraph 93(7) (identification of shares on a disposal: cases to which section 127 applies)—
- (a) for “(whether or not by virtue of section 135(3) of that Act)” substitute “(including a case where that section applies by virtue of any enactment relating to chargeable gains)”; and
- (b) for the words from “shall be construed” to the end substitute “have the same meaning as in section 127 of the 1992 Act (or, as the case may be, that section as applied by virtue of the enactment concerned)”.
- (5) In paragraph 96 (meaning of “disposal”)—
- (a) in sub-paragraph (2)(a) for “section 136(1)” substitute “section 136”;
- (b) in sub-paragraph (2)(b) for “sections 135 and 136 of that Act to bona fide reconstructions and amalgamations” substitute “section 136 of that Act to bona fide schemes of reconstruction”.

**PART 3**

COMMENCEMENT

*General commencement date*

- 7 (1) Subject to paragraph 8, the provisions of this Schedule have effect in relation to shares or debentures issued on or after 17th April 2002 (“the commencement date”).
- (2) The reference in sub-paragraph (1) to shares or debentures includes any interests falling to be treated as shares or debentures for the purposes of section 135 or 136 of the Taxation of Chargeable Gains Act 1992 (c. 12) as substituted by this Schedule.

*Commencement provision for certain consequential amendments*

- 8 (1) Paragraph 4(2), (3) and (5) and paragraph 6(2), (4) and (5) have effect in relation to disposals on or after the commencement date.

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- (2) Paragraph 4(4) has effect in relation to transactions to which section 473 of the Taxes Act 1988 applies occurring on or after the commencement date.
- (3) Paragraph 4(6) has effect in relation to events occurring on or after the commencement date.
- (4) Paragraph 4(7) has effect in relation to shares and securities (within the meaning of section 842 of the Taxes Act 1988) issued on or after the commencement date.

## SCHEDULE 10

Section 47

### CHARGEABLE GAINS: TAPER RELIEF: MINOR AMENDMENTS

#### *Introduction*

- 1 Schedule A1 to the Taxation of Chargeable Gains Act 1992 (c. 12) (taper relief) is amended as follows.

#### *Periods of share ownership that do not count because of change of activity by company*

- 2 Paragraph 11 (periods of share ownership not to count where there is a change of activity by the company) shall cease to have effect in relation to disposals on or after 17th April 2002.

#### *Periods of share ownership not to count where company is not active*

- 3 (1) After that paragraph insert—

#### **“Periods of share ownership not to count if company is not active**

11A (1) Where there is a disposal of an asset consisting of shares in a company, any period after 5th April 1998 during which the asset consisted of shares in a company that—

- (a) was a close company, and
- (b) was not active,

shall not count for the purposes of taper relief.

- (2) Subject to the following provisions of this paragraph, a company is regarded as active at any time when—

- (a) it is carrying on a business of any description,
- (b) it is preparing to carry on a business of any description, or
- (c) it or another person is winding up the affairs of a business of any description that it has ceased to carry on.

- (3) In sub-paragraph (2) above—

- (a) references to a business include a business that is not conducted on a commercial basis or with a view to the realisation of a profit, and
- (b) references to carrying on a business include holding assets and managing them.

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- (4) For the purposes of this paragraph a company is not regarded as active by reason only of its doing all or any of the following—
- (a) holding money (in any currency) in cash or on deposit;
  - (b) holding other assets whose total value is insignificant;
  - (c) holding shares in or debentures of a company that is not active;
  - (d) making loans to an associated company or to a participator or an associate of a participator;
  - (e) carrying out administrative functions in order to comply with requirements of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986 or other regulatory requirements.
- (5) Notwithstanding anything in sub-paragraphs (2) to (4) above a company shall be treated as active for the purposes of this paragraph if—
- (a) it is the holding company of a group of companies that contains at least one active company, or
  - (b) it has a qualifying shareholding in a joint venture company or is the holding company of a group of companies any member of which has a qualifying shareholding in a joint venture company.
- (6) In this paragraph “associated company” has the meaning given by section 416 of the Taxes Act and “participator” and “associate” have the meaning given by section 417 of that Act.
- (7) Any reference in this paragraph to shares in or debentures of a company includes an interest in, or option in respect of, shares in or debentures of a company.”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to disposals on or after 17th April 2002.

*Meaning of “holding company”*

- 4 (1) In paragraph 22(1) (interpretation) for the definition of “holding company” substitute—
- ““holding company” means a company that has one or more 51% subsidiaries;”.
- (2) In paragraph 23 (provisions as to holdings in joint venture companies), omit the following provisions—
- (a) the final sentence of sub-paragraph (4);
  - (b) sub-paragraph (5);
  - (c) in sub-paragraph (7), the words “, (5)(b)”.
- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

*Meaning of “interest in share”s*

- 5 (1) In paragraph 22(1) (interpretation), at the appropriate place insert—
- ““interest in shares” means an interest as a co-owner (whether the shares are owned jointly or in common, and whether or not the interests of

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the co-owners are equal), and “interest in debentures”, in relation to any debentures, has a corresponding meaning.”.

- (2) The amendment in sub-paragraph (1) applies to disposals on or after 17th April 2002 and as it so applies has effect in relation to periods of ownership on or after that date.

#### *Meaning of “joint venture company” and “qualifying shareholding”*

- 6 (1) In paragraph 22(1) (interpretation), at the appropriate places insert—

““joint venture company” has the meaning given by paragraph 23(2) below;”;

““qualifying shareholding”, in relation to a joint venture company, has the meaning given by paragraph 23(3) below;”.

- (2) In paragraph 23(2) and (3) for “this paragraph” substitute “ this Schedule ”.
- (3) The amendments in this paragraph have effect in relation to disposals on or after 17th April 2002.

#### *Meaning of “ordinary share capital”*

- 7 (1) In paragraph 22(1) (interpretation) at the appropriate place insert—

““ordinary share capital” has the meaning given by section 832(1) of the Taxes Act;”.

- (2) Omit paragraphs 23(10) and 24(6).
- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002.

#### *Debentures to be treated as shares*

- 8 (1) In paragraph 22(1) (interpretation), in the definition of “shares” for “includes any securities of that company” substitute—

“includes—

- (a) any securities of that company, and
- (b) any debentures of that company that are deemed, by virtue of section 251(6), to be securities for the purposes of that section”.

- (2) The amendment made by sub-paragraph (1) applies in relation to disposals on or after 6th April 2001 (so that assets disposed of on or after that date that are treated as shares by virtue of that sub-paragraph shall be treated as having been shares in relation to all times relevant for the purposes of Schedule A1).

This is subject to the following provisions.

- (3) In relation to any time before 17th April 2002, the amendment made by sub-paragraph (1) does not apply to the references to shares in the following provisions of that Schedule—
- (a) paragraph 5 (conditions for assets other than shares to qualify as business assets);
- (b) paragraph 6A (meaning of “material interest” for purposes of paragraph 6);

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- (c) paragraph 11 (periods of share ownership not to count where there is a change of activity by the company), except sub-paragraph (6);
  - (d) paragraph 11A (periods of share ownership not to count if company is not active);
  - (e) paragraph 12 (periods of share ownership not to count in a case of value-shifting);
  - (f) the definition of “unlisted company” in paragraph 22(1).
- (4) The amendment made by sub-paragraph (1) does not apply to the references to shares in paragraph 18(1) of that Schedule (special rules for assets acquired in the reconstruction of mutual businesses etc) in so far as they relate to shares issued before 17th April 2002.

*Meaning of “trading company”*

- 9 (1) In paragraph 22(1) (interpretation), for the definition of “trading company” substitute—

““trading company” has the meaning given by paragraph 22A below;”.

- (2) After that paragraph insert—

**“Meaning of “trading company”**

22A(1) In this Schedule “trading company” means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.

- (2) For the purposes of sub-paragraph (1) above “trading activities” means activities carried on by the company—

- (a) in the course of, or for the purposes of, a trade being carried on by it,
- (b) for the purposes of a trade that it is preparing to carry on,
- (c) with a view to its acquiring or starting to carry on a trade, or
- (d) with a view to its acquiring a significant interest in the share capital of another company that—

(i) is a trading company or the holding company of a trading group, and

(ii) if the acquiring company is a member of a group of companies, is not a member of that group.

- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) above unless the acquisition is made, or (as the case may be) the company starts to carry on the trade, as soon as is reasonably practicable in the circumstances.

- (4) The reference in sub-paragraph (2)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—

- (a) such as would make that company a 51% subsidiary of the acquiring company, or
- (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the two companies members of the same group of companies.”.

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- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

*Meaning of “trading group”*

- 10 (1) In paragraph 22(1) (interpretation), for the definition of “trading group” substitute—  
““trading group” has the meaning given by paragraph 22B below;”.
- (2) After paragraph 22A (inserted by paragraph 9 above) insert—

**“Meaning of “trading group”**

- 22B (1) In this Schedule “trading group” means a group of companies—
- (a) one or more of whose members carry on trading activities, and
  - (b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities.
- (2) For the purposes of sub-paragraph (1) above “trading activities” means activities carried on by a member of the group—
- (a) in the course of, or for the purposes of, a trade being carried on by any member of the group,
  - (b) for the purposes of a trade that any member of the group is preparing to carry on,
  - (c) with a view to any member of the group acquiring or starting to carry on a trade, or
  - (d) with a view to any member of the group acquiring a significant interest in the share capital of another company that—
    - (i) is a trading company or the holding company of a trading group, and
    - (ii) is not a member of the same group of companies as the acquiring company.
- (3) Activities do not qualify as trading activities under sub-paragraph (2)(c) or (d) above unless the acquisition is made, or (as the case may be) the group member in question starts to carry on the trade, as soon as is reasonably practicable in the circumstances.
- (4) The reference in sub-paragraph (2)(d) above to the acquisition of a significant interest in the share capital of another company is to an acquisition of ordinary share capital in the other company—
- (a) such as would make that company a member of the same group of companies as the acquiring company, or
  - (b) such as would give the acquiring company a qualifying shareholding in a joint venture company without making the joint venture companies a member of the same group of companies as the acquiring company.
- (5) For the purposes of this paragraph the activities of the members of the group shall be treated as one business (with the result that activities are disregarded to the extent that they are intra-group activities).”.

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- (3) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

#### *Joint venture companies*

- 11 (1) Paragraph 23 (qualifying shareholding in joint venture companies) is amended as follows.
- (2) In sub-paragraph (2)(b) (meaning of “joint venture company”: requirement that 75% of ordinary share capital held by not more than five companies), for “companies” substitute “persons”.
- (3) In sub-paragraph (3)(a) and (b) (meaning of “qualifying shareholding”: holding of more than 30% of ordinary share capital), for “more than 30%” substitute “10% or more”.
- (4) After sub-paragraph (7) insert—
- “(7A) For the purposes of this paragraph the activities of a joint venture company that is a holding company and its 51% subsidiaries shall be treated as a single business (so that activities are disregarded to the extent that they are intra-group activities).”
- (5) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

#### *Joint enterprise companies*

- 12 (1) Paragraph 24 (joint enterprise companies: relevant connection) is amended as follows.
- (2) In sub-paragraph (2) (meaning of “joint enterprise company”: requirement that 75% of ordinary share capital held by not more than five companies), for “companies” substitute “persons”.
- (3) In sub-paragraph (4)(a) and (b) (meaning of “qualifying shareholding”: holding of more than 30% of ordinary share capital), for “more than 30%” substitute “10% or more”.
- (4) The amendments in this paragraph apply to disposals on or after 17th April 2002 and as they so apply have effect in relation to periods of ownership on or after that date.

## SCHEDULE 11

Section 51

### CHARGEABLE GAINS: DEDUCTION OF PERSONAL LOSSES FROM GAINS TREATED AS ACCRUING TO SETTLORS

#### *Introduction*

- 1 The Taxation of Chargeable Gains Act 1992 (c. 12) is amended in accordance with paragraphs 2 to 6.



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## Section 2

- 2 (1) Section 2 (persons and gains chargeable to capital gains tax, and allowable losses) is amended as follows.
- (2) In subsection (5) (computation of tax in cases where gains treated as accruing to settlor etc in respect of trust gains), for the word “and” at the end of paragraph (a) substitute—
- “(aa) every amount which is treated by virtue of sections 77 and 86 as an amount of chargeable gains accruing to the person in question for that year, reduced as follows—
- (i) first, by making the deductions for which subsection (2) provides in respect of any allowable losses accruing to that person;
  - (ii) then, where taper relief would be deductible by the trustees of the settlement in question but for section 77(1)(b)(i) or 86(1)(e)(ii), by applying reductions in respect of taper relief under section 2A at the rates that would be applicable in the case of the trustees;
- and”.
- (3) In paragraph (b) of that subsection, omit “77, 86,”.
- (4) After that subsection insert—
- “(6) Allowable losses must (notwithstanding section 2A(6)) be deducted under paragraph (a)(i) of subsection (5) above before any may be deducted under paragraph (aa)(i) of that subsection.
- (7) Where in any year of assessment—
- (a) there are amounts treated as accruing to a person by virtue of section 77 or 86,
  - (b) two or more of those amounts, or elements of them—
    - (i) relate to different settlements, and
    - (ii) attract taper relief (by virtue of subsection (5)(aa)(ii) above) at the same rate, or are not eligible for taper relief, and
  - (c) losses are deductible from the amounts or elements mentioned in paragraph (b) above (“the equal-tapered amounts”) but are not enough to exhaust them all,
- the deduction applicable to each of the equal-tapered amounts shall be the appropriate proportion of the aggregate of those losses.
- The “appropriate proportion” is that given by dividing the equal-tapered amount in question by the total of the equal-tapered amounts.
- (8) The references to section 86 in subsection (5)(aa) above (in the opening words) and subsection (7)(a) above include references to that section read with section 10A.”.

## Section 77

- 3 In section 77 (charge on settlor with interest in settlement), in subsection (1)(b) (amount by reference to which settlor is charged), for the words from “would” to the end substitute—

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“would be chargeable to tax for the year in respect of those gains if—

- (i) the gains were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied), and
- (ii) section 3 were disregarded,

and ”.

### Section 86

- 4 In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), in subsection (1)(e) (amount by reference to which settlor is charged), for the words from “if” to the end substitute “if—
- (i) the assumption as to residence specified in subsection (3) below were made, and
  - (ii) any chargeable gains on the disposals were not eligible for taper relief, but section 2(2) applied as if they were (so that the order of deducting losses provided for by section 2A(6) applied);”.

### Section 86A

- 5 (1) Section 86A (attribution of gains to settlor in section 10A cases) is amended as follows.
- (2) In subsection (2) (reduction in amounts attributed to settlor in accordance with section 10A by reference to chargeable amounts paid to beneficiaries during his period of non-residence)—
- (a) in paragraph (a), for “the amount falling within section 86(1)(e)” substitute “the tapered section 86(1)(e) amount”;
  - (b) in paragraph (b), for “the amounts falling within section 86(1)(e)” substitute “the tapered section 86(1)(e) amounts”.
- (3) After that subsection insert—
- “(2A) In subsection (2) above “tapered section 86(1)(e) amount” means an amount falling within section 86(1)(e) as it would apply with the omission of sub-paragraph (ii).
- (2B) Where subsection (2) above has effect to reduce an amount that is treated by virtue of section 86 as accruing to the settlor for a year of assessment—
- (a) the reduced amount shall be treated as falling within paragraph (b) of section 2(5) and not paragraph (aa);
  - (b) section 86(1)(e) shall have effect in relation to that amount with the omission of sub-paragraph (ii).”.

(4) In subsection (7) (reduction in gains available for attribution to beneficiaries by amounts attributed to settlor in accordance with section 10A), for the words from “the amount or” to “so attributed” substitute “the tapered section 10A amount”.

(5) After that subsection insert—

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“(7A) In subsection (7) above “the tapered section 10A amount” means the amount, or aggregate of the amounts, falling to be attributed as mentioned in that subsection, minus the total amount of any taper relief that would be deductible from that amount or aggregate by the trustees of the settlement but for section 86(1)(e)(ii).

Where section 86A(2) has effect to reduce that amount or aggregate, the words from “minus” to “section 86(1)(e)(ii)” above do not apply.”.

### Section 87

- 6 (1) Section 87 of that Act (attribution of gains to beneficiaries) is amended as follows.
- (2) In subsection (3) (reduction in gains available for attribution to beneficiaries by amounts attributed to settlor under section 86), for the words from “reduced by the amount” to the end substitute “ reduced by the tapered section 86(4) amount ”.
- (3) After that subsection insert—

“(3A) In subsection (3) above “the tapered section 86(4) amount” means the amount, or aggregate of the amounts, treated as accruing as mentioned in subsection (3)(a) above, minus the total amount of any taper relief that would be deductible from that amount or aggregate by the trustees of the settlement but for section 86(1)(e)(ii).”.

### Commencement

- 7 This Schedule applies in relation to chargeable gains treated as accruing to a person by virtue of section 77 or 86 (read, where appropriate, with section 10A) of the Taxation of Chargeable Gains Act 1992 (c. 12) in the year 2003-04 and subsequent years of assessment.

### Election for Schedule to apply for years earlier than 2003-04

- 8 (1) This Schedule also applies, if the person so elects, in relation to chargeable gains so accruing to a person in any of the years of assessment 2000-01, 2001-02 and 2002-03.
- (2) An election under this paragraph—
- must be made by a notice given to an officer of the Board no later than 31st January 2005;
  - where chargeable gains are treated as accruing in respect of two or more settlements, may be restricted to those treated as accruing in respect of the settlement or settlements specified in the election.
- (3) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under this paragraph.
- (4) Where—
- a person makes an election under this paragraph for any one or more of the years of assessment 2000-01, 2001-02 and 2002-03, and
  - the effect of the election, or (as the case may be) both or all of them taken together, is to increase the total amount of tax that the person is entitled to recover from the trustees of a particular settlement for those three years under

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section 78(1)(a) of the Taxation of Chargeable Gains Act 1992 or paragraph 6 of Schedule 5 to that Act,  
 the trustees of that settlement must join in the election, or (as the case may be) each of them that has that effect or contributes to it.

## SCHEDULE 12

Section 53

### TAX RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

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

- C9** Sch. 12 modified (with effect as specified in art. 2 of the commencing S.I. of the commencing S.I.) by Finance Act 2004 (c. 12), s. 53(2)(6); S.I. 2004/3268, art. 2

## PART 1

### ENTITLEMENT TO RELIEF FOR R&D EXPENDITURE: LARGE COMPANIES

#### *Entitlement to relief under this Part*

- 1 (1) A company (in this Part referred to as “the company”) is entitled to tax relief under this Part for an accounting period if—
- (a) it is a large company throughout that period, and
  - (b) its qualifying R&D expenditure for that period is not less than—
    - (i) [<sup>F56</sup>£10,000], if the accounting period is a period of 12 months, or
    - (ii) such amount as bears to [<sup>F57</sup>£10,000] the same proportion as the accounting period bears to 12 months.
- (2) For the purposes of this paragraph the company’s qualifying R&D expenditure is “for an accounting period” if it is deductible in computing for tax purposes the profits for that period of a trade carried on by the company (including expenditure that is so deductible by virtue of section 401 of the Taxes Act 1988).

#### Textual Amendments

- F56** Word in Sch. 12 para. 1(1)(b)(i) substituted (with effect in accordance with s. 168(4)(d)(i) of the amending Act) by Finance Act 2003 (c. 14), Sch. 31 para. 9(2)
- F57** Word in Sch. 12 para. 1(1)(b)(ii) substituted (with effect in accordance with s. 168(4)(d)(i) of the amending Act) by Finance Act 2003 (c. 14), Sch. 31 para. 9(2)

#### *Meaning of “large company” and “small or medium-sized enterprise”*

- 2 (1) For the purposes of this Schedule—
- (a) “large company” means a company that does not qualify as a small or medium-sized enterprise; and
  - (b) “small or medium-sized enterprise” [<sup>F58</sup> has the meaning given by paragraph 2(1) of Schedule 20 to the Finance Act 2000.]

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- (2) The Treasury may by order amend sub-paragraph (1)(b) so as to substitute another definition of “small or medium-sized enterprise” for the definition that is for the time being effective for the purposes of this Schedule.

#### Textual Amendments

**F58** Words in Sch. 12 para. 2(1)(b) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Research and Development Tax Relief \(Definition of Small or Medium-Sized Enterprise\) Order 2005 \(S.I. 2005/3376\)](#), arts. 1(1), 3

#### Qualifying R&D expenditure

- 3 For the purposes of this Schedule the company’s “qualifying R&D expenditure” is—
- (a) its qualifying expenditure on direct research and development (see paragraph 4),
  - (b) its qualifying expenditure on sub-contracted research and development (see paragraph 5), and
  - (c) its qualifying expenditure on contributions to independent research and development (see paragraph 6).

#### Qualifying expenditure on direct research and development

- 4 (1) The company’s qualifying expenditure on direct research and development is expenditure incurred by it where the following conditions are satisfied.
- (2) The first condition is that the expenditure is incurred on research and development directly undertaken by the company.
- [<sup>F59</sup>(3) The second condition is that the expenditure—
- (a) is incurred on staffing costs,
  - (b) is incurred on [<sup>F60</sup>software or consumable items] , or
  - (c) is qualifying expenditure on externally provided workers.]
- (4) The third condition is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) The fourth condition is that the expenditure is not of a capital nature.
- (6) The fifth condition is that, if the expenditure is incurred in carrying on activities contracted out to the company, they are contracted out—
- (a) by a large company, or
  - (b) by any person otherwise than in the course of a trade, profession or vocation the profits of which are chargeable to tax under Case I or II of Schedule D.

#### Textual Amendments

**F59** Sch. 12 para. 4(3) substituted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 10](#)

**F60** Words in Sch. 12 substituted (with effect in accordance with s. 141(3)-(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(b\)](#); S.I. 2005/123, art. 2

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*Expenditure on research and development directly undertaken on company's behalf*

- 5 (1) The company's qualifying expenditure on sub-contracted research and development is expenditure incurred by it where the following conditions are satisfied.
- (2) The first condition is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
  - (b) an individual, or
  - (c) a partnership, each member of which is an individual,
- in respect of research and development contracted out by the company to the body, individual or partnership concerned ("the sub-contracted R&D").
- (3) The second condition is that the sub-contracted research and development is directly undertaken on behalf of the company by the body, individual or partnership concerned.
- (4) The third condition is that the expenditure is attributable to relevant research and development in relation to the company.
- (5) The fourth condition is that the expenditure is not of a capital nature.
- (6) The fifth condition is that, if the sub-contracted R&D is itself contracted out to the company, it is contracted out—
- (a) by a large company, or
  - (b) by any person otherwise than in the course of a trade, profession or vocation the profits of which are chargeable to tax under Case I or II of Schedule D.

*Qualifying expenditure on contributions to independent research and development*

- 6 (1) The company's qualifying expenditure on contributions to independent research and development is expenditure incurred by it where the following conditions are satisfied.
- (2) The first condition is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
  - (b) an individual, or
  - (c) a partnership, each member of which is an individual,
- for the purpose of funding research and development carried on by the body, individual or partnership concerned ("the funded R&D").
- (3) The second condition is that the funded R&D is relevant research and development in relation to the company.
- (4) The third condition is that the funded R&D is not contracted out to the qualifying body, individual or partnership concerned by another person.
- (5) The fourth condition is that—
- (a) if the payment is made to an individual, the company is not connected with the individual when the payment is made, and
  - (b) if the payment is made to a partnership (other than a qualifying body), the company is not connected with any member of the partnership when the payment is made.

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## PART 2

### ENTITLEMENT TO RELIEF FOR R&D EXPENDITURE: WORK SUBCONTRACTED TO SMALL OR MEDIUM-SIZED ENTERPRISE

#### *Entitlement to relief under this Part*

- 7 (1) A company (“the SME”) is entitled to tax relief under this Part for an accounting period if—
- (a) it qualifies as a small or medium-sized enterprise in that period, and
  - (b) its aggregate R&D expenditure for that period is not less than—
    - (i) [<sup>F61</sup>£10,000], if the accounting period is a period of 12 months, or
    - (ii) such amount as bears to [<sup>F62</sup>£10,000] the same proportion as the accounting period bears to 12 months.
- (2) In this paragraph “aggregate R&D expenditure” of the SME means the aggregate of—
- (a) its qualifying sub-contracted R&D expenditure (see paragraph 8), <sup>F63</sup>...
  - (b) its qualifying R&D expenditure within the meaning of Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for R&D expenditure of small and medium-sized enterprises) [<sup>F64</sup>and
  - (c) its qualifying additional SME expenditure (see paragraph 10B).]
- (3) For this purpose the SME’s aggregate R&D expenditure is “for an accounting period” if it is deductible in computing for tax purposes the profits for that period of a trade carried on by the SME (including expenditure that is so deductible by virtue of section 401 of the Taxes Act 1988).
- (4) Any relief to which a company is entitled under this Part for an accounting period is in addition to any relief to which it may be entitled under Schedule 20 to the Finance Act 2000.

#### **Textual Amendments**

- F61** Word in Sch. 12 para. 7(1)(b)(i) substituted (with effect in accordance with s. 168(4)(b)(ii) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 12\(2\)](#)
- F62** Word in Sch. 12 para. 7(1)(b)(ii) substituted (with effect in accordance with s. 168(4)(b)(ii) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 12\(2\)](#)
- F63** Word in Sch. 12 para. 7(2) repealed (with effect in accordance with s. 168(4)(b)(ii) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 13\(2\)](#), [Sch. 43 Pt. 3\(10\)](#)
- F64** Sch. 12 para. 7(2)(c) and preceding word added (with effect in accordance with s. 168(4)(b)(ii) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 13\(2\)](#)

#### *Qualifying sub-contracted R&D expenditure*

- 8 For the purposes of this Schedule, the SME’s “qualifying sub-contracted R&D expenditure” is the expenditure incurred by the SME on research and development that is contracted out to it where—
- (a) that research and development is contracted out to the SME—
    - (i) by a large company, or

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- (ii) by any person otherwise than in the course of carrying on a trade, profession or vocation the profits of which are chargeable to tax under Case I or II of Schedule D; and
- (b) the conditions of either paragraph 9 or paragraph 10 are satisfied.

*Expenditure on research and development directly undertaken by the SME*

- 9 (1) The first condition of this paragraph is that the expenditure is incurred on research and development directly undertaken by the SME.
- [<sup>F65</sup>(2) The second condition is that the expenditure—
- (a) is incurred on staffing costs,
- (b) is incurred on [<sup>F60</sup>software or consumable items] , or
- (c) is qualifying expenditure on externally provided workers.]
- (3) The third condition is that the expenditure is attributable to relevant research and development in relation to the SME.
- (4) The fourth condition is that the expenditure is not of a capital nature.

**Textual Amendments**

**F60** Words in Sch. 12 substituted (with effect in accordance with s. 141(3)-(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(b\)](#); [S.I. 2005/123](#), [art. 2](#)

**F65** Sch. 12 para. 9(2) substituted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 14](#)

*Expenditure on research and development directly undertaken on SME's behalf*

- 10 (1) The first condition of this paragraph is that the expenditure is incurred in making payments to—
- (a) a qualifying body,
- (b) an individual, or
- (c) a partnership, each member of which is an individual,
- in respect of research and development contracted out by the SME to the body, individual or partnership concerned.
- (2) The second condition is that the research and development is directly undertaken on behalf of the SME by the body, individual or partnership concerned.
- (3) The third condition is that the expenditure is attributable to relevant research and development in relation to the SME.
- (4) The fourth condition is that the expenditure is not of a capital nature.



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## [<sup>F66</sup>PART 2A

### ENTITLEMENT OF SME TO ADDITIONAL RELIEF AVAILABLE TO LARGE COMPANIES

#### Textual Amendments

**F66** Sch. 12 Pt. 2A inserted (with effect in accordance with s. 168(4)(d)(iii) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 15](#)

#### *Entitlement to relief under this Part*

- 10A (1) A company (“the SME”) is entitled to tax relief under this Part for an accounting period if—
- (a) it qualifies as a small or medium-sized enterprise in that period, and
  - (b) its aggregate R&D expenditure for that period is not less than—
    - (i) £10,000, if the accounting period is a period of 12 months, or
    - (ii) such amount as bears to £10,000 the same proportion as the accounting period bears to 12 months.
- (2) Sub-paragraphs (2) and (3) of paragraph 7 (meaning of “aggregate R&D expenditure” and “for an accounting period”) apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (3) Any relief to which a company is entitled under this Part for an accounting period is in addition to any relief to which it may be entitled under—
- (a) Schedule 20 to the Finance Act 2000, or
  - (b) Part 2 of this Schedule.

#### *Qualifying additional SME expenditure*

- 10B For the purposes of this Schedule, the SME’s “qualifying additional SME expenditure” is any expenditure which—
- (a) had the SME been a large company throughout the accounting period in question, would have been qualifying R&D expenditure of that company (see paragraph 3), but
  - (b) is not qualifying R&D expenditure for the purposes of Schedule 20 to the Finance Act 2000 (see paragraph 3 of that Schedule) in the case of the SME by reason only of paragraph 3(7) or 10(2)(a)(iv) of that Schedule (subsidised expenditure, within the meaning given by paragraph 8 of that Schedule); and
  - (c) is not qualifying sub-contracted R&D expenditure for the purposes of this Schedule (see paragraph 8) in the case of the SME.]

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### PART 3

#### THE RELIEF

##### *Deduction in computing profits of trade*

- 11 (1) This paragraph applies where a company is entitled to relief under [F67Part 1, 2 or 2A] of this Schedule for an accounting period.
- (2) In so far as the company’s qualifying expenditure for that period is deductible in computing for tax purposes the profits for that period of a trade carried on by the company, it is entitled (on making a claim) to an additional deduction in computing the profits of the trade for that period of an amount equal to 25% of the qualifying expenditure.
- (3) In sub-paragraph (2) “qualifying expenditure” means—
- in the case of relief under Part 1, qualifying R&D expenditure (see paragraph 3),<sup>F68</sup> ...
  - in the case of the relief under Part 2, qualifying sub-contracted R&D expenditure (see paragraph 8) [F69and
  - in the case of relief under Part 2A, qualifying additional SME expenditure (see paragraph 10B).]

#### Textual Amendments

**F67** Words in Sch. 12 para. 11(1) substituted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 17\(2\)](#)

**F68** Word in Sch. 12 para. 11(3) repealed (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 17\(3\)](#), [Sch. 43 Pt. 3\(10\)](#)

**F69** Sch. 12 para. 11(3)(c) and preceding word inserted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 17\(3\)](#)

### PART 4

#### SPECIAL PROVISION FOR GIVING RELIEF TO INSURANCE COMPANIES

##### *Treated as large companies*

- 12 Where, in an accounting period, an insurance company (within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988)—
- carries on life assurance business, and
  - qualifies as a small or medium-sized enterprise,
- Parts 1 to 3 of this Schedule apply to that company as if it did not qualify as such an enterprise in that period.

##### *Entitlement to relief in respect of “I minus E” basis*

- 13 (1) This paragraph applies where for any accounting period the profits arising to a company from its life assurance business are not charged to corporation tax under Case I of Schedule D.

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[<sup>F70</sup>(2) The provisions of Part 3 which allow a deduction in calculating the profits of a trade apply in relation to the company to treat amounts as expenses payable falling to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988.]

- (3) Where by virtue of section 436, 439B or 441 of the Taxes Act 1988—
- (a) any profits arising to the company from any category of life assurance business are treated as income chargeable under Case VI of Schedule D, and
  - (b) the profits of that part of that business are computed in accordance with the provisions of that Act applicable to Case I of that Schedule,

Part 3 of this Schedule has effect as if the references to the trade carried on by the company were references to that part of that business (and sub-paragraph (2) does not apply in relation to that part).

- (4) Subject to sub-paragraph (3), the provisions of Part 3 do not apply to allow any deduction in any computation of the profits of the company's life assurance business made in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.

#### Textual Amendments

**F70** Sch. 12 para. 13(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. 64\(2\)](#)

## PART 5

### SUPPLEMENTARY PROVISIONS

#### *Research and development expenditure of group companies*

- 14 (1) Sub-paragraph (2) applies where—
- (a) a company (“A”) incurs expenditure on making a payment to another company (“B”) in respect of activities contracted out by A to B,
  - (b) the expenditure incurred on the payment is research and development expenditure of A, and
  - (c) A and B are members of the same group at the time the payment is made.
- (2) For the purposes of this Schedule —
- (a) any of the activities contracted out by A to B and directly undertaken by B shall be treated (to the extent that it would not otherwise be the case) as research and development directly undertaken by B, and
  - (b) where B makes a payment to a third party (“C”) in respect of any of those activities that are contracted out by B to C and directly undertaken by C, those activities shall be treated (to the extent that it would not otherwise be the case) as research and development contracted out by B to C.
- (3) For the purposes of this paragraph A and B are members of the same group if they are members of the same group of companies for the purposes of Chapter 4 of Part 10 of the Taxes Act 1988 (group relief).

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*Refunds of contributions to independent research and development etc*

- 15 (1) This paragraph applies where a company receives a payment refunding the whole or any part of—
- (a) any qualifying expenditure on sub-contracted research and development (see paragraph 5),
  - (b) any qualifying expenditure on contributions to independent research and development (see paragraph 6),<sup>F71</sup>...
  - (c) any expenditure which is qualifying sub-contracted R&D expenditure by virtue of paragraph 10, [<sup>F72</sup>or
  - (d) any expenditure which is qualifying additional SME expenditure,]
- in respect of which it obtains relief under this Schedule.
- (2) The appropriate amount shall be treated as income of the company chargeable to tax under Case I of Schedule D for the accounting period in which the payment is made.
- (3) Where, by virtue of paragraph 13(3) (profits of life assurance business chargeable to tax under Case VI of Schedule D), the relief obtained in respect of the contribution or expenditure concerned is a deduction in computing for tax purposes the profits of a part of the life assurance business of the company—
- (a) sub-paragraph (2) does not apply, and
  - (b) the appropriate amount shall be treated as income referable to that part which is chargeable to tax under Case VI of Schedule D for the accounting period in which the payment is made.
- (4) For this purpose “the appropriate amount” means 25% of the payment.

**Textual Amendments**

- F71** Word in Sch. 12 para. 15(1) repealed (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 18](#), [Sch. 43 Pt. 3\(10\)](#)
- F72** Sch. 12 para. 15(1)(d) and preceding word inserted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 18](#)

*Artificially inflated claims for deduction*

- 16 (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 any relief to which a company is entitled under this Schedule.
- (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 relief under this Schedule 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.

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## PART 6

### GENERAL PROVISIONS

[<sup>F73</sup>Meaning of “relevant research and development”, “staffing costs”, “<sup>F60</sup>software or consumable items]” and “qualifying expenditure on externally provided worker”s]

- 17 The following provisions of Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for R&D expenditure of small and medium-sized enterprises) apply for the purposes of this Schedule as they apply for the purposes of that Schedule—
- (a) paragraph 4 (relevant research and development);
  - (b) paragraph 5 (staffing costs); <sup>F74</sup> ...
  - (c) paragraph 6 (expenditure on [<sup>F60</sup>software or consumable items] )<sup>F75</sup>; and
  - (d) paragraphs 8A to 8E (qualifying expenditure on externally provided workers).]

#### Textual Amendments

- F60** Words in Sch. 12 substituted (with effect in accordance with s. 141(3)-(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(b\)](#); [S.I. 2005/123](#), [art. 2](#)
- F73** Sch. 12 para. 17 heading substituted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 19\(4\)](#)
- F74** Word in Sch. 12 para. 17 repealed (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 19\(2\)](#), [Sch. 43 Pt. 3\(10\)](#)
- F75** Sch. 12 para. 17(d) and preceding word inserted (with effect in accordance with s. 168(3)(b) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 19\(3\)](#)

*Meaning of “qualifying body”*

- 18 (1) For the purposes of this Schedule “qualifying body” means—
- (a) a charity (within the meaning of section 506(1) of the Taxes Act 1988);
  - (b) an institution of higher education;
  - (c) an Association of a description specified in section 508 of the Taxes Act 1988 (scientific research organisations);
  - (d) a health service body within the meaning of section 519A(2) of that Act; or
  - (e) any other body prescribed, or of a description prescribed, by the Treasury, by order, for the purposes of this Schedule.
- (2) In sub-paragraph (1)(b), “institution of higher education” means—
- (a) an institution within the higher education sector within the meaning of the Further and Higher Education Act 1992 (c. 13);
  - (b) an institution within the higher education sector within the meaning of Part 2 of the Further and Higher Education (Scotland) Act 1992 (c. 37) or a central institution within the meaning of the Education (Scotland) Act 1980 (c. 44); or
  - (c) a higher education institution within the meaning of Article 30(3) of the Education and Libraries (Northern Ireland) Order 1993 (1993/ 2810 (N.I. 12)).

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- (3) An order under this paragraph shall have effect in relation to such accounting periods or expenditure as may be specified in the order (which may include accounting periods beginning, or expenditure incurred, before the time the order is made).

*Other definitions etc*

- 19 (1) In this Schedule—  
     “life assurance business” has the meaning given in section 431(2) of the Taxes Act 1988;  
     “research and development” has the meaning given by section 837A of the Taxes Act 1988.
- (2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.

*Transitional provision*

- 20 (1) This Schedule does not apply to expenditure incurred before 1st April 2002.
- For this purpose no account shall be taken of section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins).
- (2) Paragraphs 1(1) and 7(1) (requirement of minimum amount of qualifying expenditure in an accounting period) apply to an accounting period beginning before and ending after that date as if so much of the period as falls on or after that date were a separate accounting period.

SCHEDULE 13

Section 54

TAX RELIEF FOR EXPENDITURE ON VACCINE RESEARCH ETC

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

**C10** Sch. 13 modified (with effect as specified in art. 2 of the commencing S.I. of the commencing S.I.) by [Finance Act 2004 \(c. 12\), s. 53\(2\)\(6\)](#); [S.I. 2004/3268, art. 2](#)

**Commencement Information**

**I33** Sch. 13 has effect in relation to expenditure incurred on or after 22.4.2003 by The Finance Act 2002, Schedule 13 (Appointed Day) Order 2003 ([S.I. 2003/1472](#)), art. 2 (with para. 28(1))

**PART 1**

ENTITLEMENT TO RELIEF

*Entitlement to relief under this Schedule*

- 1 (1) A company is entitled to relief under this Schedule for an accounting period if the company’s qualifying expenditure for that period (see paragraph 2) is not less than—  
 (a) [<sup>F76</sup>£10,000] , if the accounting period is a period of 12 months, or

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(b) such amount as bears to [<sup>F77</sup>£10,000] the same proportion as the accounting period bears to 12 months.

(2) Relief under this Schedule in respect of any expenditure is in addition to any relief in respect of that expenditure under Schedule 20 to the Finance Act 2000 (c. 17) or Schedule 12 to this Act (tax relief for expenditure on research and development).

#### Textual Amendments

**F76** Word in Sch. 13 para. 1(1)(a) substituted (with effect in accordance with s. 168(4)(e) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 21\(2\)](#)

**F77** Word in Sch. 13 para. 1(1)(b) substituted (with effect in accordance with s. 168(4)(e) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 21\(2\)](#)

#### Qualifying expenditure

- 2 (1) For the purposes of this Schedule “qualifying expenditure” means—
- (a) qualifying expenditure on direct research and development (see paragraphs 3 to 5),
  - (b) qualifying expenditure on sub-contracted research and development (see paragraphs 6 to 11), or
  - (c) qualifying expenditure on contributions to independent research and development (see paragraph 12).
- (2) The qualifying expenditure of a company “for an accounting period” is determined as follows.
- (3) The qualifying expenditure on direct or sub-contracted research and development for an accounting period is—
- (a) in the case of company that qualifies as a small or medium-sized enterprise in that period, qualifying expenditure that—
    - (i) is deductible in computing for tax purposes the profits for that period of a trade carried on by the company, or
    - (ii) would have been so deductible had the company, at the time the expenditure was incurred, been carrying on a trade consisting of the activities in respect of which it was incurred,(disregarding for this purpose section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins));
  - (b) in the case of a company that does not qualify as a small or medium-sized enterprise in that period, qualifying expenditure that is deductible in computing for tax purposes the profits for that period of a trade carried on by the company (including expenditure that is so deductible by virtue of section 401 of the Taxes Act 1988).
- (4) The qualifying expenditure on contributions to independent research and development for an accounting period is the expenditure that is incurred on contributions paid in that period.

#### Qualifying expenditure on direct research and development

- 3 (1) Qualifying expenditure of a company on direct research and development is expenditure incurred by the company that satisfies the following conditions.

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- (2) The first condition is that the expenditure is on qualifying R&D activity (see paragraph 4) directly undertaken by the company.
- (3) The second condition is that the qualifying R&D activity on which the expenditure is incurred is relevant research and development in relation to the company.
- (4) The third condition is that the expenditure is not of a capital nature.
- <sup>[F78]</sup>(5) The fourth condition is that the expenditure—
  - (a) is incurred on staffing costs,
  - (b) is incurred on <sup>[F79]</sup>software or consumable items], or
  - (c) is qualifying expenditure on externally provided workers.]
- (6) The fifth condition is that the expenditure is not incurred by the company in carrying on activities the carrying on of which is contracted out to the company by any person.
- (7) The sixth condition is that the expenditure is not subsidised.

#### Textual Amendments

- F78** Sch. 13 para. 3(5) substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 22](#)
- F79** Words in Sch. 13 substituted (with effect in accordance with s. 141(3)-(7)) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(c\)](#); [S.I. 2005/123](#), [art. 2](#)

#### Qualifying R&D activity

- 4 (1) For the purposes of this Schedule “qualifying R&D activity” means research and development relating to—
  - (a) vaccines or medicines for the prevention or treatment of tuberculosis,
  - (b) vaccines or medicines for the prevention or treatment of malaria,
  - (c) vaccines for the prevention of infection by human immunodeficiency virus, or
  - (d) vaccines or medicines for the prevention of the onset, or for the treatment, of acquired immune deficiency syndrome resulting from infection by human immunodeficiency virus in prescribed clades only.
- (2) For the purposes of sub-paragraph (1) “prescribed clade” means clade A, C, D or E or such other clade or clades as the Treasury may by regulations prescribe.
- (3) The Treasury may make provision by regulations further defining the purposes referred to in sub-paragraph (1)(a), (b), (c) or (d).
- (4) In sub-paragraph (1) references to vaccines or medicines are to vaccines or medicines for use in humans.

<sup>[F80]</sup>Meaning of “relevant R&D”, “small or medium-sized enterprise”, “staffing costs”, “<sup>[F79]</sup>software or consumable items]”, “subsidised” and “qualifying expenditure on externally provided workers.]”

- 5 (1) For the purposes of this Schedule “relevant research and development”, in relation to a company, means research and development—



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- (a) related to a trade carried on by the company, or
  - (b) from which it is intended that a trade to be carried on by the company will be derived.
- (2) For the purposes of this Schedule research and development related to a trade carried on by the company includes research and development which may lead to or facilitate an extension of that trade.
- (3) The following provisions of Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for R&D expenditure of small and medium-sized companies) apply for the purposes of this Schedule as they apply for the purposes of that Schedule—
- (a) paragraph 2 (meaning of “small or medium-sized enterprise”);
  - (b) paragraph 5 (staffing costs);
  - (c) paragraph 6 (expenditure on [<sup>F79</sup>software or consumable items]); <sup>F81</sup>...
  - (d) paragraph 8 [<sup>F82</sup>(subsidised expenditure); and]
  - [<sup>F83</sup>(e) paragraphs 8A to 8E (qualifying expenditure on externally provided workers),]

except that in their application for the purposes of this Schedule, references in that Schedule to relevant research and development shall be construed in accordance with sub-paragraphs (1) and (2) above.

#### Textual Amendments

- F79** Words in Sch. 13 substituted (with effect in accordance with s. 141(3)-(7)) by [Finance Act 2004 \(c. 12\), s. 141\(2\)\(c\)](#); [S.I. 2005/123, art. 2](#)
- F80** Sch. 13 para. 5 heading substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 31 para. 23\(5\)](#)
- F81** Word in Sch. 13 para. 5(3) repealed (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 31 para. 23\(2\)](#), [Sch. 43 Pt. 3\(10\)](#)
- F82** Words in Sch. 13 para. 5(3)(d) substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 31 para. 23\(3\)](#)
- F83** Sch. 13 para. 5(3)(e) inserted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\), Sch. 31 para. 23\(4\)](#)

#### Qualifying expenditure on sub-contracted research and development

- 6 (1) Paragraphs 7 to 11 make provision for determining the qualifying expenditure of a company on sub-contracted research and development.

This is subject to sub-paragraph (3).

- (2) For the purposes of those paragraphs a company (“the principal”) incurs expenditure on sub-contracted research and development if it makes a payment (a “sub-contractor payment”) to another person (“the sub-contractor”) in respect of research and development contracted out by the company to that person.
- (3) Where the sub-contractor is—
- (a) a charity (within the meaning of section 506(1) of the Taxes Act 1988),
  - (b) a university, or
  - (c) an Association of a description specified in section 508 of that Act (scientific research organisations),

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paragraphs 7(1) and 8 to 11 do not apply and expenditure of the principal on sub-contracted expenditure is qualifying expenditure if it satisfies the conditions of paragraph 7(2) to (6).

*Conditions that must be satisfied by qualifying expenditure on sub-contracted research and development*

- 7 (1) Expenditure of a company on sub-contracted research and development is not qualifying expenditure unless it satisfies the following conditions.
- (2) The first condition is that the expenditure is on research and development directly undertaken on behalf of the company by the sub-contractor.
- (3) The second condition is that the expenditure is on qualifying R&D activity (see paragraph 4).
- (4) The third condition is that the R&D activity in respect of which the expenditure is incurred is relevant research and development in relation to the company.
- (5) The fourth condition is that the expenditure is not of a capital nature.
- (6) The fifth condition is that the expenditure is not subsidised.

*Treatment of sub-contractor payment where principal and sub-contractor are connected persons*

- 8 (1) Where the principal and the sub-contractor are connected persons and in accordance with generally accepted accounting practice—
- (a) 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
- (b) all of the sub-contractor’s relevant expenditure has been so brought into account,
- the whole of the payment (up to the amount of the sub-contractor’s relevant expenditure) is qualifying expenditure on sub-contracted research and development.
- This is subject to paragraph 7 (conditions that must be satisfied by qualifying expenditure on sub-contracted R&D).
- (2) In sub-paragraph (1)—
- (a) “relevant expenditure” has the meaning given by paragraph 9, and
- (b) “relevant period” means a period—
- (i) for which accounts are drawn up by the sub-contractor, and
- (ii) that ends not more than twelve months after the end of the principal’s period of account in which the sub-contractor payment is, in accordance with generally accepted accounting practice, brought into account in determining the principal’s profit or loss.
- (3) Any apportionment of expenditure of the principal or the sub-contractor necessary for the purposes of this paragraph shall be made on a just and reasonable basis.

*Relevant expenditure of the sub-contractor*

- 9 (1) For the purposes of paragraph 8 the “relevant expenditure” of the sub-contractor is expenditure that—

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- (a) is incurred by the sub-contractor in carrying on, on behalf of the principal, the activities to which the sub-contractor payment relates, and
  - (b) satisfies the following conditions.
- (2) The first condition is that the expenditure is not of a capital nature as regards the sub-contractor.
- [<sup>F84</sup>(3) The second condition is that the expenditure—
- (a) is incurred on staffing costs,
  - (b) is incurred on [<sup>F79</sup>software or consumable items] , or
  - (c) is qualifying expenditure on externally provided workers.

In applying for the purposes of this sub-paragraph (by virtue of paragraph 5 above)—paragraph 5 of Schedule 20 to the Finance Act 2000 (meaning of “staffing costs”), or paragraphs 8A to 8E of that Schedule (qualifying expenditure on externally provided workers), the references to the company shall be read as references to the sub-contractor.]

- (4) The third condition is that the expenditure is not subsidised.

In applying (by virtue of paragraph 5 above) paragraph 8 of that Schedule (subsidised expenditure) for the purposes of this paragraph, the references to the company shall be read as references to the sub-contractor.

#### Textual Amendments

**F79** Words in Sch. 13 substituted (with effect in accordance with s. 141(3)-(7)) by [Finance Act 2004 \(c. 12\)](#), [s. 141\(2\)\(c\)](#); [S.I. 2005/123](#), [art. 2](#)

**F84** Sch. 13 para. 9(3) substituted (with effect in accordance with s. 168(3)(a) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 31 para. 24](#)

#### *Election for connected persons treatment*

- 10 (1) The principal and the sub-contractor may in any case jointly elect that paragraph 8 (treatment of sub-contractor payment where principal and sub-contractor are connected) shall apply to sub-contractor payments made by the principal to the sub-contractor.
- (2) Any such election must be made in relation to all sub-contractor payments paid under the same contract or other arrangement.
- (3) The election must be made by notice in writing given to the Inland Revenue.
- (4) The notice must be given not later than two years after the end of the company’s accounting period in which the contract or other arrangement is entered into.
- (5) An election under this paragraph, once made, is irrevocable.

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

- 11 Where the principal makes a sub-contractor payment and—
- (a) the principal and the sub-contractor are not connected persons, and
  - (b) no election is made under paragraph 10 (election for connected persons treatment),

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65% of the amount of the sub-contractor payment is treated as qualifying expenditure on sub-contracted research and development.

This is subject to paragraph 7 (conditions that must be satisfied by qualifying expenditure on sub-contracted R&D).

*Qualifying expenditure on contributions to independent research and development*

- 12 (1) Expenditure of a company on contributions to independent research and development is qualifying expenditure where the following conditions are satisfied.
- (2) The first condition is that the expenditure must be incurred on payments made to—
- (a) a charity (within the meaning of section 506(1) of the Taxes Act 1988),
  - (b) a university, or
  - (c) an Association of a description specified in section 508 of that Act (scientific research organisations),
- for the purpose of funding qualifying R&D activity carried on by the body in question.
- (3) The second condition is that the R&D activity must be research and development related to a trade carried on by the company.

**PART 2**

MANNER OF GIVING EFFECT TO RELIEF: SMALL AND MEDIUM-SIZED COMPANIES

*Application of this Part*

- 13 This Part provides for how relief under this Schedule for an accounting period is to be given in the case of a company that qualifies as a small or medium-sized company in that period.

*Deduction in computing profits of trade*

- 14 (1) Where a company—
- (a) is entitled to relief under this Schedule for an accounting period in respect of any qualifying expenditure, and
  - (b) is carrying on a trade in that period,
- it may (on making a claim) make the appropriate deduction in computing the profits of the trade for that period.
- (2) For this purpose the appropriate deduction is—
- (a) 50% of so much of the qualifying expenditure as is expenditure in respect of which the company is also entitled to relief under Schedule 20 to the Finance Act 2000 (c. 17), and
  - (b) 150% of so much of the qualifying expenditure as is not expenditure in respect of which the company is also entitled to relief under that Schedule.
- (3) This paragraph is without prejudice to any other deduction in respect of the qualifying expenditure.

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*Alternative treatment of pre-trading expenditure: deemed trading loss*

- 15 (1) Where a company—
- (a) is entitled to relief under this Schedule for an accounting period in respect of any qualifying expenditure, and
  - (b) is not carrying on a trade in that period,
- it may elect to be treated as if it had incurred a trading loss in that accounting period.
- (2) The amount of the trading loss is—
- (a) 50% of so much of the qualifying expenditure as is expenditure in respect of which the company is also entitled to relief under Schedule 20 to the Finance Act 2000, and
  - (b) 150% of so much of the qualifying expenditure as is not expenditure in respect of which the company is also entitled to relief under that Schedule.
- (3) Section 401 of the Taxes Act 1988 (relief for pre-trading expenditure) does not apply to qualifying expenditure in respect of which an election is made under this paragraph.
- (4) An election under this paragraph must—
- (a) specify the accounting period in respect of which it is made, and
  - (b) be made by notice in writing to the Inland Revenue given not later than two years after the end of the accounting period to which the election relates.
- (5) Where a company is treated under this paragraph as incurring a trading loss in an accounting period, the trading loss may not be set off against profits of a preceding accounting period under section 393A(1)(b) of the Taxes Act 1988 unless the company is entitled to tax relief under this paragraph for that earlier period.
- (6) Where a company is treated under this paragraph as incurring a trading loss in an accounting period and the company begins, in that accounting period or a later accounting period, to carry on a trade derived from the research and development in relation to which the tax relief in question was obtained under this paragraph, then—
- (a) subject to paragraph 19 (restriction on losses carried forward), and
  - (b) to the extent that—
    - (i) the company has not obtained relief in respect of the trading loss under any other provision, and
    - (ii) the loss has not been surrendered under section 403(1) of the Taxes Act 1988 (surrender of relief to group or consortium members),the loss shall be treated as if it were a loss of that trade brought forward under section 393 of that Act (relief of trading losses against future trading profits).

*Entitlement to tax credit*

- 16 (1) A company may claim a tax credit for an accounting period in which it has a surrenderable loss.
- (2) A company has a “surrenderable loss” for an accounting period—
- (a) if paragraph 14 applies and the company incurs a trading loss in that period in the trade mentioned in sub-paragraph (1)(b) of that paragraph;
  - (b) if paragraph 15 applies and the company is treated under that paragraph as incurring a trading loss.

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- (3) The amount of the surrenderable loss is equal to the lower of—
- (a) so much of the trading loss referred to in sub-paragraph (2) above as is unrelieved, and
  - (b) the total amount deductible under paragraph 14 or, as the case may be, the total deemed trading loss under paragraph 15.
- (4) For this purpose the amount of a trading loss that is “unrelieved” means the amount of that loss reduced by—
- (a) any relief that was or could have been obtained by the company making a claim under section 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),
  - (c) any loss surrendered under section 403(1) of that Act (surrender of relief to group or consortium members), or
  - (d) any loss surrendered under paragraph 15 of Schedule 20 to the Finance Act 2000 (c. 17) (entitlement to R&D tax credit).
- (5) No account shall be taken for this purpose of any losses—
- (a) brought forward from an earlier accounting period under section 393(1) of the Taxes Act 1988, or
  - (b) carried back from a later accounting period under section 393A(1)(b) of that Act.

*Amount of credit*

- 17 (1) The amount of the tax credit to which a company is entitled for an accounting period is 16% of the surrenderable loss for the period, subject to the following limit.
- (2) The limit is that the total of the tax credits to which the company is entitled for an accounting period under this Schedule and under Schedule 20 to the Finance Act 2000 (c. 17) may not exceed the total of the company’s PAYE and NICs liabilities for payment periods ending in that accounting period.
- (3) 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.
- (4) An order under sub-paragraph (3) may make such incidental, supplementary, consequential and transitional provision as the Treasury think fit.
- (5) Paragraph 17 of Schedule 20 to the Finance Act 2000 (calculation of total amount of company’s PAYE and NICs liabilities for a payment period) applies for the purposes of this paragraph as it applies for the purposes of paragraph 16 of that Schedule.

*Payment in respect of tax credit*

- 18 (1) Where—
- (a) a company is entitled to a tax credit under this Schedule for an accounting period, and
  - (b) makes a claim,
- the Inland Revenue shall pay to the company the amount of the credit.

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- (2) An amount payable in respect of—
- (a) a tax credit under this Schedule, or
  - (b) interest on a tax credit under this Schedule under section 826 of the Taxes Act 1988,

may be applied in discharging any liability of the company to pay corporation tax, and to the extent that it is so applied the Inland Revenue's obligation under subparagraph (1) is discharged.

- (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 tax credit under this Schedule 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 tax credit under this Schedule 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.

#### *Restriction on losses carried forward*

- 19 (1) 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 tax credit under this Schedule is treated as reduced by the amount of the loss surrendered.
- (2) The amount of the loss surrendered is—
- (a) where the maximum amount of tax credit was claimed, the whole of the surrenderable loss for that period, and
  - (b) where less than the maximum amount was claimed, a corresponding proportion of the surrenderable loss for that period.

The "maximum amount" here means the amount specified in paragraph 17(1).

#### *Payment in respect of tax credit not income*

- 20 A payment in respect of a tax credit under this Schedule is not income of the company for tax purposes.

### **PART 3**

#### **MANNER OF GIVING EFFECT TO RELIEF: LARGE COMPANIES**

#### *Deduction in computing profits of trade*

- 21 (1) This paragraph applies where a company that does not qualify as a small or medium-sized enterprise in an accounting period is entitled to relief under this Schedule for that period.

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- (2) In so far as the company's qualifying expenditure for that period is deductible in computing for tax purposes the profits for that period of a trade carried on by the company, it is entitled (on making a claim) to an additional deduction in computing the profits of the trade for that period of an amount equal to 50% of the qualifying expenditure.
- (3) In so far as the company's qualifying expenditure for that period is not so deductible, it may (on making a claim) treat 150% of that qualifying expenditure as if it were so deductible.
- (4) This paragraph is without prejudice to any other deduction in respect of the qualifying expenditure.

#### PART 4

##### SPECIAL PROVISION FOR GIVING RELIEF TO INSURANCE COMPANIES

###### *Treated as large companies*

- 22 Where, in an accounting period, an insurance company (within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988)—
- (a) carries on life assurance business, and
  - (b) qualifies as a small or medium-sized enterprise,
- Parts 2 and 3 of this Schedule apply to that company as if it did not qualify as such an enterprise in that period.

###### *Entitlement to relief in respect of "I minus E" basis*

- 23 (1) This paragraph applies where for any accounting period the profits arising to a company from its life assurance business are not charged to corporation tax under Case I of Schedule D.
- [<sup>F85</sup>(2) The provisions of Part 3 which allow a deduction in calculating the profits of a trade apply in relation to the company to treat amounts as expenses payable falling to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988.]
- (3) Where by virtue of section 436, 439B or 441 of the Taxes Act 1988—
- (a) any profits arising to the company from any category of life assurance business are treated as income chargeable under Case VI of Schedule D, and
  - (b) the profits of that part of that business are computed in accordance with the provisions of that Act applicable to Case I of that Schedule,
- Part 3 of this Schedule has effect as if the references to the trade carried on by the company were references to that part of that business (and sub-paragraph (2) does not apply in relation to that part).
- (4) Subject to sub-paragraph (3), the provisions of Part 3 do not apply to allow any deduction in any computation of the profits of the company's life assurance business made in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.



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### Textual Amendments

- F85** Sch. 13 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. 65\(2\)](#)

## PART 5

### SUPPLEMENTARY PROVISIONS

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

- 24 (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 relief to which a company is entitled under paragraph 14, 15 or 21, and
  - (b) any tax credit to which a company is entitled under this Schedule.
- (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) relief under paragraph 14, 15 or 21 to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled; or
  - (b) a tax credit under this Schedule 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.

#### *Refunds of contributions to independent research and development*

- 25 (1) This paragraph applies where a company receives a payment refunding the whole or any part of—
- (a) any qualifying expenditure on sub-contracted research and development to which paragraph 6(3) applies (research sub-contracted to charities, universities and scientific research organisations), or
  - (b) any qualifying expenditure on contributions to independent research and development (see paragraph 12),
- in respect of which it obtains relief under this Schedule.
- (2) The appropriate amount shall be treated as income of the company chargeable to tax under Case I of Schedule D for the accounting period in which the payment is made.
- (3) Where, by virtue paragraph 23(3) (profits of life assurance business chargeable to tax under Case VI of Schedule D), the relief obtained in respect of the contribution or expenditure concerned is a deduction in computing for tax purposes the profits of a part of the life assurance business of the company—
- (a) sub-paragraph (2) does not apply, and

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- (b) the appropriate amount shall be treated as income referable to that part which is chargeable to tax under Case VI of Schedule D for the accounting period in which the payment is made.
- (4) For this purpose “the appropriate amount” means—
- (a) where the company qualifies as a small or medium-sized enterprise in the accounting period in which it obtains the relief—
- (i) if it is entitled to relief under Schedule 20 to the Finance Act 2000 (c. 17) in respect of the qualifying expenditure refunded, 50% of the payment, and
- (ii) in any other case, 150% of the payment; and
- (b) where the company does not so qualify—
- (i) if the relief falls within paragraph 21(2) (relief for qualifying expenditure deductible in computing profits for tax purposes), 50% of the payment, and
- (ii) in any other case, 150% of the payment.

#### *Funding of tax credits*

<sup>F86</sup>26 .....

#### **Textual Amendments**

**F86** Sch. 13 para. 26 repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), Sch. 4 para. 96, [Sch. 5](#); S.I. 2005/1126, art. 2(2)(h)(i)

#### *Interpretation*

- 27 (1) In this Schedule—
- “the Inland Revenue” means any officer of the Board;
- “life assurance business” has the meaning given in section 431(2) 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);
- <sup>F87</sup> ...
- “payment period” has the meaning given in paragraph 17(2) of Schedule 20 to the Finance Act 2000 (c. 17);
- “research and development” has the meaning given by section 837A of the Taxes Act 1988;
- “surrenderable loss” has the meaning given in paragraph 16(2).
- (2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.
- (3) For the purposes of this Schedule a company not within the charge to corporation tax that incurs qualifying expenditure is treated as having such accounting periods as it would have—

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- (a) if it carried on a trade consisting of the qualifying R&D activity on which the expenditure is incurred, and
- (b) if it had started to carry on that trade when it started to carry on that activity.

#### Textual Amendments

**F87** Words in Sch. 13 para. 27(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](#))

#### Commencement and transitional provision

- 28 (1) This Schedule applies only to expenditure incurred on or after such day (being a day not earlier than 1st April 2002) as the Treasury may by order appoint.
- (2) For the purposes of determining the expenditure incurred on or after that day no account shall be taken of section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins).
- (3) Paragraph 1(1) (requirement of minimum amount of qualifying expenditure in an accounting period) applies to an accounting period beginning before and ending on or after that day as if so much of the period as falls on or after that day were a separate accounting period.

## SCHEDULE 14

Section 54

### TAX CREDITS UNDER SCHEDULE 13: CONSEQUENTIAL AMENDMENTS

#### Interest

- 1 (1) Section 826 of the Taxes Act 1988 (interest on tax overpaid) is amended as follows.
- (2) In subsection (1) (payments which carry interest) after paragraph (d) insert—
- “(da) a payment of a tax credit falls to be made to a company under Schedule 13 to the Finance Act 2002 in respect of an accounting period, or”.
- (3) After subsection (3A) (material date for repayments of R&D tax credit) insert—
- “(3AA) In relation to a payment of tax credit falling within subsection (1)(da) 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 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 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) for “or (d)” substitute “(d), (da)”, and

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(b) in paragraph (b)(ii) after “R&D tax credit” insert “, tax credit under Schedule 13 to the Finance Act 2002”.

(5) In subsection (8BA) (cases where there is a change in the amount of the R&D tax credit etc) after “R&D tax credit” (in both places) insert “, tax credit under Schedule 13 to the Finance Act 2002”.

*Claim must be made in tax return*

2 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), at the end insert—

“(3) A claim to which Part 9C of this Schedule applies (claims for tax credits under Schedule 13 to the Finance Act 2002) can only be made by being included in a company tax return (see paragraph 83N).”.

*Recovery of excessive tax credits*

3 In paragraph 52 of that Schedule (recovery of excessive repayments, etc)—

(a) in sub-paragraph (2) (excessive repayments to which paragraphs 41 to 48 apply), after paragraph (bb) insert—

“(bc) tax credit under Schedule 13 to the Finance Act 2002,”,

(b) in sub-paragraph (5) (connection of assessment for excessive payment to an accounting period), after paragraph (ac) insert—

“(ad) an amount of tax credit under Schedule 13 to the Finance Act 2002 paid to a company for an accounting period,”,

and

(c) at the end of that sub-paragraph, after “(ac)” insert “, (ad)”.

*Claims for tax credits*

4 After Part 9B of that Schedule insert—

**“PART 9C**

CLAIMS FOR TAX CREDIT UNDER SCHEDULE 13 TO THE FINANCE ACT 2002

***Introduction***

83M This Part of this Schedule applies to claims for tax credits under Schedule 13 to the Finance Act 2002 (vaccine research etc).

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

83N (1) A claim to which this Part of this Schedule applies 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.

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### **Content of claim**

- 83O A claim to which this Part of this Schedule applies must specify the amount of the relief claimed, which must be an amount quantified at the time the claim is made.

### **Amendment or withdrawal of claim**

- 83P A claim to which this Part of this Schedule applies may be amended or withdrawn by the claimant company only by amending its company tax return.

### **Time limit for claims**

- 83Q (1) A claim to which this Part of this Schedule applies 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**

- 83R (1) The company is liable to a penalty where it—
- (a) fraudulently or negligently makes a claim to which this Part of this Schedule applies which 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 credit claimed, that is, the difference between—
- (a) the amount of the credit to which the company is entitled under Schedule 13 to the Finance Act 2002 for the accounting period to which the claim relates, and
  - (b) the amount of such credit claimed by the company for that period.”.

### **Commencement**

- 5 This Schedule has effect in relation to tax credits payable under Schedule 13 in respect of expenditure incurred on or after such day as the Treasury may appoint under paragraph 28 of that Schedule.

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## SCHEDULE 15

Section 56

### R&D TAX RELIEF FOR SMALL AND MEDIUM-SIZED ENTERPRISES: MINOR AND CONSEQUENTIAL AMENDMENTS

1        Schedule 20 to the Finance Act 2000 (c. 17) (R&D tax relief for small and medium-sized enterprises) is amended as follows.

2        (1) In paragraph 1 (entitlement to R&D tax relief)—

- (a) in sub-paragraph (1)(b) (requirement that qualifying R&D expenditure is not less than £25,000), for “the company’s qualifying R&D expenditure (see paragraph 3)” substitute “ the aggregate of its qualifying R&D expenditure (see paragraph 3) and its qualifying sub-contracted R&D expenditure (within the meaning of paragraph 8 of Schedule 12 to the Finance Act 2002) ”;
- (b) after sub-paragraph (3) insert—

“(3A) For the purposes of sub-paragraph (1)(b) a company’s qualifying sub-contracted R&D expenditure (within the meaning of paragraph 8 of Schedule 12 to the Finance Act 2002) is deductible in an accounting period if it is allowable as a deduction in computing for tax purposes the profits for that period of a trade carried on by the company.”.

(2) This paragraph does not apply in relation to a company’s qualifying sub-contracted R&D expenditure (within the meaning of paragraph 8 of Schedule 12 to this Act) incurred before 1st April 2002.

For this purpose no account shall be taken of section 401 of the Taxes Act 1988 (pre-trading expenditure treated as incurred when trading begins).

3        In paragraph 5 (staffing costs)—

- (a) in sub-paragraph (1)(c) omit “(within the meaning of section 231A(4) of the Taxes Act 1988)”, and
- (b) after sub-paragraph (1) insert—

“(1A) In sub-paragraph (1)(c) “pension fund” means any scheme, fund or other arrangements established and maintained (whether in the United Kingdom or elsewhere) for the purpose of providing pensions, retirement annuities, allowances, lump sums, gratuities or other superannuation benefits (with or without subsidiary benefits).

In this sub-paragraph “scheme” includes any deed, agreement or series of agreements.”.

4        In paragraph 8 (subsidised expenditure), for the second sentence of sub-paragraph (2) substitute—

“For this purpose the following are not State aids—

- (a) R&D tax relief and R&D tax credits;
- (b) tax relief under Schedule 12 to the Finance Act 2002 (tax relief for expenditure on research and development);
- (c) tax relief and tax credits under Schedule 13 to that Act (tax relief for expenditure on vaccine research etc).”.

*Status:* Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Finance Act 2002 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- 5 In paragraph 12 (treatment of sub-contractor payments where principal and sub-contractor unconnected), for paragraph (b) substitute—
- “(b) the company and the sub-contractor are not connected persons, and
  - (c) no election is made under paragraph 11,”.

## SCHEDULE 16

Section 57

### COMMUNITY INVESTMENT TAX RELIEF

#### PART 1

##### INTRODUCTION

###### *Eligibility for tax relief*

- 1 (1) An individual or company (“the investor”) that makes an investment (“the investment”) in a body is eligible for relief in respect of the investment if—
- (a) that body is accredited as a community development finance institution under this Schedule at the time the investment is made (see Part 2);
  - (b) the investment is a qualifying investment (see Part 3); and
  - (c) the general conditions of Part 4 are satisfied.
- (2) In this Schedule references to “the CDFI” are to the body in which the investment is made.

###### **Commencement Information**

**I34** Sch. 16 para. 1 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

###### *Meaning of “investment”*

- 2 (1) For the purposes of this Schedule, a person makes an investment in a body at any time when—
- (a) he makes a loan (whether secured or unsecured) to the body, or
  - (b) an issue of securities of or shares in the body, for which he has subscribed, is made to him.
- (2) For the purposes of sub-paragraph (1)(a)—
- (a) a person does not make a loan to a body where—
    - (i) the body uses overdraft facilities provided by that person, or
    - (ii) that person subscribes for or otherwise acquires securities of the body;
  - (b) where the loan agreement authorises the body to draw down amounts of the loan over a period of time, the loan is treated as made at the time when the first amount is drawn down.

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#### Commencement Information

**I35** Sch. 16 para. 2 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

#### Meaning of “the five year period”

- 3 In this Schedule “the five year period” means the period of five years beginning with the day the investment is made (“the investment date”).

#### Commencement Information

**I36** Sch. 16 para. 3 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

## PART 2

### ACCREDITED COMMUNITY DEVELOPMENT FINANCE INSTITUTIONS

#### Application and criteria for accreditation

- 4 (1) Applications for accreditation as a community development finance institution must be made to the Secretary of State in such form and manner as he may specify.
- (2) The Secretary of State shall accredit a body if, and only if, he is satisfied—
- (a) that the body’s principal objective is to provide (directly or indirectly)—
    - (i) finance, or
    - (ii) finance and access to business advice,
 for enterprises for disadvantaged communities, and
  - (b) that the body satisfies such other criteria as may be specified in regulations made by the Treasury.
- (3) For the purposes of this paragraph “enterprises for disadvantaged communities” include—
- (a) enterprises located in disadvantaged areas, and
  - (b) enterprises owned or operated by, or designed to serve, members of disadvantaged groups.
- (4) The criteria mentioned in paragraph (b) of sub-paragraph (2) may include criteria relating to the enterprises to which the body provides or proposes to provide finance or access to business advice.
- (5) Regulations under that paragraph may—
- (a) make the provision mentioned in that paragraph by reference to any material published by, or on behalf of, the Secretary of State (whether before or after the coming into force of this paragraph), and
  - (b) make different provision for different cases or circumstances or in relation to different areas.
- (6) Without prejudice to the generality of sub-paragraph (5)(b), those regulations may, in particular, make different provision in the case of bodies whose principal objective in providing finance as mentioned in sub-paragraph (2)(a) is to invest directly in



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enterprises that use the money raised for the purposes of the business of the enterprise in cases where—

- (a) that business does not include the provision of finance for other enterprises, or
- (b) if it includes any such provision, the nature and extent of that provision satisfies such conditions as the Treasury may, by regulations, prescribe.

- (7) Where the Secretary of State accredits a body of the kind mentioned in sub-paragraph (6), he shall specify in the accreditation that the body is accredited as a retail community development finance institution.

**Commencement Information**

**I37** Sch. 16 para. 4 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*Terms and conditions of accreditation*

- 5 (1) An accreditation under this Schedule shall—
- (a) be made on—
    - (i) such terms as regulations may require, and
    - (ii) such other terms as the Secretary of State considers appropriate, and
  - (b) be made conditional upon compliance with—
    - (i) such requirements as regulations may require, and
    - (ii) such other requirements as the Secretary of State considers appropriate.
- (2) The requirements that may be imposed by virtue of sub-paragraph (1)(b) include requirements relating to the provision of information.
- (3) Regulations may—
- (a) make provision for appeals to the Special Commissioners against refusals to grant accreditation under this Schedule;
  - (b) make provision about the consequences of a failure to comply with any requirement of an accreditation, including—
    - (i) provision for the withdrawal of the accreditation with effect from the time of the failure or a later time; and
    - (ii) provision for the imposition of penalties;
  - (c) make provision for the making of decisions by the Secretary of State as to any matter required to be decided for the purposes of the regulations;
  - (d) make different provision for different cases or circumstances or in relation to different areas; and
  - (e) make such incidental, supplemental, transitional and consequential provision as appears to the Treasury to be necessary or expedient.
- (4) In this paragraph “regulations” means regulations made by the Treasury.

**Commencement Information**

**I38** Sch. 16 para. 5 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

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### *Delegation of Secretary of State's functions*

- 6 The Secretary of State may delegate any functions conferred on him by or under this Part.

#### **Commencement Information**

**I39** Sch. 16 para. 6 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

### *Period of accreditation*

- 7 (1) An accreditation has effect for a period of three years beginning on such day as may be specified in the accreditation, being a day which is no earlier than—
- (a) if the body is not accredited under this Schedule at the time the application is made, the day the accreditation is granted, and
  - (b) if the body is so accredited, the time the body's current accreditation expires.
- This is subject to sub-paragraphs (2) and (3).
- (2) Where the application for an accreditation is made before 6th April 2003, the accreditation may specify that it is to have effect for a period—
- (a) beginning on 17th April 2002 or such later day as may be specified in the accreditation, and
  - (b) ending immediately before the third anniversary of the day the accreditation is granted.
- (3) Where the body is accredited at the time the application is made and it makes a request under this sub-paragraph, the new accreditation may specify that the existing accreditation is to be treated for the purposes of this Schedule (including sub-paragraph (1)(b) above) as expiring immediately before the grant of the new accreditation (if it would otherwise expire at a later time).
- (4) This paragraph has effect subject to paragraph 5(3)(b) (power to provide for the withdrawal of accreditation).

#### **Commencement Information**

**I40** Sch. 16 para. 7 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

## **PART 3**

### **QUALIFYING INVESTMENTS**

#### *Introduction*

- 8 For the purposes of this Schedule the investment is a “qualifying investment” in the CDFI if—
- (a) the investment consists of—
    - (i) a loan in relation to which the conditions of paragraph 9 are satisfied,

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- (ii) securities in relation to which the conditions of paragraph 10 are satisfied, or
  - (iii) shares in relation to which the conditions of paragraph 11 are satisfied;
- (b) the investor receives from the CDFI a valid tax relief certificate in relation to the investment (see paragraph 12); and
  - (c) the requirements of paragraph 13 are met in relation to pre-arranged protection against risks.

#### Commencement Information

**I41** Sch. 16 para. 8 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

#### *Conditions to be satisfied in relation to loans*

- 9 (1) The first condition of this paragraph is that either—
- (a) the CDFI receives from the investor, on the investment date, the full amount of the loan, or
  - (b) if the loan agreement authorises the CDFI to draw down amounts of the loan over a period of time, the end of that period is not later than 18 months after the investment date.
- (2) The second condition is that the loan must not carry any present or future right to be converted into or exchanged for a loan which is, or securities, shares, or other rights which are, redeemable within the five year period.
- (3) The third condition is that the loan must not have been made on terms that allow any person to require—
- (a) the repayment during the first two years of the five year period of any of the loan capital advanced in those two years,
  - (b) the repayment during the third year of that period of more than 25% of the loan capital outstanding at the end of those two years,
  - (c) the repayment before the end of the fourth year of that period of more than 50% of that loan capital, or
  - (d) the repayment before the end of that period of more than 75% of that loan capital.
- (4) For the purposes of sub-paragraph (3), any requirement arising as a consequence of a failure of the CDFI to fulfil any obligation of the loan agreement shall be disregarded if that obligation—
- (a) is imposed by reason only of the commercial risks to which the investor is exposed as lender under that agreement, and
  - (b) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Schedule.
- (5) The Treasury may by order substitute for any percentage for the time being specified in sub-paragraph (3) such other percentage as they think fit; and any such substitution shall have effect in relation to loans made by a person on or after such date as may be specified in the order.

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#### Commencement Information

**I42** Sch. 16 para. 9 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Conditions to be satisfied in relation to securities*

- 10 (1) The first condition of this paragraph is that the securities must be—
- (a) subscribed for wholly in cash, and
  - (b) fully paid for on the investment date.
- (2) The second condition is that the securities must not carry—
- (a) any present or future right to be redeemed within the five year period, or
  - (b) any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within that period.

#### Commencement Information

**I43** Sch. 16 para. 10 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Conditions to be satisfied in relation to shares*

- 11 (1) The first condition of this paragraph is that the shares must be—
- (a) subscribed for wholly in cash, and
  - (b) fully paid up on the investment date.
- Shares are not fully paid up for the purposes of paragraph (b) if there is any undertaking to pay cash to the CDFI at a future date in connection with the acquisition of the shares.
- (2) The second condition is that the shares must not carry—
- (a) any present or future right to be redeemed during the five year period, or
  - (b) any present or future right to be converted into or exchanged for a loan which is, or securities, shares or other rights which are, redeemable within that period.

#### Commencement Information

**I44** Sch. 16 para. 11 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Tax relief certificates*

- 12 (1) For the purposes of this Schedule a “tax relief certificate” means a certificate issued by the CDFI in respect of the investment, which is in such form as the Board may specify.
- (2) The CDFI must not, in relation to an accreditation period—
- (a) if it is accredited for that period as a retail community development finance institution (see paragraph 4(7)), issue tax relief certificates in respect of

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- investments made in the CDFI in that period with an aggregate value exceeding £10 million, and
- (b) in any other case, issue tax relief certificates in respect of investments made in the CDFI in that period with an aggregate value exceeding £20 million.
- (3) For the purposes of sub-paragraph (2) the value of an investment made in the CDFI is—
- (a) if the investment consists of a loan—
- (i) the amount of the loan, or
- (ii) where the loan agreement authorises the CDFI to draw down amounts of the loan over a period of time, the amount committed under the loan agreement; and
- (b) if the investment consists of securities or shares, the amount subscribed for them.
- (4) The Treasury may, by order, substitute for any amount for the time being specified in sub-paragraph (2) such other amount as they think fit.
- (5) Any such substitution shall have effect in relation to such accreditation periods as may be specified in the order; and those periods may, if the substitution increases the amount for the time being specified in sub-paragraph (2), include periods beginning before the order takes effect.
- (6) Any tax relief certificate issued wholly or partly in contravention of sub-paragraph (2) is invalid.
- (7) A body is liable to a penalty not exceeding £3000 if it issues a tax relief certificate which is made fraudulently or negligently.

#### Commencement Information

I45 Sch. 16 para. 12 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

#### *Pre-arranged protection against risks*

- 13 (1) Any arrangements—
- (a) under which the investment is made, or
- (b) made, before the investor makes the investment, in relation to or in connection with the making of the investment,
- must not include arrangements (“excluded arrangements”) the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for the investor against what would otherwise be the risks attached to making the investment.
- (2) For the purposes of sub-paragraph (1), excluded arrangements do not include any arrangements which are confined to the provision for the investor of any such protection against those risks as might reasonably be expected to be provided for commercial reasons if the investment were made in the course of a business of banking.
- (3) For the purposes of this paragraph “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

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#### Commencement Information

**I46** Sch. 16 para. 13 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

### PART 4

#### GENERAL CONDITIONS

##### *No control of CDFI by investor*

- 14 (1) The investor must not control the CDFI at any time during the five year period.
- (2) In this paragraph references to the investor include any person connected with the investor.
- (3) Where the CDFI is a body corporate, the question whether the investor controls the CDFI shall, for the purposes of this paragraph, be determined in accordance with section 840 of the Taxes Act 1988.

This is subject to sub-paragraph (6).

- (4) In any other case, the investor shall be treated, for those purposes, as having control of the CDFI if he has power to secure—
- (a) by means of the possession of voting power in the CDFI, or
  - (b) by virtue of any powers conferred by the constitution of, or any other document regulating, the CDFI,
- that the affairs of the body are conducted in accordance with his wishes.

This is subject to sub-paragraphs (5) and (6).

- (5) Where the CDFI is a partnership and the investor is a member of that partnership, for the purposes of determining in accordance with this paragraph whether the investor controls the CDFI the other members of that partnership shall not, by virtue of their membership of the CDFI, be treated as partners of the investor.
- (6) In determining whether the investor controls the CDFI there shall be attributed to the investor (to the extent that it would not otherwise be the case)—
- (a) any rights or powers that the investor is entitled to acquire at a future date or will, at a future date, become entitled to acquire, and
  - (b) any rights or powers which another person holds on behalf of the investor or may be required to exercise, by direction, on his behalf.

#### Commencement Information

**I47** Sch. 16 para. 14 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

##### *Beneficial ownership*

- 15 (1) The investor must be the sole beneficial owner of the investment when it is made.

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- (2) Where the investment consists of a loan, the person beneficially entitled to repayment of the loan shall be treated as the beneficial owner of the loan for the purposes of this Schedule.

**Commencement Information**

**I48** Sch. 16 para. 15 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*Investor must not be accredited*

- 16 The investor must not be accredited as a community development finance institution under this Schedule (see Part 2) on the investment date.

**Commencement Information**

**I49** Sch. 16 para. 16 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*No acquisition of share in partnership*

- 17 (1) Where the CDFI is a partnership, the investment must not consist of or include any amount of capital contributed by the investor on becoming a member of the partnership.
- (2) For this purpose, the amount of capital contributed by the investor on becoming a member of the partnership includes any amount which—
- (a) purports to be provided by the investor by way of loan capital, and
  - (b) is accounted for as partners' capital in the accounts of the partnership.

**Commencement Information**

**I50** Sch. 16 para. 17 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*No tax avoidance purpose*

- 18 The investment must not be made as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

**Commencement Information**

**I51** Sch. 16 para. 18 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

**PART 5**

FORM OF RELIEF

*Individual investors*

- 19 (1) This paragraph applies where the investor is—

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- (a) an individual, and
  - (b) eligible for relief in respect of the investment (see paragraph 1(1)).
- (2) Where the investor makes a claim in respect of a loan, securities or shares for a relevant tax year in accordance with this Part, the amount of his liability for that year to income tax on his total income shall be reduced by the smaller of—
- (a) 5% of the invested amount in respect of that loan or those securities or shares for the year, and
  - (b) the amount which reduces his liability to zero.
- (3) For this purpose the “relevant” tax years are—
- (a) the tax year in which the investment date falls, and
  - (b) each of the four subsequent tax years.
- (4) The investor is entitled to make a claim for relief for a relevant tax year if—
- (a) it appears to him that the conditions for the relief are for the time being satisfied, and
  - (b) he has received a tax relief certificate (see paragraph 12) relating to the investment from the CDFI,
- but no claim may be made before the end of the tax year to which it relates.
- (5) Sub-paragraph (4) is subject to the following provisions—
- (a) paragraph 22 (loans: no claim after disposal or excessive repayments or receipts of value);
  - (b) paragraph 23 (securities or shares: no claim after disposal or excessive receipts of value);
  - (c) paragraph 24 (loss of accreditation by CDFI).
- (6) In determining for the purposes of sub-paragraph (2) the amount of income tax to which the investor would be liable apart from this paragraph, no account shall be taken of—
- (a) any income tax reduction under Chapter 1 of Part 7 of the Taxes Act 1988 or under section 347B of that Act;
  - (b) any income tax reduction under section 353(1A) of that Act;
  - (c) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788, or by way of a credit under section 790(1), of that Act;
  - (d) any tax at the basic rate on so much of that person’s income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.

#### Commencement Information

**I52** Sch. 16 para. 19 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Company investors

- 20 (1) This paragraph applies where the investor is—
- (a) a company, and
  - (b) eligible for relief in respect of the investment (see paragraph 1(1)).



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- (2) Where the investor makes a claim for a relevant accounting period in respect of a loan, securities or shares in accordance with this Part, the amount of its liability for corporation tax for that period shall be reduced by the smaller of—
  - (a) 5% of the invested amount in respect of that loan or those securities or shares for the period, and
  - (b) the amount which reduces the investor’s liability to zero.
- (3) For this purpose the “relevant” accounting periods are—
  - (a) the accounting period in which the investment date falls, and
  - (b) each of the accounting periods in which the subsequent four anniversaries of that date fall.
- (4) The investor is entitled to make a claim for relief for a relevant accounting period if—
  - (a) it appears to the investor that the conditions for the relief are for the time being satisfied, and
  - (b) it has received a tax relief certificate (see paragraph 12) relating to the investment from the CDFI,but no claim may be made before the end of the accounting period to which it relates.
- (5) Sub-paragraph (4) is subject to the following provisions—
  - (a) paragraph 22 (loans: no claim after disposal or excessive repayments or receipts of value);
  - (b) paragraph 23 (securities or shares: no claim after disposal or excessive receipts of value);
  - (c) paragraph 24 (loss of accreditation by CDFI);
  - (d) paragraph 25 (accreditation of the investor).

#### **Commencement Information**

**I53** Sch. 16 para. 20 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Determination of “the invested amount”*

- 21 (1) This paragraph applies for the purpose of determining “the invested amount” in respect of any loan, securities or shares comprised in the investment.

This is subject to paragraphs 31(2) and 38 (which adjust “the invested amount” in certain cases where value is received).

- (2) In the case of a loan, the invested amount is—
  - (a) for the tax year or accounting period in which the investment date falls, the average capital balance for the first year of the five year period;
  - (b) for the tax year or accounting period in which the first anniversary of the investment date falls, the average capital balance for the second year of the five year period;
  - (c) for any subsequent tax year or accounting period—
    - (i) the average capital balance for the period of one year beginning with the anniversary of the investment date falling in the tax year or accounting period concerned, or

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- (ii) if less, the average capital balance for the period of six months beginning eighteen months after the investment date.
- (3) In the case of securities or shares, the invested amount for a tax year or accounting period is the amount subscribed by the investor for the securities or shares.
- (4) For the purposes of this paragraph, the average capital balance of the loan for a period is the mean of the daily balances of capital outstanding during the period.

#### Commencement Information

**I54** Sch. 16 para. 21 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Loans: no claim after disposal or excessive repayments or receipts of value*

- 22 (1) Where the investment consists of a loan, no claim may be made in respect of a tax year or accounting period if—
- (a) the investor disposes of the whole or any part of the loan before the qualifying date relating to that year or period,
  - (b) at any time after the investment is made but before that qualifying date, the amount of the capital outstanding on the loan is reduced to nil, or
  - (c) before that qualifying date, paragraphs (a) and (b) of paragraph 30(1) (repayments of loan in five year period exceeding permitted limits) apply in relation to the investment (whether by virtue of paragraph 31 (receipts of value treated as repayments) or otherwise).

For the purposes of paragraph (a) any repayment of the loan is to be disregarded.

- (2) For the purposes of this paragraph the qualifying date relating to a tax year or accounting period is the anniversary of the investment date next occurring after the end of that year or period.

#### Commencement Information

**I55** Sch. 16 para. 22 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Securities or shares: no claim after disposal or excessive receipts of value*

- 23 (1) Where the investment consists of securities or shares, a claim made in respect of a tax year or accounting period must relate only to those securities or shares held by the investor, as sole beneficial owner, continuously throughout the period—
- (a) beginning when the investment is made, and
  - (b) ending immediately before the qualifying date relating to the tax year or accounting period.
- (2) No claim for relief may be made in relation to a tax year or accounting period if before the qualifying date relating to that year or period paragraphs (a) to (d) of paragraph 32(1) (receipts of value in five year period exceeding permitted limits) apply in relation to the investment or any part of it.

*Status: Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.*

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- (3) For the purposes of this paragraph, the qualifying date relating to a tax year or accounting period is the anniversary of the investment date next occurring after the end of that year or period.

**Commencement Information**

**I56** Sch. 16 para. 23 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*Loss of accreditation by the CDFI*

- 24 (1) Where the CDFI ceases to be accredited under Part 2 with effect from a time (“the relevant time”) within the five year period, no claim for relief relating to the investment may be made by the investor—
- (a) for the relevant tax year or accounting period, or
  - (b) for any later tax year or accounting period.
- (2) For the purposes of sub-paragraph (1) the relevant tax year or accounting period is—
- (a) where the relevant time falls within the first year of the five year period, the tax year or accounting period in which the investment date fell, and
  - (b) in any other case, the year or period in which fell the last anniversary of that date before the relevant time (or, if the relevant time itself falls on an anniversary of the investment date, the year or period in which that anniversary falls).

**Commencement Information**

**I57** Sch. 16 para. 24 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*Accreditation of the investor*

- 25 (1) Where the investor is a company and becomes accredited with effect from a time (“the relevant time”) within the five year period, no claim for relief relating to the investment may be made by the investor for the relevant accounting period or any later period.
- (2) For the purposes of sub-paragraph (1) the relevant accounting period is—
- (a) where the relevant time falls within the first year of the five year period, the accounting period in which the investment date fell, and
  - (b) in any other case, the period in which fell the last anniversary of that date before the relevant time (or, if the relevant time itself falls on an anniversary of the investment date, the period in which that anniversary falls).

**Commencement Information**

**I58** Sch. 16 para. 25 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

*Attribution*

- 26 (1) In this Schedule—

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- (a) references to the relief attributable to any loan, securities or shares in respect of a tax year shall be read as references to the reduction made in the investor's liability to income tax for that year that is attributed to that loan, or those securities or shares, in accordance with this paragraph, and
- (b) references to the relief attributable to any loan, securities or shares in respect of an accounting period shall be read as references to the reduction made in the investor's liability to corporation tax for that period that is attributed to that loan, or those securities or shares, in accordance with this paragraph.

This is subject to the provisions of Part 6 for the withdrawal or reduction of relief.

- (2) Where the investor's liability to income or corporation tax is reduced for a tax year or accounting period under this Part, then—
  - (a) where the reduction is obtained by reason of one loan, or securities or shares comprised in one issue, the amount of the tax reduction shall be attributed to that loan or those securities or shares, and
  - (b) where the reduction is obtained by reason of a loan or loans, securities or shares comprised in two or more investments, the reduction—
    - (i) shall be apportioned between the loan or loans, securities or shares in each of those investments in the same proportions as the invested amounts in respect of the loan or loans, securities or shares for the year or period, and
    - (ii) shall be attributed to that loan or those loans, securities or shares accordingly.
- (3) Where under this paragraph an amount of any reduction of income tax or corporation tax is attributed to any securities in the same issue, a proportionate part of that amount shall be attributed to each security.
- (4) Where under this paragraph an amount of any reduction of income tax or corporation tax is attributed to any shares in the same issue, a proportionate part of that amount shall be attributed to each of those shares.
- (5) If corresponding bonus shares are issued to the investor in respect of any shares ("the original shares") comprised in the investment that have been continuously held by the investor, as sole beneficial owner, from the time they were issued until the issue of the bonus shares—
  - (a) a proportionate part of any amount attributed to the original shares, in respect of a tax year or accounting period, immediately before the bonus shares are issued shall be attributed to each of the shares in the holding comprising the original shares and the bonus shares, in respect of that year or period, and
  - (b) after the issue of the bonus shares, this Schedule shall apply as if—
    - (i) the original issue had included the bonus shares, and
    - (ii) the bonus shares had been held by the investor, as sole beneficial owner, continuously from the time the original shares were issued until the bonus shares were issued.

- (6) In sub-paragraph (5)—

“corresponding bonus shares” means bonus shares that are in the same company, of the same class, and carry the same rights as the original shares; and

“original issue” means the issue of shares forming the investment.

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- (7) If relief attributable to a loan or any securities or shares falls to be withdrawn under Part 6, the relief attributable to that loan or each of those securities or shares shall be reduced to nil.
- (8) If relief attributable to any securities or shares falls to be reduced under that Part by any amount, the relief attributable to each of those securities or shares shall be reduced by a proportionate part of that amount.

#### Commencement Information

**I59** Sch. 16 para. 26 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

## PART 6

### WITHDRAWAL OF RELIEF

#### *Manner of withdrawal of relief*

- 27 (1) This paragraph applies where any relief has been obtained which—
- (a) is subsequently found not to have been due, or
  - (b) falls to be withdrawn or reduced under this Part.
- (2) Where the investor is an individual, the relief shall be withdrawn or reduced by making an assessment to income tax <sup>F88</sup>... for the tax year for which the relief was obtained.
- (3) No assessment shall be made under sub-paragraph (2) in respect of an individual by reason of any event occurring after his death.
- (4) Where the investor is a company, the relief shall be withdrawn or reduced by making an assessment to corporation tax under Case VI of Schedule D for the accounting period for which the relief was obtained.

#### Textual Amendments

**F88** Words in Sch. 16 para. 27(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005](#) (c. 5), s. 883(1), [Sch. 1 para. 577\(2\)](#), [Sch. 3](#) (with [Sch. 2](#))

#### Commencement Information

**I60** Sch. 16 para. 27 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Disposal of loan during five year period*

- 28 (1) Where the investment consists of a loan, if within the five year period—
- (a) the investor disposes of the whole of the investment, otherwise than by way of a permitted disposal, or
  - (b) the investor disposes of a part of the investment,
- any relief attributable to the investment in respect of any tax year or accounting period must be withdrawn.

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- (2) For the purposes of this paragraph—
- (a) a disposal is “permitted” if—
    - (i) it is by way of a distribution in the course of dissolving or winding up the CDFI,
    - (ii) it is a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset),
    - (iii) it is a deemed disposal under section 24(2) of that Act (claim that value of asset has become negligible), or
    - (iv) it is made after the CDFI has ceased to be accredited under this Schedule, and
  - (b) a full or partial repayment of the loan shall not be treated as giving rise to a disposal.

#### Commencement Information

**I61** Sch. 16 para. 28 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Disposal of shares or securities during five year period*

- 29 (1) This paragraph applies where the investment consists of securities or shares and—
- (a) the investor disposes of the whole or any part of the investment (“the former investment”) within the five year period,
  - (b) the CDFI has not ceased to be accredited before the disposal, and
  - (c) the disposal does not arise by virtue of an event within paragraph 35(1)(a) (repayment, redemption or repurchase of securities or shares included in the investment).
- (2) If the disposal is not a qualifying disposal, any relief attributable to the former investment in respect of any tax year or accounting period must be withdrawn.
- (3) If the disposal is a qualifying disposal, any relief attributable to the former investment for a tax year or accounting period must—
- (a) if it is greater than an amount equal to 5% of the amount or value of the consideration (if any) which the investor receives for the former investment, be reduced by that amount, and
  - (b) in any other case, be withdrawn.
- (4) For the purposes of this paragraph “qualifying disposal” means a disposal that is—
- (a) by way of a bargain made at arm’s length for full consideration, or
  - (b) a permitted disposal (within the meaning of paragraph 28).
- (5) Where for any tax year or accounting period—
- (a) the amount of relief attributable to the former investment (“A”) is less than
  - (b) the amount (“B”) which is equal to 5% of the invested amount in respect of the former investment for that year or period,
- sub-paragraph (3)(a) shall have effect in relation to that year or period as if the amount or value referred to in that sub-paragraph were reduced by multiplying it by the fraction—

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

- (6) Where the amount of relief attributable to the former investment in respect of a tax year or accounting period has been reduced before the relief was obtained, the amount of relief attributable to that investment shall be deemed for the purposes of sub-paragraph (5) to be the amount of the relief that would have been attributable had no such reduction been made before the relief was obtained.
- (7) Sub-paragraph (6) does not apply to a reduction by virtue of paragraph 26(5) (attribution of relief where there is a corresponding issue of bonus shares).

### Commencement Information

**I62** Sch. 16 para. 29 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

### *Repayments of loan capital*

- 30 (1) Where the investment consists of a loan, if—
- (a) the average capital balance of the loan for the third, fourth or final year of the five year period is less than the permitted balance for the year in question, and
  - (b) the difference between those balances is not an amount of insignificant value, any relief attributable to the investment in respect of any tax year or accounting period must be withdrawn.
- (2) For the purposes of this paragraph—
- “the average capital balance” of the loan for a period is the mean of the daily balances of capital outstanding during that period, disregarding any non-standard repayments of the loan made in that period or at any earlier time;
- “the permitted balance” of the loan is—
- (a) for the third year of the five year period, 75% of the average capital balance for the period of six months beginning 18 months after the investment date,
  - (b) for the fourth year of that period, 50% of that balance, and
  - (c) for the final year of that period, 25% of that balance.
- (3) For the purposes of sub-paragraph (2), a repayment of the loan is a non-standard repayment if it is made—
- (a) at the choice or discretion of the CDFI and not as a direct or indirect consequence of any obligation provided for under the terms of the loan agreement, or
  - (b) as a consequence of the failure of the CDFI to fulfil any obligation of the loan agreement which—
    - (i) is imposed by reason only of the commercial risks to which the investor is exposed as lender under that agreement, and
    - (ii) is no more likely to be breached than any obligation that might reasonably have been agreed in respect of the loan in the absence of this Schedule.

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- (4) For the purposes of this paragraph “an amount of insignificant value” means an amount which—
- (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the average capital balance of the loan for the year of the five year period in question.

#### Commencement Information

**I63** Sch. 16 para. 30 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

#### *Value received treated as repayment of loan*

- 31 (1) This paragraph applies where the investment consists of a loan and the investor receives any value (other than insignificant value) from the CDFI during the period of restriction.
- (2) The investor shall be treated for the purposes of—
- (a) paragraph 21 (determination of “invested amount”), and
  - (b) paragraph 30 (repayments of loan capital),
- as having received a repayment of the loan of an amount equal to the amount of the value received.
- (3) For those purposes the repayment shall be treated as made—
- (a) where the value was received in the first or second year of the period of restriction, at the beginning of that second year, and
  - (b) where the value was received in a later year of that period, at the beginning of the year in question.
- (4) For the purposes of paragraph 30 the repayment shall be treated as a repayment other than a non-standard repayment (within the meaning of that paragraph).
- (5) For the purposes of this paragraph the investor receives insignificant value where he receives an amount of insignificant value; and for this purpose “an amount of insignificant value” means an amount which—
- (a) does not exceed £1,000, or
  - (b) if it exceeds that amount, is insignificant in relation to the average capital balance of the loan for the year of the period of restriction in which the value is received.
- (6) For the purposes of sub-paragraph (5)(b)—
- (a) “the average capital balance” of the loan for a year is the mean of the daily balances of capital outstanding during the year (disregarding the receipt of value in question), and
  - (b) any value received in the first year of the period of restriction shall be treated as received at the beginning of the second year of that period.
- (7) This paragraph is subject to paragraph 37 (value received where there is more than one investment).
- (8) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which relief attributable to any loan, securities or shares in respect of any one or



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more tax years or accounting periods has already been reduced or withdrawn on its account.

#### Commencement Information

**I64** Sch. 16 para. 31 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

*Value received by investor where the investment consists of securities or shares*

- 32 (1) Where the investment consists of securities or shares and—
- (a) the investor receives any value (other than insignificant value) from the CDFI during the period of restriction,
  - (b) the investment or a part of it is held by the investor at the time the value is received and has been held by him, as sole beneficial owner, continuously since the investment was made (“the continuing investment”),
  - (c) the receipt is wholly or partly in excess of the permitted level of receipts in respect of the continuing investment, and
  - (d) the amount of that excess (“the excess”) is not an amount of insignificant value,
- any relief attributable to the continuing investment in respect of any tax year or accounting period must be withdrawn.
- (2) For the purposes of sub-paragraph (1) the permitted level of receipts is exceeded where—
- (a) any amount of value is received by the investor (disregarding any amounts of insignificant value) in the first three years of the period of restriction, or
  - (b) the aggregate amount of value received by the investor (disregarding any amounts of insignificant value)—
    - (i) before the beginning of the fifth year of that period, exceeds 25% of the invested capital;
    - (ii) before the beginning of the final year of that period, exceeds 50% of the invested capital;
    - (iii) before the end of that period, exceeds 75% of the invested capital.
- (3) In this paragraph—
- “the invested capital”, in relation to the continuing investment, means the amount subscribed for the securities or shares concerned;
  - “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 investor for the securities or shares comprising the continuing investment;
- and for the purposes of sub-paragraph (1) the investor receives insignificant value where he receives an amount of insignificant value.
- (4) This paragraph is subject to paragraph 37 (value received where there is more than one investment).
- (5) Value received shall be disregarded, for the purposes of this paragraph, to the extent to which relief attributable to any loan, securities or shares in respect of any one or

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more tax years or accounting periods has already been reduced or withdrawn on its account.

#### Commencement Information

**I65** Sch. 16 para. 32 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Meaning of “period of restriction”

33 In this Part “the period of restriction” in relation to the investment is the period of six years beginning one year before the investment date.

#### Commencement Information

**I66** Sch. 16 para. 33 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Aggregation of receipts of insignificant value

34 (1) Where—

- (a) value is received (“the relevant receipt”) by the investor from the CDFI at any time during the period of restriction relating to the investment,
- (b) the investor has received from the CDFI one or more receipts of insignificant value at a time or times during that period but 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) is not an amount of insignificant value,

the investor 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 that aggregate amount.

For this purpose a receipt does not fall within paragraph (b) if the whole or any part of it has previously been aggregated under this sub-paragraph.

- (2) For the purposes of this paragraph “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 relevant amount.
- (3) Where the investment consists of a loan, the relevant amount for the purposes of sub-paragraph (2) is—
  - (a) if the relevant receipt is received in the first or second year of the period of restriction, the average capital balance of the loan for the second year of that period, and
  - (b) if the relevant receipt is received in a later year, the average capital balance of the loan for the year in question.
- (4) For the purposes of sub-paragraph (3)—
  - (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
  - (b) the relevant receipt and any receipts within sub-paragraph (1)(b) shall be disregarded when calculating the average capital balance for the year in question.

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- (5) Where the investment consists of securities or shares, the relevant amount for the purposes of sub-paragraph (2) is—
- (a) if the relevant receipt is received in the first year of the period of restriction, the amount subscribed for the securities or shares, and
  - (b) in any other case, the amount subscribed for such of the securities or shares as—
    - (i) are held by the investor at the time the relevant receipt is received, and
    - (ii) have been held by him, as sole beneficial owner, continuously since the investment was made.

#### Commencement Information

**I67** Sch. 16 para. 34 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *When value is received*

- 35 (1) For the purposes of this Part the investor receives value from the CDFI at any time when the CDFI—
- (a) repays, redeems or repurchases any securities or shares included in the investment;
  - (b) releases or waives any liability of the investor to the CDFI or discharges, or undertakes to discharge, any liability of the investor to a third person;
  - (c) makes a loan or advance to the investor which has not been repaid in full before the investment is made;
  - (d) provides a benefit or facility for—
    - (i) the investor or any associates of the investor, or
    - (ii) if the investor is a company, directors or employees of the investor or any of their associates;
  - (e) disposes of an asset to the investor for no consideration or for a consideration which is or the value of which is less than the market value of the asset;
  - (f) acquires an asset from the investor for a consideration which is or the value of which is more than the market value of the asset; or
  - (g) makes a payment to the investor other than a qualifying payment.

[<sup>F89</sup>(1A) But if the investor is a bank, the investor does not receive value from the CDFI when the CDFI makes a deposit with the investor in the course of its ordinary banking arrangements.]

- (2) For the purposes of sub-paragraph (1)(b) the CDFI shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.
- (3) For the purposes of sub-paragraph (1)(c) there shall be treated as if it were a loan made by the CDFI to the investor—
- (a) the amount of any debt incurred by the investor to the CDFI (other than an ordinary trade debt), and
  - (b) the amount of any debt due from the investor to a third person which has been assigned to the CDFI.

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(4) For the purposes of this paragraph—

- (a) references to a debt or liability do not, in relation to a person, include references to any debt or liability which would be discharged by the making by that person of a qualifying payment;
- (b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would have been a qualifying payment; and
- (c) any reference to a payment or disposal to a person includes a reference to a payment or disposal made to that person indirectly or to his order or for his benefit.

In paragraphs (a) to (c) references to “a person” include references to any person who, at any time in the period of restriction in question, is connected with that person, whether or not he is so connected at the material time.

(5) In this paragraph—

[<sup>F90</sup>“bank” has the meaning given by section 840A of the Taxes Act 1988;]  
“qualifying payment” means—

- (a) any payment by any person for any goods, services or facilities provided by the investor (in the course of his trade or otherwise) which is reasonable in relation to the market value of those goods, services or facilities;
- (b) the payment by any person of any interest which represents no more than a reasonable commercial return on money lent to that person;
- (c) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or securities of that company;
- (d) any payment for the acquisition of an asset which does not exceed its market value;
- (e) the payment by any person, as rent for any property occupied by the person, of an amount not exceeding a reasonable and commercial rent for the property; and
- (f) a payment in discharge of an ordinary trade debt; and  
“ordinary trade debt” means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—
  - (a) does not exceed six months, and
  - (b) is not longer than that normally given to customers of the person carrying on the trade or business.

**Textual Amendments**

**F89** Sch. 16 para. 35(1A) inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 54\(2\)\(4\)](#)

**F90** Words in Sch. 16 para. 35(5) inserted (retrospectively) by [Finance Act 2008 \(c. 9\), s. 54\(3\)\(4\)](#)

**Commencement Information**

**I68** Sch. 16 para. 35 in force at 23.1.2003 by [S.I. 2003/88, arts. 2, 3](#)

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### *The amount of value received*

- 36 For the purposes of this Part the amount of the value received is—
- (a) in a case within paragraph 35(1)(a), the amount received by the investor;
  - (b) in a case within paragraph 35(1)(b), the amount of the liability;
  - (c) in a case within paragraph 35(1)(c)—
    - (i) the amount of the loan or advance, less
    - (ii) the amount of any repayment made before the investment is made;
  - (d) in a case within paragraph 35(1)(d)—
    - (i) the cost to the CDFI of providing the benefit or facility, less
    - (ii) any consideration given for it by the investor or any associate of his;
  - (e) in a case within paragraph 35(1)(e) or (f), the difference between the market value of the asset and the consideration (if any) received for it; and
  - (f) in a case within paragraph 35(1)(g), the amount of the payment.

#### **Commencement Information**

**I69** Sch. 16 para. 36 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

### *Value received where there is more than one investment*

- 37 (1) This paragraph applies where—
- (a) the investor makes two or more investments in the CDFI (being investments in relation to which the investor is eligible for and claims relief), and
  - (b) the investor receives value (other than value within paragraph 35(1)(a)) which falls within the periods of restriction relating to two or more of those investments.
- (2) Where this paragraph applies, paragraphs 31, 32, 34 and 38 have effect in relation to each investment referred to in sub-paragraph (1)(b) as if the amount of the value received were reduced by multiplying it by the fraction—

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

- (3) For this purpose—
- (a) A is the appropriate amount in respect of the investment in question, and
  - (b) B is the aggregate of that amount and the appropriate amount or amounts in respect of the other investment or investments.
- (4) Where the investment consists of a loan, the appropriate amount for the purposes of sub-paragraph (3) is—
- (a) if the value is received in the first or second year of the period of restriction, the average capital balance of the loan for the second year of that period, and
  - (b) if the value is received in a later year, the average capital balance of the loan for the year in question.
- (5) For the purposes of sub-paragraph (4)—

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- (a) the average capital balance of the loan for a year is the mean of the daily balances of capital outstanding during the year, and
  - (b) the receipt of value shall be disregarded when calculating the average capital balance for the year in question.
- (6) Where the investment consists of securities or shares, the appropriate amount for the purposes of sub-paragraph (3) is—
- (a) if the value is received in the first year of the period of restriction, the amount subscribed for the securities or shares, and
  - (b) in any other case, the amount subscribed for such of the securities or shares as—
    - (i) are held by the investor at the time the value is received, and
    - (ii) have been held by him, as sole beneficial owner, continuously since the investment was made.

#### Commencement Information

**I70** Sch. 16 para. 37 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Effect of receipt of value on future claims for relief*

- 38 (1) This paragraph applies where the investment consists of securities or shares and—
- (a) the investor receives any value (other than insignificant value) from the CDFI during the period of restriction, and
  - (b) the investment or a part of it is held by the investor at the time the value is received and has been held by him, as sole beneficial owner, continuously since the investment was made (“the continuing investment”),
- but no relief attributable to the continuing investment is withdrawn under paragraph 32 as a result of the receipt.
- (2) For the purposes of calculating any relief in respect of any securities or shares included in the continuing investment for any relevant tax year or accounting period, the amount subscribed for the securities or shares comprising the continuing investment shall be treated as reduced by the amount of the value received.
- (3) For this purpose the “relevant” tax years or accounting periods are—
- (a) any tax year or accounting period ending on or after the anniversary of the investment date immediately preceding the receipt of value, or
  - (b) if the value was received on an anniversary of the investment date, any tax year or accounting period ending on or after that anniversary.
- (4) For the purposes of this paragraph the investor receives insignificant value where he receives an amount of insignificant value; and for these purposes “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 investor for the securities or shares comprising the continuing investment.

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#### Commencement Information

I71 Sch. 16 para. 38 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

#### *Receipts of value by and from connected persons*

- 39 In paragraphs 31 to 38 references to the investor or the CDFI include references to any person who at any time in the period of restriction relating to the investment is connected with the investor or, as the case may be, CDFI, whether or not he is connected at the material time.

#### Commencement Information

I72 Sch. 16 para. 39 in force at 23.1.2003 by S.I. 2003/88, arts. 2, 3

## PART 7

### RESTRUCTURING OF CDFI

#### *Rights issues etc*

- 40 (1) Where—
- (a) the investor holds shares (“the existing holding”) in the CDFI which are of the same class and held in the same capacity,
  - (b) there is by virtue of such an allotment as is mentioned in section 126(2)(a) of the 1992 Act (an allotment of shares or debentures in respect of and in proportion to an original holding), other than an allotment of corresponding bonus shares, a reorganisation affecting the existing holding,
  - (c) immediately following the reorganisation, relief is attributable to the shares comprised in the existing holding or the shares or debentures allotted in respect of those shares, in respect of one or more tax years or accounting periods, and
  - (d) if relief is attributable to the shares comprised in the existing holding at that time, those shares have been held by the investor continuously from the time they were issued until the reorganisation,
- sections 127 to 130 of that Act (treatment of share capital following a reorganisation) shall not apply in relation to the existing holding.
- (2) Subsection (10) of section 116 of that Act (reorganisations, conversions and reconstructions) shall not apply in any case where the old asset consists of shares held (in the same capacity) by the investor—
- (a) that have been held by the investor continuously from the time they were issued until the relevant transaction, and
  - (b) to which relief is attributable immediately before that transaction.

In this sub-paragraph “old asset” and “the relevant transaction” have the meanings given in section 116 of that Act.

- (3) For the purposes of sub-paragraph (1)—

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“corresponding bonus shares” means bonus shares that—  
 (a) are issued in respect of shares comprised in the existing holding, and  
 (b) are of the same class, and carry the same rights, as those shares;  
 “reorganisation” has the meaning given in section 126 of that Act.

- (4) The following provisions of the 1992 Act have effect subject to this paragraph—  
 section 116 (reorganisations, conversions and reconstructions);  
 Chapter 2 of Part 4 (reorganisation of share capital, conversion of securities etc).

#### Commencement Information

**I73** Sch. 16 para. 40 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Company reconstructions etc*

- 41 (1) Where—  
 (a) the investor holds shares in or debentures of a company (“company A”),  
 (b) there is a reconstruction or amalgamation affecting that holding (“the existing holding”),  
 (c) immediately before the reconstruction or amalgamation, relief is attributable to the shares or debentures comprised in the existing holding in respect of one or more tax years or accounting periods, and  
 (d) the shares or debentures comprised in the existing holding have been held by the investor continuously from the time they were issued until the reconstruction or amalgamation,  
 sections 135 and 136 of the 1992 Act (share exchanges and company reconstructions) shall not apply in respect of the existing holding.
- (2) Sub-paragraph (1)(a) applies only where the shares or debentures are held by the investor in the same capacity.
- (3) For the purposes of sub-paragraph (1) a “reconstruction or amalgamation” means an issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of company A.
- (4) The following provisions of the 1992 Act have effect subject to this paragraph—  
 section 116 (reorganisations, conversions and reconstructions);  
 Chapter 2 of Part 4 (reorganisation of share capital, conversion of securities etc).

#### Commencement Information

**I74** Sch. 16 para. 41 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)



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## PART 8

### SUPPLEMENTARY AND GENERAL

#### *Information to be provided by the investor*

- 42 (1) Where—
- (a) the investor has obtained relief in respect of the investment, and
  - (b) an event occurs by reason of which relief attributable to the investment for any tax year or accounting period falls to be withdrawn or reduced by virtue of paragraph 28, 29, 30 or 32,
- the investor must give the Inland Revenue a notice containing particulars of the event.
- (2) Where sub-paragraph (1) requires the giving of a notice, then, subject to sub-paragraph (3) the investor must give the notice not later than—
- (a) if the investor is an individual, 31st January next following the tax year in which the event occurred, and
  - (b) if the investor is a company, the end of the period of 12 months beginning with the end of the accounting period in which the event occurred.
- (3) Where—
- (a) the investor is required to give a notice by virtue of the receipt of value by a person connected with the investor (see paragraph 39), and
  - (b) the end of the period of 60 days beginning when the investor comes to know of that event is later than the final notice date under sub-paragraph (2),
- the notice must be given within that 60 day period.
- (4) In this paragraph “the Inland Revenue” means any officer of the Board.

#### **Commencement Information**

**I75** Sch. 16 para. 42 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### *Disclosure*

- 43 (1) No obligation as to secrecy or other restriction on the disclosure of information imposed by statute or otherwise prevents the disclosure of information—
- (a) by the Secretary of State to the Inland Revenue for the purpose of assisting the Inland Revenue to discharge their functions under the Tax Acts so far as relating to matters arising under this Schedule, or
  - (b) by the Inland Revenue to the Secretary of State for the purpose of assisting the Secretary of State to discharge his functions under this Schedule.
- (2) Information obtained by such disclosure shall not be further disclosed except for the purposes of legal proceedings arising out of the functions referred to.
- (3) In this paragraph “the Inland Revenue” means any officer of the Board.

#### **Commencement Information**

**I76** Sch. 16 para. 43 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

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### Nominees

- 44 (1) For the purposes of this Schedule—
- (a) loans made by or to, or disposed of by, a nominee for a person shall be treated as made by or to, or disposed of by, that person;
  - (b) securities or shares subscribed for by, issued to, acquired or held by or disposed of by a nominee for a person shall be treated as subscribed for by, issued to, acquired or held by or disposed of by that person.
- (2) For the purposes of sub-paragraph (1) references to things done by or to a nominee for a person include things done by or to a bare trustee for a person.

#### Commencement Information

**I77** Sch. 16 para. 44 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

### Application for postponement of tax pending appeal

- 45 No application shall be made under section 55(3) or (4) of the Taxes Management Act 1970 (c. 9) (application for postponement of payment of tax pending appeal) on the ground that a person is eligible for relief unless a claim for the relief has been duly made by the person under Part 5 of this Schedule.

#### Commencement Information

**I78** Sch. 16 para. 45 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

### Meaning of “issue of securities or share”s

- 46 (1) In this Schedule—
- (a) references (however expressed) to an issue of securities of any body are to such securities of that body as carry the same rights and are issued under the same terms and on the same day, and
  - (b) references (however expressed) to an issue of shares in any body are to such shares in that body as are of the same class and issued on the same day.
- (2) In this Schedule references (however expressed) to an issue of securities of or shares in a body to a person are references to such of the securities or shares in an issue of securities of or shares in that body as are issued to that person in one capacity.

#### Commencement Information

**I79** Sch. 16 para. 46 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

### Identification of securities or shares on a disposal

- 47 (1) In any case where—
- (a) the investor disposes of part of a holding of securities or shares (“the holding”), and

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- (b) the holding includes securities or shares to which relief is attributable in respect of one or more tax years or accounting periods that have been held continuously by the investor from the time they were issued until the disposal,

this paragraph applies for the purpose of identifying the securities or shares disposed of.

- (2) For the purposes of this paragraph “holding” means—
  - (a) any number of securities of a company carrying the same rights and issued under the same terms held by the investor in the same capacity, growing or diminishing as securities carrying those rights and issued under those terms are acquired or disposed of, or
  - (b) any number of shares in a company of the same class held by the investor in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.
- (3) Where securities or shares included in the holding have been acquired by the investor on different days, then, for the purposes of capital gains tax or corporation tax on chargeable gains and of this Schedule, any disposal by the investor of any of those securities or shares shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.
- (4) Where securities or shares included in the holding have been acquired by the investor on the same day, then, for the purposes of capital gains tax or corporation tax on chargeable gains and of this Schedule, if there is a disposal by the investor of any of those securities or shares, any securities or shares—
  - (a) to which relief is attributable, and
  - (b) which have been held by the investor continuously from the time they were issued until the time of disposal,shall be treated as disposed of after any other securities or shares included in the holding which were acquired by the investor on that day.
- (5) Chapter 1 of Part 4 of the 1992 Act (share pooling, etc) shall have effect subject to this paragraph.
- (6) Sections 104 to 107 of that Act (which make provision for the purposes of capital gains tax and corporation tax on chargeable gains for the identification of securities and shares on a disposal) shall not apply to securities or shares to which relief is attributable.
- (7) In a case to which section 127 of that Act (equation of original shares and new holding) applies, shares comprised in the new holding shall be treated for the purposes of sub-paragraphs (3) and (4) as acquired when the original shares were acquired.
- (8) In sub-paragraph (7)—
  - (a) the reference to section 127 includes a reference to that section as it is applied by virtue of any enactment relating to chargeable gains, and
  - (b) “original shares” and “new holding” have the same meaning as in section 127 or (as the case may be) that section as applied by virtue of the enactment in question.

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#### Commencement Information

**I80** Sch. 16 para. 47 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Meaning of “disposal”

- 48 (1) Subject to sub-paragraph (2), in this Schedule “disposal” shall be construed in accordance with the 1992 Act, and cognate expressions shall be construed accordingly.
- (2) An investor shall be treated for the purposes of this Schedule, and for the purposes of capital gains tax or corporation tax on chargeable gains, as disposing of any securities or shares which but for paragraph 41 he—
- (a) would be treated as exchanging for other securities or shares by virtue of section 136 of the 1992 Act, or
  - (b) would be so treated but for section 137(1) of the 1992 Act (which restricts section 136 of that Act to bona fide reconstructions).

#### Commencement Information

**I81** Sch. 16 para. 48 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Construction of references to investment being “held continuously”

- 49 (1) This paragraph applies where for the purposes of this Schedule it falls to be determined whether the investor has held the investment (or any part of it) continuously throughout any period.
- (2) The investor shall not be treated as having held the investment (or any part of it) continuously throughout a period if—
- (a) he is deemed, under any provision of the 1992 Act, to have disposed of and immediately reacquired the investment (or part) at any time during the period, or
  - (b) he is treated as having disposed of the investment (or part) at any such time, by virtue of paragraph 48(2).

#### Commencement Information

**I82** Sch. 16 para. 49 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Meaning of “associate”

- 50 (1) In this Schedule “associate”, in relation to a person, means—
- (a) any relative or partner of that person,
  - (b) the trustee or trustees of any settlement in relation to which that person, or any relative of his (living or dead), is or was a settlor, and
  - (c) where that person is interested in any shares or obligations of a company which are subject to any trust or are part of the estate of a deceased person—

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- (i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased, and
  - (ii) if that person is a company, any other company interested in those shares or obligations.
- (2) In sub-paragraph (1)(a) and (b) “relative” means [<sup>F91</sup>spouse or civil partner], parent or remoter forebear or child or remoter issue.
- (3) In sub-paragraph (1)(b) “settlor” and “settlement” have the same meaning as in [<sup>F92</sup>Chapter 5 of Part 5 of the Income Tax (Trading and Other Income) Act 2005 (see section 620 of that Act)].

#### Textual Amendments

**F91** Words in Sch. 16 para. 50(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **135**

**F92** Words in Sch. 16 para. 50(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 577\(3\)](#) (with Sch. 2)

#### Commencement Information

**I83** Sch. 16 para. 50 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Minor definitions etc

- 51 (1) In this Schedule—
- “the Board” means the Commissioners of Inland Revenue;
  - “body” includes an unincorporated association;
  - “relief” means relief under Part 5 of this Schedule;
  - “tax year” means a year of assessment;
  - “the 1992 Act” means the Taxation of Chargeable Gains Act 1992 (c. 12).
- (2) For the purposes of this Schedule shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.
- (3) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.
- (4) For the purposes of this Schedule the market value at any time of any asset is the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.
- (5) In this Schedule—
- (a) references to relief obtained by the investor in respect of any investment (or part of an investment) include references to relief obtained by the investor in respect of that investment (or part) at any time after the investor has disposed of it, and
  - (b) references to the withdrawal or reduction of relief obtained by the investor in respect of the investment (or any part of it) include references to the withdrawal or reduction of relief obtained in respect of that investment (or part) at any such time.
- (6) In the case of any condition that cannot be satisfied until a future date—

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- (a) references in this Schedule to a condition being satisfied for the time being are to nothing having occurred to prevent its being satisfied, and
- (b) references to its continuing to be satisfied are to nothing occurring to prevent its being satisfied.

#### Commencement Information

**I84** Sch. 16 para. 51 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

#### Index of defined expressions

52 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

|   |                 |
|---|-----------------|
| associate   | paragraph 50    |
| the Board   | paragraph 51(1) |
| body  | paragraph 51(1) |
| the CDFI  | paragraph 1(2)  |
| disposal  | paragraph 48    |
| the five year period                                    | paragraph 3     |
| held continuously (in relation to securities or shares) | paragraph 49    |
| the invested amount                                     | paragraph 21    |
| the investment  | paragraph 1     |
| the investment date                                     | paragraph 3     |
| the investor  | paragraph 1     |
| issue of securities or shares                           | paragraph 46    |
| owner (in relation to a loan)                           | paragraph 15(2) |
| the 1992 Act  | paragraph 51(1) |
| period of restriction                                   | paragraph 33    |
| relief  | paragraph 51(1) |
| tax relief certificate                                  | paragraph 12    |

#### Commencement Information

**I85** Sch. 16 para. 52 in force at 23.1.2003 by [S.I. 2003/88](#), [arts. 2, 3](#)

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## SCHEDULE 17

Section 57

### COMMUNITY INVESTMENT TAX RELIEF: CONSEQUENTIAL AMENDMENTS

#### Commencement Information

**186** Sch. 17 in force at 23.1.2003 by S.I. 2003/88, art. 2

- 1 In section 98 of the Taxes Management Act 1970 (c. 9), in the second column of the Table, after the final entry insert—  
“paragraph 42 of Schedule 16 to the Finance Act 2002  
.”
- 2 In section 289A of the Taxes Act 1988 (form of relief under enterprise investment scheme), after subsection (5)(c) insert—  
“(ca) any income tax reduction under paragraph 19(2) of Schedule 16 to the Finance Act 2002 (community investment tax relief),”.
- 3 In Schedule 15B to that Act (venture capital trusts: relief from income tax), after paragraph 1(6)(d) insert—  
“(da) any income tax reduction under paragraph 19(2) of Schedule 16 to the Finance Act 2002 (community investment tax relief),”.
- 4 In section 25 of the Finance Act 1990 (c. 29) (donations to charity by individuals), in subsection (7) omit “and” at the end of paragraph (b) and at the end of paragraph (c) insert “and  
(d) paragraph 19(6)(d) of Schedule 16 to the Finance Act 2002.”.
- 5 In Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns, assessments and related matters), in paragraph 8 (calculation of tax payable), after paragraph 1A of the second step of the calculation in sub-paragraph (1) insert—  
“1B Any relief under Part 5 of Schedule 16 to the Finance Act 2002 (community investment tax relief).”.

## SCHEDULE 18

Section 58

### RELIEF FOR COMMUNITY AMATEUR SPORTS CLUBS

#### PART 1

##### CLUBS ENTITLED TO BE REGISTERED

#### *The requirements*

- 1 A club is entitled to be registered as a community amateur sports club if it is, and is required by its constitution to be, a club that—
  - (a) is open to the whole community,
  - (b) is organised on an amateur basis, and

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- (c) has as its main purpose the provision of facilities for, and promotion of participation in, one or more eligible sports.

In this Schedule “registered club” means a club that is so registered.

#### *Open to the whole community*

- 2 (1) A club is open to the whole community if—
- (a) membership of the club is open to all without discrimination,
  - (b) the facilities of the club are available to members without discrimination, and
  - (c) any fees are set at a level that does not pose a significant obstacle to membership or use of the club’s facilities.
- (2) For the purposes of sub-paragraph (1) “discrimination” includes indirect discrimination and includes, in particular—
- (a) discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs;
  - (b) discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport.
- (3) This paragraph does not prevent a club from having different classes of membership depending on—
- (a) the age of the member;
  - (b) whether the member is a student;
  - (c) whether the member is waged or unwaged;
  - (d) whether the member is a playing or a non-playing member;
  - (e) how far from the club the member lives;
  - (f) any restriction on the days or times when the member has access to the club’s facilities.

#### *Organised on an amateur basis*

- 3 (1) A club is organised on an amateur basis if—
- (a) it is non-profit making,
  - (b) it provides for members and their guests only the ordinary benefits of an amateur sports club, and
  - (c) its constitution provides for any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes.
- (2) A club is “non-profit making” if its constitution requires any surplus income or gains to be reinvested in the club and does not permit any distribution of club assets, in cash or in kind, to members or third parties.

This does not prevent donations by the club to charities or to other clubs that are registered as community amateur sports clubs.

- (3) The ordinary benefits of an amateur sports club are—
- (a) provision of sporting facilities;
  - (b) reasonable provision and maintenance of club-owned sports equipment;
  - (c) provision of suitably qualified coaches;
  - (d) provision, or reimbursement of the costs, of coaching courses;



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- (e) provision of insurance cover;
  - (f) provision of medical treatment;
  - (g) reimbursement of reasonable travel expenses incurred by players and officials travelling to away matches;
  - (h) reasonable provision of post-match refreshments for players and match officials;
  - (i) sale or supply of food or drink as a social adjunct to the sporting purposes of the club.
- (4) Sub-paragraph (3) does not prevent a club from—
- (a) entering into an agreement with a member for the supply to the club of goods or services, or
  - (b) employing and paying remuneration to staff who are also members of the club,
- provided the terms are approved by the governing body of the club without the member concerned being present and are agreed with the member on an arm's length basis.
- (5) In relation to the application of the net assets on the dissolution of the club, “approved sporting or charitable purposes” means such of the following as may be approved by the members of the club in general meeting or by the members of the governing body of the club—
- (a) the purposes of the governing body of an eligible sport for the purposes of which the club existed, for use in related community sport;
  - (b) the purposes of another club that is registered as a community amateur sports club;
  - (c) the purposes of a charity.

## PART 2

### EXEMPTIONS FOR REGISTERED CLUBS

#### *Exemption for trading income*

- 4 (1) Where—
- (a) a club is a registered club throughout an accounting period,
  - (b) its trading income for that period (before deduction of any expenses) does not exceed [<sup>F93</sup>£30,000],
  - (c) the whole of that income is applied for qualifying purposes, and
  - (d) the club makes a claim under this paragraph to the Inland Revenue,
- it shall be exempt from corporation tax on that income.
- (2) In relation to an accounting period that is shorter than 12 months, sub-paragraph (1) (b) has effect as if the amount specified there were proportionately reduced.
- (3) Where a club is a registered club for only part of an accounting period, sub-paragraph (1) has effect as if—
- (a) that part were a separate accounting period;
  - (b) the club's trading income for that part were the proportionately reduced amount of its trading income for the actual accounting period.

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- (4) In this paragraph “trading income” means income that (apart from this paragraph) is chargeable under Case I of Schedule D.

#### Textual Amendments

**F93** Word in Sch. 18 para. 4(1)(b) substituted (with effect in accordance with s. 56(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 56\(2\)](#)

#### *Exemption for interest and gift aid income*

- 5 (1) Where—
- (a) a club is a registered club throughout an accounting period,
  - (b) the whole of its interest income and gift aid income for that period is applied for qualifying purposes, and
  - (c) the club makes a claim under this paragraph to the Inland Revenue,
- it shall be exempt from corporation tax on that income.
- (2) Where a club is a registered club for only part of an accounting period, sub-paragraph (1) has effect as if—
- (a) that part were a separate accounting period;
  - (b) the club’s interest income for that part were the proportionately reduced amount of its interest income for the actual accounting period.
- (3) In this paragraph—
- (a) “interest income”, in relation to a club, means interest on which (apart from this paragraph) the club is chargeable to tax under paragraph (a) of Case III of Schedule D (as set out in section 18(3A) of the Taxes Act 1988);
  - (b) “gift aid income”, in relation to a club, means gifts to the club that are treated as annual payments by section 25(10) of the Finance Act 1990 (c. 29) (gift aid) as it applies by virtue of paragraph 9(1) below.

#### *Exemption for property income*

- 6 (1) Where—
- (a) a club is a registered club throughout an accounting period,
  - (b) its property income for that period (before deduction of any expenses) does not exceed [<sup>F94</sup>£20,000],
  - (c) the whole of that income is applied for qualifying purposes, and
  - (d) the club makes a claim under this paragraph to the Inland Revenue,
- it shall be exempt from corporation tax on that income.
- (2) In relation to an accounting period that is shorter than 12 months, sub-paragraph (1) (b) has effect as if the amount specified there were proportionately reduced.
- (3) Where a club is a registered club for only part of an accounting period, sub-paragraph (1) has effect as if—
- (a) that part were a separate accounting period;
  - (b) the club’s property income for that part were the proportionately reduced amount of its property income for the actual accounting period.

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- (4) In this paragraph “property income” means income that (apart from this paragraph) is chargeable to tax under Schedule A.

#### Textual Amendments

**F94** Word in Sch. 18 para. 6(1)(b) substituted (with effect in accordance with s. 56(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 56\(3\)](#)

#### Exemption for chargeable gains

- 7 A gain accruing to a registered club shall not be a chargeable gain if—
- the whole of the gain is applied for qualifying purposes, and
  - the club makes a claim under this paragraph to the Inland Revenue.

#### Exemption reduced where club incurs non-qualifying expenditure

- 8 (1) This paragraph applies where—
- any of a club’s income or gains for an accounting period are exempted from tax under this Part (or would be so exempted but for this paragraph), and
  - in that accounting period the club incurs expenditure for non-qualifying purposes.
- (2) In this paragraph—
- A is the total amount of income and gains mentioned in sub-paragraph (1)(a);
- N is the amount of the expenditure mentioned in sub-paragraph (1)(b);
- T is the aggregate of—
- the club’s income (whether taxable or not, and before deduction of any expenses) for the accounting period, and
  - the club’s gains that are chargeable gains, together with those that would be chargeable but for paragraph 7, for that period.
- (3) Where N is less than T, the total amount of income and gains for the accounting period exempted under this Part is reduced to—

$$A - \left( A \times \frac{N}{T} \right)$$

- (4) Where N is equal to T, the total amount of income and gains for the accounting period exempted under this Part is reduced to nil.
- (5) Where N is greater than T—
- the total amount of income and gains for the accounting period exempted under this Part is reduced to nil, and
  - the surplus amount is carried back to previous accounting periods (taking later ones before earlier ones) and deducted from the amounts exempted under this Part for those periods, until it is exhausted.

In paragraph (b) “the surplus amount” means—

$$\left( A \times \frac{N}{T} \right) - A$$

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- (6) The reference in paragraph (b) of sub-paragraph (5) to previous accounting periods is to accounting periods ending not more than six years before the end of the accounting period mentioned in paragraph (a) of that sub-paragraph.
- (7) To the extent that an amount exempted under this Part has been reduced under sub-paragraph (3), (4) or (5) in respect of expenditure incurred for non-qualifying purposes in a particular accounting period, it may not be reduced again under sub-paragraph (5) in respect of expenditure so incurred in a later accounting period.
- (8) All such adjustments shall be made, whether by way of assessment or otherwise, as may be required in consequence of sub-paragraph (5).
- (9) Where by virtue of this paragraph there is an amount of a registered club's income and gains for which relief under this Part is not available, the club may, by notice to the Inland Revenue, specify which items of the income and gains are, in whole or in part, to be attributed to that amount.

If, within 30 days of being required to do so by the Inland Revenue, a registered club does not give notice under this sub-paragraph, the items of its income and gains that are to be attributed to the amount in question shall be such as the Inland Revenue may determine.

### PART 3

#### RELIEFS FOR DONORS

- 9 (1) Section 25 of the Finance Act 1990 (c. 29) (gift aid) has effect as if a registered club were a charity.  
For the purposes of that section as so applied, membership fees are not gifts.
- (2) Section 23 of the Inheritance Tax Act 1984 (c. 51) (gifts to charities) has effect as if—
  - (a) a registered club were a charity;
  - (b) in subsection (5) of that section (no exemption where property may become applicable for purposes that are not charitable etc), for the words from “other than charitable purposes” to the end there were substituted “other than—
    - (a) the purposes of the club in question;
    - (b) the purposes of another club that is registered as a community amateur sports club;
    - (c) the purposes of the governing body of an eligible sport (within the meaning of Schedule 18 to the Finance Act 2002) for the purposes of which the club in question exists; or
    - (d) the purposes of a charity.”.
- (3) The following enactments also have effect as if a registered club were a charity—
  - (a) section 83A of the Taxes Act (gifts in kind to charities etc);
  - (b) section 257 of the Taxation of Chargeable Gains Act 1992 (c. 12) (gifts to charities etc);
  - (c) section 63(2) of the Capital Allowances Act (gifts of plant or machinery to charities etc).

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## PART 4

### CHARGEABLE GAINS: PROPERTY CEASING TO BE HELD FOR QUALIFYING PURPOSES

- 10 (1) This paragraph applies where a club holds property and, without disposing of it—
- (a) ceases to be a registered club, or
  - (b) ceases to hold the property for qualifying purposes.
- (2) Where this paragraph applies—
- (a) the club shall be treated for the purposes of the Taxation of Chargeable Gains Act 1992 as having disposed of, and immediately reacquired, the property at the time of the cessation for a consideration equal to its market value at that time;
  - (b) any gain accruing on the deemed disposal shall be treated for the purposes of paragraph 7 as not accruing to a registered club;
  - (c) if and so far as any of the property represents, directly or indirectly, the consideration for the disposal of assets by the club, any gain accruing on that disposal shall be treated for the purposes of paragraph 7 as not having accrued to a registered club.
- (3) An assessment in respect of a chargeable gain accruing by virtue of sub-paragraph (2) may be made at any time not more than three years after the end of the accounting period in which the club ceases to be a registered club or (as the case may be) to hold the property for qualifying purposes.

## PART 5

### REGISTRATION

#### *Registration and termination*

- 11 (1) A club that applies to the Inland Revenue to be registered as a community amateur sports club shall be so registered if the Inland Revenue are satisfied that it is entitled to be.
- (2) The Inland Revenue may register a club with effect from such date as they may specify (which may be before the date of the application).
- (3) If it appears to the Inland Revenue that a registered club is not, or is no longer, entitled to be registered, they may terminate the club's registration with effect from such date as they may specify (which may be before the date of the decision to terminate the registration).
- (4) Where the Inland Revenue—
- (a) register a club,
  - (b) refuse a club's application for registration, or
  - (c) terminate a club's registration,
- they shall notify the club accordingly.
- (5) The Inland Revenue may publish the names and addresses of registered clubs.

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### *Information etc*

- 12 A club that makes an application to be registered must—
- (a) provide the Inland Revenue with such information relating to the application as they may reasonably require;
  - (b) if required to do so by the Inland Revenue, produce for inspection by them any books, documents or other records in the club's possession, or under its control, that contain such information.

### *Appeals*

- 13 (1) An appeal to the General Commissioners may be brought against a decision of the Inland Revenue under paragraph 11.
- (2) Notice of an appeal under this paragraph must be given—
- (a) in writing,
  - (b) within 30 days of the date of the notification under paragraph 11(4),
  - (c) to the Inland Revenue.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) 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.
- (5) Where the appeal is against a refusal to register a club, or against a decision to register it with effect from a particular date, the Commissioners (if they do not dismiss the appeal) may either—
- (a) direct that the club be registered with effect from a specified date, or
  - (b) remit the matter to the Inland Revenue for reconsideration.
- (6) Where the appeal is against a decision to terminate the registration of a club, or to do so with effect from a particular date, the Commissioners (if they do not dismiss the appeal) may either—
- (a) rescind the termination,
  - (b) direct that the termination have effect from a specified date, or
  - (c) remit the matter to the Inland Revenue for reconsideration.
- (7) The provisions of the Taxes Management Act 1970 (c. 9) relating to appeals under the Taxes Acts shall apply to an appeal under this paragraph as they apply to those appeals.

## **PART 6**

### INTERPRETATION

#### *“Eligible sport”*

- 14 (1) For the purposes of this Schedule “eligible sport” means a sport that is designated for those purposes by Treasury order.

A sport may be so designated by reference to its appearing in a list maintained by a body specified in the order.

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

*“Inland Revenue”*

- 15 (1) Subject to sub-paragraph (2), references in this Schedule to the Inland Revenue are to any officer of the Board.
- (2) References to the Inland Revenue in paragraphs 11 and 13(1), (5) and (6) are to the Board.

*Other expressions*

- 16 In this Schedule—
- (a) “dispose”, “disposal”, “gain” and “chargeable gain” shall be construed in accordance with the Taxation of Chargeable Gains Act 1992 (c. 12);
  - (b) “for qualifying purposes” means for the purposes of providing facilities for, and promoting participation in, one or more eligible sports, and “for non-qualifying purposes” shall be construed accordingly.

SCHEDULE 19

Section 59

CAPITAL ALLOWANCES: CARS WITH LOW CARBON DIOXIDE EMISSIONS

*Introductory*

- 1 The Capital Allowances Act 2001 (c. 2) is amended as follows.

*Types of expenditure for which first-year allowances available*

- 2 In section 39, after the entry relating to section 45A add,

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|              |   |
|--------------|---|
| “section 45D | expenditure on cars with low CO <sub>2</sub> emissions,”. |
|--------------|---|

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*First-year qualifying expenditure: car with low carbon dioxide emissions*

- 3 After section 45C insert—

**“45D Expenditure on cars with low carbon dioxide emissions**

- (1) Expenditure is first-year qualifying expenditure if—
- (a) it is incurred in the period beginning with 17th April 2002 and ending with 31st March 2008,
  - (b) it is expenditure on a car which is first registered on or after 17th April 2002 and which is unused and not second-hand,
  - (c) the car—
    - (i) is an electrically-propelled car, or
    - (ii) is a car with low CO<sub>2</sub> emissions, and

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- (d) the expenditure is not excluded by section 46 (general exclusions).
- (2) For the purposes of this section a car with low CO<sub>2</sub> emissions is a car which satisfies the conditions in subsections (3) and (4).
- (3) The first condition is that, when the car is first registered, it is so registered on the basis of an EC certificate of conformity, or a UK approval certificate, that specifies—
  - (a) in the case of a car other than a bi-fuel car, a CO<sub>2</sub> emissions figure in terms of grams per kilometre driven, or
  - (b) in the case of a bi-fuel car, separate CO<sub>2</sub> emissions figures in terms of grams per kilometre driven for different fuels.
- (4) The second condition is that the applicable CO<sub>2</sub> emissions figure in the case of the car does not exceed 120 grams per kilometre driven.
- (5) For the purposes of subsection (4) the applicable CO<sub>2</sub> emissions figure in the case of a car other than a bi-fuel car is—
  - (a) where the EC certificate of conformity or UK approval certificate specifies only one CO<sub>2</sub> emissions figure, that figure, and
  - (b) where the certificate specifies more than one CO<sub>2</sub> emissions figure, the figure specified as the CO<sub>2</sub> emissions (combined) figure.
- (6) For the purposes of subsection (4) the applicable CO<sub>2</sub> emissions figure in the case of a bi-fuel car is—
  - (a) where the EC certificate of conformity or UK approval certificate specifies more than one CO<sub>2</sub> emissions figure in relation to each fuel, the lowest CO<sub>2</sub> emissions (combined) figure specified, and
  - (b) in any other case, the lowest CO<sub>2</sub> figure specified by the certificate.
- (7) The Treasury may by order amend the amount from time to time specified in subsection (4).
- (8) In this section any reference to a car—
  - (a) includes a reference to a mechanically propelled road vehicle of a type commonly used as a hackney carriage, but
  - (b) does not include a reference to a motorcycle.
- (9) For the purposes of this section, a car is an electrically-propelled car only if—
  - (a) it is propelled solely by electrical power, and
  - (b) that power is derived from—
    - (i) a source external to the vehicle, or
    - (ii) an electrical storage battery which is not connected to any source of power when the vehicle is in motion.
- (10) In this section—
  - “bi-fuel car” means a car which is capable of being propelled by—
    - (a) petrol and road fuel gas, or
    - (b) diesel and road fuel gas;



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“car” has the meaning given by section 81 (extended meaning of “car”);

“diesel” means any diesel fuel within the definition in Article 2 of Directive 98/70/EC of the European Parliament and of the Council;

“EC certificate of conformity” means a certificate of conformity issued by a manufacturer under any provision of the law of a member State implementing Article 6 of Council Directive 70/156/EEC, as amended;

“petrol” has the meaning given by Article 2 of Directive 98/70/EC of the European Parliament and of the Council;

“road fuel gas” has the same meaning as in section 168AB of ICTA;

“UK approval certificate” means a certificate issued under—

- (a) section 58(1) or (4) of the Road Traffic Act 1988, or
- (b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981.”.

#### *General exclusions affecting first-year qualifying expenditure*

- 4 (1) Section 46 is amended as follows.
- (2) In subsection (1) (expenditure which is subject to the general exclusions) after the entry relating to section 45A add “,

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|             |   |
|-------------|---|
| section 45D | (expenditure on cars with low CO <sub>2</sub> emissions).”. |
|-------------|---|

---

- (3) After subsection (2) (general exclusions listed for the purposes of subsection (1)) insert—

“(3) Subsection (1) is subject to the following provisions of this section.

- (4) General exclusion 2 does not prevent expenditure being first-year qualifying expenditure under section 45D.”.

#### *Amount of first-year allowances*

- 5 In section 52(3), in the Table, after the entry relating to expenditure qualifying under section 45A add—

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|  |        |
|--|--------|
| “Expenditure qualifying under section 45D (expenditure on cars with low CO <sub>2</sub> emissions) | 100%”. |
|--|--------|

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#### *Single asset pool in relation to cars above cost threshold*

- 6 In section 74, in subsection (2) (cars to which section 74 applies) after paragraph (b) insert “, and
- (c) the qualifying expenditure incurred on the provision of the car is not first-year qualifying expenditure under section 45D (expenditure on cars with low CO<sub>2</sub> emissions).”.

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## SCHEDULE 20

Section 61

### CAPITAL ALLOWANCES: PLANT OR MACHINERY FOR GAS REFUELLING STATION

#### *Introductory*

1 The Capital Allowances Act 2001 (c. 2) is amended as follows.

#### *Types of expenditure for which first-year allowances available*

2 In section 39, after the entry relating to section 45D (which is inserted by Schedule 19 to this Act) add—

|              |  |
|--------------|--|
| “section 45E | expenditure on plant or machinery for gas refuelling station”. |
|--------------|--|

#### *First-year qualifying expenditure: plant or machinery for gas refuelling station*

3 After section 45D (which is added by Schedule 19 to this Act) insert—

#### **“45E Expenditure on plant or machinery for gas refuelling station**

- (1) Expenditure is first-year qualifying expenditure if—
  - (a) it is incurred in the period beginning with 17th April 2002 and ending with 31st March 2008,
  - (b) it is expenditure on plant or machinery for a gas refuelling station where the plant or machinery is unused and not second-hand, and
  - (c) it is not excluded by section 46 (general exclusions).
- (2) For the purposes of this section expenditure on plant or machinery for a gas refuelling station is expenditure on plant or machinery installed at a gas refuelling station for use solely for or in connection with refuelling vehicles with natural gas or hydrogen fuel.
- (3) For the purposes of subsection (2) the plant or machinery which is for use for or in connection with refuelling vehicles with natural gas or hydrogen fuel includes—
  - (a) any storage tank for natural gas or hydrogen fuel,
  - (b) any compressor, pump, control or meter used for or in connection with refuelling vehicles with natural gas or hydrogen fuel, and
  - (c) any equipment for dispensing natural gas or hydrogen fuel to the fuel tank of a vehicle.
- (4) For the purposes of this section—
 

“gas refuelling station” means any premises, or that part of any premises, where vehicles are refuelled with natural gas or hydrogen fuel;

“hydrogen fuel” means a fuel consisting of gaseous or cryogenic liquid hydrogen which is used for propelling vehicles;

“vehicle” means a mechanically propelled road vehicle.”.

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*General exclusions affecting first-year qualifying expenditure*

- 4 In section 46, in subsection (1) (expenditure which is subject to the general exclusions) after the entry relating to section 45D (which is added by Schedule 19 to this Act) add—

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|              |  |
|--------------|--|
| “section 45E | (expenditure on plant or machinery for gas refuelling station)”. |
|--------------|--|

---

*Amount of first-year allowance*

- 5 In section 52(3), in the Table, after the entry relating to expenditure qualifying under section 45D (which is added by Schedule 19 to this Act) add—

---

|  |        |
|--|--------|
| “Expenditure qualifying under section 45E (expenditure on plant or machinery for gas refuelling station) | 100%”. |
|--|--------|

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SCHEDULE 21

Section 63

FIRST-YEAR ALLOWANCES FOR EXPENDITURE WHOLLY FOR A RING FENCE TRADE

**PART 1**

PLANT AND MACHINERY

*Introductory*

- 1 Part 2 of the Capital Allowances Act 2001 (c. 2) (plant and machinery allowances) is amended as follows.

*Types of expenditure for which first-year allowances available*

- 2 In section 39, after the entry relating to section 45E (which is added by Schedule 20 to this Act) add “, or

---

|             |  |
|-------------|--|
| section 45F | expenditure on plant and machinery for use wholly in a ring fence trade.”. |
|-------------|--|

---

*First-year qualifying expenditure: plant and machinery for use wholly in a ring fence trade*

- 3 After section 45E (which is inserted by Schedule 20 to this Act) insert—

**“45F Expenditure on plant and machinery for use wholly in a ring fence trade**

- (1) Expenditure is first-year qualifying expenditure if—  
(a) it is incurred on or after 17th April 2002,

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- (b) it is incurred by a company,
  - (c) it is incurred on the provision of plant or machinery for use wholly for the purposes of a ring fence trade, and
  - (d) it is not excluded by section 46 (general exclusions).
- (2) This section is subject to section 45G (plant or machinery used for less than five years in a ring fence trade).
- (3) In this section “ring fence trade” means a ring fence trade in respect of which tax is chargeable under section 501A of the Taxes Act 1988 (supplementary charge in respect of ring fence trades).”.

*Plant or machinery used for less than five years in a ring fence trade*

4 After section 45F insert—

**“45G Plant or machinery used for less than five years in a ring fence trade**

- (1) Expenditure incurred by a company on the provision of plant or machinery is to be treated as never having been first-year qualifying expenditure under section 45F if the plant or machinery—
- (a) is at no time in the relevant period used in a ring fence trade carried on by the company or a company connected with it, or
  - (b) is at any time in the relevant period used for a purpose other than that of a ring fence trade carried on by the company or a company connected with it.
- (2) For the purposes of this section “the relevant period” means whichever of the following periods, beginning with the incurring of the expenditure, first ends, namely—
- (a) the period ending with the fifth anniversary of the incurring of the expenditure, or
  - (b) the period ending with the day preceding the first occasion on which the plant or machinery, after becoming owned by the company which incurred the expenditure, is not owned by a company which is either that company or a company connected with it.
- (3) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (1).
- (4) If a person who has made a return becomes aware that, after making it, anything in it has become incorrect because of the operation of this section, he must give notice to the Inland Revenue specifying how the return needs to be amended.
- (5) The notice must be given within 3 months beginning with the day on which the person first became aware that anything in the return had become incorrect because of the operation of this section.
- (6) In this section “ring fence trade” has the same meaning as in section 45F.”.

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### *General exclusions affecting first-year qualifying expenditure*

- 5 In section 46, in subsection (1) (expenditure which is subject to the general exclusions) after the entry relating to section 45E (which is added by Schedule 20 to this Act) add “, or

---

|             |  |
|-------------|--|
| section 45F | (expenditure on plant and machinery for use wholly in a ring fence trade).”. |
|-------------|--|

---

### *Amount of first-year allowances*

- 6 In section 52(3), in the Table, after the entry relating to expenditure qualifying under section 45E (which is added by Schedule 20 to this Act) add—

---

|   |        |
|---|--------|
| “Expenditure qualifying under section 45F (expenditure on plant and machinery for use wholly in a ring fence trade) which is long-life asset expenditure  | 24%    |
| Expenditure qualifying under section 45F (expenditure on plant and machinery for use wholly in a ring fence trade) other than long-life asset expenditure | 100%”. |

---

### *Penalty for failure to provide information etc*

- 7 (1) The Taxes Management Act 1970 (c. 9) is amended as follows.
- (2) In the second column of the Table in section 98, in the entry relating to requirements imposed by provisions of the Capital Allowances Act, after “45B(5) and (6),” insert “45G(4) and (5),”.

## **PART 2**

### **MINERAL EXTRACTION ALLOWANCES**

#### *Introductory*

- 8 Part 5 of the Capital Allowances Act 2001 (c. 2) (mineral extraction allowances) is amended as follows.

#### *First-year qualifying expenditure*

- 9 After section 416, insert the following Chapter—

### **“CHAPTER 5A**

#### **FIRST-YEAR QUALIFYING EXPENDITURE**

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### *General*

#### **416A First-year allowances available for certain types of qualifying expenditure**

A first-year allowance is not available unless the qualifying expenditure is first-year qualifying expenditure under section 416B (expenditure incurred wholly for purposes of a ring fence trade).

### *Types of expenditure which may qualify for first year allowances*

#### **416B Expenditure incurred by company for purposes of a ring fence trade**

- (1) Expenditure is first-year qualifying expenditure if—
  - (a) it is incurred on or after 17th April 2002,
  - (b) it is incurred by a company,
  - (c) it is incurred wholly for the purposes of a ring fence trade, and
  - (d) it is not excluded by—
    - (i) subsection (2) (acquisition of mineral asset), or
    - (ii) subsection (3) (acquisition of asset representing expenditure of connected company).
- (2) Expenditure is not first-year qualifying expenditure under this section if it is expenditure on acquiring a mineral asset.
- (3) Expenditure is not first-year qualifying expenditure under this section if it is expenditure incurred by a company on the acquisition of an asset representing expenditure incurred by a company connected with that company.
- (4) To the extent that references in this section to an asset representing expenditure incurred by a company include a reference to an asset representing expenditure on mineral exploration and access, they also include a reference to any results obtained from any search, exploration or inquiry on which any such expenditure was incurred.
- (5) In this section “ring fence trade” means a ring fence trade in respect of which tax is chargeable under section 501A of the Taxes Act 1988 (supplementary charge in respect of ring fence trades).

### *Supplementary*

#### **416C Time when expenditure is incurred**

- (1) In determining whether expenditure is first-year qualifying expenditure under this Chapter, any effect of the provisions specified in subsection (2) on the time at which the expenditure is to be treated as incurred is to be disregarded.

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- (2) The provisions are—
- (a) section 400(4) (which treats certain pre-trading expenditure as incurred on the first day of trading), and
  - (b) section 434 (which treats certain other expenditure incurred for the purposes of a trade about to be carried on as incurred on that day).”.

### *First-year allowances*

10 At the beginning of Chapter 6 (allowances and charges) insert—

#### *“First-year allowances*

#### **First-year allowances**

416D) A person is entitled to a first-year allowance in respect of first-year qualifying expenditure if the expenditure is incurred in a chargeable period to which this Act applies.

- (2) Any first-year allowance is made for the chargeable period in which the first-year qualifying expenditure is incurred.
- (3) The amount of the allowance is a percentage of the first-year qualifying expenditure in respect of which the allowance is made, as shown in the Table—

TABLE

#### AMOUNT OF FIRST-YEAR ALLOWANCES

| <i>Type of first-year qualifying expenditure</i>   | <i>Amount</i> |
|--|---------------|
| Expenditure qualifying under section 416B (expenditure incurred wholly for the purposes of a ring fence trade) | 100%          |

- (4) A person who is entitled to a first-year allowance may claim the allowance in respect of the whole or a part of the first-year qualifying expenditure.
- (5) This section is subject to section 416E (artificially inflated claims for first-year allowances).”.

### *Artificially inflated claims for first-year allowances*

11 After section 416D insert—

#### **“416E Artificially inflated claims for first-year allowances**

- (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 a chargeable period the amount of any first-year allowance to which a person is entitled.

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- (2) For the purposes of this section, 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 person to obtain—
- (a) a first-year allowance to which he would not otherwise be entitled, or
  - (b) a first-year allowance of a greater amount than that to which he would otherwise be entitled.
- (3) In this section “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.

*Amount of allowances and charges: balancing charge for period in which expenditure incurred*

- 12 (1) Section 418 is amended as follows.
- (2) In subsection (4) (amount of balancing charge) after paragraph (b) insert the following as a second sentence—
- “Where a person is liable to a balancing charge in respect of first-year qualifying expenditure for the chargeable period in which he incurred the expenditure, any first-year allowance made in respect of the expenditure shall be treated for the purposes of paragraph (b) as if it were an allowance for an earlier chargeable period.”.

*Unrelieved qualifying expenditure: effect of first-year qualifying expenditure*

- 13 (1) Section 419 is amended as follows.
- (2) In subsection (1) (amount of qualifying expenditure which is unrelieved qualifying expenditure for the chargeable period in which the expenditure is incurred) for “the whole of it” substitute—
- “(a) the whole of it, unless the expenditure is first-year qualifying expenditure, or
  - (b) if the expenditure is first-year qualifying expenditure, none of it,
- but paragraph (b) is subject to subsections (3) to (5). ”.
- (3) After subsection (2) insert—
- “(3) If, in the case of expenditure which is first-year qualifying expenditure, a disposal receipt falls to be brought into account for the chargeable period in which the expenditure is incurred (“the initial period”), subsection (4) below applies.
- (4) Where this subsection applies, the unrelieved balance of the expenditure shall be taken to be unrelieved qualifying expenditure for the initial period, but only for the purpose specified in subsection (5).
- (5) The purpose is that of determining in accordance with sections 417 and 418—
- (a) any question whether the person who incurred the expenditure—
    - (i) is entitled to a balancing allowance for the initial period, or
    - (ii) is liable to a balancing charge for that period, and



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- (b) if so, the amount of that balancing allowance or balancing charge.
- (6) In this section “the unrelieved balance of the expenditure” means so much of the first-year qualifying expenditure in question as remains after deducting the amount of any first-year allowance given in respect of the whole or any part of that expenditure.”.

## SCHEDULE 22

Section 64

### COMPUTATION OF PROFITS: ADJUSTMENT ON CHANGE OF BASIS

#### PART 1

##### INTRODUCTION

###### *General scheme*

- 1 (1) Where there is a change of basis within section 64, one or more adjustments shall be made in accordance with this Schedule.
- (2) Any such adjustment shall be calculated and given effect in accordance with the provisions of Part 2 of this Schedule (general rules), subject to the provisions of Part 3 of this Schedule (special rules for certain cases).
- (3) Part 4 of this Schedule contains supplementary provisions and Part 5 provides for commencement.

#### PART 2

##### GENERAL RULES

###### *Calculation of adjustment*

- 2 The amount of the adjustment is calculated as follows:

###### *First step*

Add together any amounts representing the extent to which, comparing the two bases, profits were understated (or losses overstated) on the old basis:

1. Receipts which on the new basis would have been brought into account in computing the profits of a period of account before the change of basis, to the extent that they were not so brought into account.
2. Expenses which on the new basis fall to be brought into account in computing the profits of a period of account after the change, to the extent that they were brought into account in computing the profits of a period of account before the change of basis.
3. Deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, to the extent that they—

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- (a) are not matched by credits in respect of closing trading stock or closing work in progress in the last period of account before the change, or
  - (b) are calculated on a different basis that if used to calculate those credits would have given a higher figure.
4. Amounts recognised for accounting purposes in respect of depreciation in the last period of account before the change, to the extent that they were not the subject of an adjustment for [<sup>F95</sup>corporation tax purposes], where such an adjustment would be required on the new basis.

*Second step*

Then deduct any amounts representing the extent to which, comparing the two bases, profits were overstated (or losses understated) on the old basis:

1. Receipts which were brought into account in a period of account before the change, to the extent that they would not have been so brought into account if the profits had been computed on the new basis.
2. Expenses which were not brought into account in computing the profits of a period of account before the change, to the extent that they—
  - (a) would have been brought into account for a period of account before the change if the profits had been computed on the new basis, and
  - (b) would have been brought into account for a period of account after the change if the profits had continued to be computed on the old basis.
3. Credits in respect of closing trading stock or closing work in progress in the last period of account before the change of basis, to the extent that they—
  - (a) are not matched by deductions in respect of opening trading stock or opening work in progress in the first period of account on the new basis, or
  - (b) are calculated on a different basis that if used to calculate those deductions would have given a lower figure.

An amount so deducted may not be deducted again in computing the profits of a period of account.

**Textual Amendments**

**F95** Words in Sch. 22 para. 2 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(2\)](#) (with Sch. 2)

*Meaning of items being brought into account*

- 3 (1) The references in paragraph 2 to items being brought into account in a period of account before the change of basis are to their being brought into account—
  - (a) in computing the profits of the same trade, profession or vocation, and
  - (b) in accordance with the law or practice then applicable.
- (2) For the purposes of sub-paragraph (1)(a) a trade [<sup>F96</sup>is not regarded as the same if section 337(1) of the Taxes Act 1988 applies (companies beginning or ceasing to carry on trade).]

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- (3) For the purposes of sub-paragraph (1)(b) the practice applicable in any case means the accepted practice in cases of that description as to how profits should be computed for the purposes of Case I or II of Schedule D.

#### Textual Amendments

- F96** Words in Sch. 22 para. 3(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(3\)](#) (with Sch. 2)

#### *Giving effect to positive adjustment*

- [<sup>F974</sup> If the amount of the adjustment is positive, it is chargeable to corporation tax and is treated as receipt of the trade, profession or vocation arising on the [<sup>F98</sup>first day] of the first period of account for which the new basis is adopted.]

#### Textual Amendments

- F97** Sch. 22 para. 4 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(4\)](#) (with Sch. 2)
- F98** Words in Sch. 22 para. 4 substituted (with effect in accordance with Sch. 6 para. 1(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), Sch. 6 para. 1\(1\)](#)

#### *Giving effect to negative adjustment*

- 5 (1) If the amount of the adjustment is negative, it is allowed as a deduction in computing profits.
- (2) An amount so allowed as a deduction in computing profits is treated as an expense of the trade, profession or vocation arising on the [<sup>F99</sup>first day] of the first period of account for which the new basis is adopted.

#### Textual Amendments

- F99** Words in Sch. 22 para. 5(2) substituted (with effect in accordance with s. 81(3) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 81\(2\)](#)

## PART 3

### SPECIAL RULES FOR CERTAIN CASES

#### *No adjustment for certain expenses previously brought into account*

- 6 (1) This paragraph applies where as a result of a change of basis expenses brought into account before the change on the old basis would on the new basis be brought into account over more than one period of account after the change.
- (2) In such a case—
- (a) no adjustment shall be made under this Schedule, and

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- (b) the expenses may not be deducted in computing the profits of the trade, profession or vocation for any period of account after the change.

*Cases where adjustment not required until asset realised or written off*

- 7 (1) This paragraph applies where there is a change of basis resulting from a tax adjustment affecting the calculation of—
- (a) any amount brought into account—
- (i) in respect of closing trading stock or work in progress in the last period of account before the change of basis, or
- (ii) in respect of opening trading stock or work in progress in the first period of account on the new basis, or
- (b) any amount brought into account in respect of depreciation.
- (2) The adjustment required by paragraph 2 in such a case shall be brought into account only when the asset to which it relates is realised or written off.

*Change from realisation basis to mark to market*

- 8 (1) This paragraph applies where there is a change of basis from—
- (a) not recognising a profit or loss on an asset until the asset is realised, to
- (b) bringing assets into account in each period of account at a fair value.
- (2) To the extent that in such a case—
- (a) a receipt within item 1 of the First step in paragraph 2 represents the fair value of an asset that is trading stock (within the meaning of section 100 of the Taxes Act 1988), or
- (b) an expense within item 2 of that step relates to such an asset,
- any resulting adjustment shall not be given effect until the period of account in which the value of the asset in question is realised.
- This is subject to any election under paragraph 9.

*Election for spreading where paragraph 8 applies*

- 9 (1) Where paragraph 8 applies the [F100 company which is chargeable to corporation tax] in respect of any adjustment charge may elect that the adjustment charge shall be spread over six periods of account in accordance with the following provisions.
- (2) The election must be made—
- (a) by notice in writing,
- (b) to an officer of the Board,
- (c) within [F101 twelve months of the end of the first accounting period to which the new basis applies].
- <sup>F102</sup>(3) .....
- (4) If an election is made, then, in each of the six periods of account beginning with the first period to which the new basis applies an amount equal to one-sixth of the amount of the adjustment charge is treated as arising and chargeable to [F103 corporation tax].

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- (5) If before the whole of the adjustment charge has been charged to [<sup>F104</sup>corporation tax] the trade, profession or vocation is permanently discontinued, the whole of the amount so far as not previously brought into charge to [<sup>F104</sup>corporation tax] is treated as arising and chargeable to [<sup>F104</sup>corporation tax] immediately before the discontinuance.

#### Textual Amendments

- F100** Words in Sch. 22 para. 9(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(5\)\(a\)](#) (with Sch. 2)
- F101** Words in Sch. 22 para. 9(2)(c) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(5\)\(b\)](#) (with Sch. 2)
- F102** Sch. 22 para. 9(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(5\)\(c\), Sch. 3](#) (with Sch. 2)
- F103** Words in Sch. 22 para. 9(4) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(5\)\(d\)](#) (with Sch. 2)
- F104** Words in Sch. 22 para. 9(5) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(5\)\(e\)](#) (with Sch. 2)

#### *Application of paragraphs 8 and 9 in case of transfer of insurance business*

- 10 (1) This paragraph applies where—
- (a) an asset to which paragraph 8 or 9 applies is transferred from one insurance company to another in pursuance of a transfer scheme, and
  - (b) immediately after the transfer either—
    - (i) the transferee company is resident in the United Kingdom, or
    - (ii) the asset is held for the purposes of a business carried on by the transferee company in the United Kingdom through a [<sup>F105</sup>permanent establishment].
- (2) The asset shall not be regarded for the purposes of paragraph 8 as having been realised by the transferor by reason of its being transferred in pursuance of the transfer scheme.
- (3) If the transfer is of the entire business of the transferor, the transferee is responsible under paragraph 8 or 9 for bringing into account any amount required to be brought into account after the transfer.
- (4) In this paragraph—
- “insurance company” has the same meaning as in Chapter 2 of Part 12 of the Taxes Act 1988 (see section 431(2) of that Act); and
- “transfer scheme” means—
- (a) a scheme under section 105 of the Financial Services and Markets Act 2000 (c. 8), including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section, or
  - (b) a qualifying overseas transfer scheme.
- (5) A “qualifying overseas transfer scheme” means—
- (a) so much of a transfer of the whole or part of the business of an overseas life insurance company carried on through a [<sup>F106</sup>permanent establishment]

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in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of [<sup>F107</sup>Article 14 of the consolidated life assurance directive], or

- (b) so much of a transfer of the whole or part of the business of an insurance company other than an overseas life insurance company as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 12 of the third non-life insurance directive.

(6) In sub-paragraph (5)—

“overseas life insurance company” has the same meaning as in Chapter 2 of Part 12 of the Taxes Act 1988 (see section 431(2) of that Act);

[<sup>F108</sup>“the consolidated life assurance directive” means the Directive of the European Parliament and of the Council of 5th November 2002 concerning life assurance (No.2002/83/EC);]

“the third non-life insurance directive” means Council Directive 92/ 49/ EEC on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC.

**Textual Amendments**

- F105** Words in Sch. 22 para. 10(1)(b)(ii) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)
- F106** Words in Sch. 22 para. 10(5)(a) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\), regs. 1\(1\), 11\(3\)\(a\)\(i\)](#)
- F107** Words in Sch. 22 para. 10(5)(a) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\), regs. 1\(1\), 11\(3\)\(a\)\(ii\)](#)
- F108** Words in Sch. 22 para. 10(6) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\), regs. 1\(1\), 11\(3\)\(b\)](#)

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

- C11** Sch. 22 para. 10 modified by SI 1997/473 reg. 53F (as inserted (30.1.2003) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2003 \(S.I. 2003/23\), regs. 1\(1\), 10](#)

<sup>F109</sup>11 .....

**Textual Amendments**

- F109** Sch. 22 para. 11 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(6\), Sch. 3](#) (with Sch. 2)

<sup>F110</sup>12 .....

**Textual Amendments**

- F110** Sch. 22 para. 12 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(6\), Sch. 3](#) (with Sch. 2)

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## PART 4

### SUPPLEMENTARY PROVISIONS

#### *Application of provisions to partnerships*

13 (1) In the case of a trade, profession or vocation carried on in partnership, the amount of any adjustment under this Schedule shall be <sup>F111</sup>computed as if the partnership were a company resident in the United Kingdom.]

(2) Subject to the following provisions of this paragraph—

(a) each partner’s share of any amount chargeable to tax under this Schedule shall be determined according to the profit-sharing arrangements for the twelve months ending immediately before the date on which the new basis was adopted; and

(b) any election under this Schedule must be made jointly by all the persons who have been members of the partnership in that twelve month period.

<sup>F112</sup>(3) . . . . .

<sup>F112</sup>(4) . . . . .

(5) For the purposes of this paragraph—

(a) “profit-sharing arrangements” means the rights of the partners to share in the profits of the trade, profession or vocation for the period in question; and

(b) references to the date on which a new basis was adopted are to the first day of the first period of account for which the new basis was adopted.

<sup>F113</sup>(6) . . . . .

#### **Textual Amendments**

**F111** Words in Sch. 22 para. 13(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(7\)\(a\)](#) (with Sch. 2)

**F112** Sch. 22 para. 13(3)(4) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(7\)\(b\), Sch. 3](#) (with Sch. 2)

**F113** Sch. 22 para. 13(6) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(7\)\(b\), Sch. 3](#) (with Sch. 2)

<sup>F114</sup>14 . . . . .

#### **Textual Amendments**

**F114** Sch. 22 para. 14 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(8\), Sch. 3](#) (with Sch. 2)

#### *Interpretation*

<sup>F115</sup>15 In this Schedule “adjustment charge” means a charge under Part 2 of this Schedule.]

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### Textual Amendments

**F115** Sch. 22 para. 15 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(9\)](#) (with Sch. 2)

## PART 5

### COMMENCEMENT

#### *General rule*

16 The provisions of this Schedule apply to a change of basis taking effect in a period of account ending on or after 1st August 2001.

#### *Application of provisions to certain earlier changes of basis*

- 17 (1) So far as they relate to a change of basis within—
- (a) paragraph 6 (no adjustment for certain expenses previously brought into account), or
  - (b) paragraph 8 (change from realisation basis to mark to market),
- the provisions of this Schedule apply to a change of basis taking effect in a period of account ending before 1st August 2001 if a relevant return is delivered or voluntarily amended by the taxpayer on or after that date.
- (2) For the purposes of sub-paragraph (1) a “relevant return” means—
- <sup>F116</sup>(a) .....
  - (b) a partnership return, or
  - (c) a company tax return,
- for the period in which the change of basis took effect or a subsequent period of account ending before 1st August 2001.
- (3) The reference in sub-paragraph (1) to the voluntary amendment of such a return is to—
- (a) an amendment under <sup>F117</sup>... 12ABA of the Taxes Management Act 1970 (amendment of <sup>F117</sup>... partnership return by taxpayer), or
  - (b) an amendment of a company tax return by the company otherwise than in response to a closure notice.
- (4) An adjustment that would be required by virtue of this paragraph to be given effect in a period of account ending before 1st August 2001 shall be given effect in the first period of account ending on or after that date.

### Textual Amendments

**F116** Sch. 22 para. 17(2)(a) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(10\)\(a\), Sch. 3](#) (with Sch. 2)

**F117** Words in Sch. 22 para. 17(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 578\(10\)\(b\), Sch. 3](#) (with Sch. 2)



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*Period in which change of basis takes effect*

- 18 The references in paragraphs 16 and 17 to the period of account in which a change of basis takes effect are to the first period of account in which the new basis is adopted.

SCHEDULE 23

Section 79

EXCHANGE GAINS AND LOSSES FROM LOAN RELATIONSHIPS ETC

PART 1

AMENDMENTS OF THE FINANCE ACT 1996

*Introductory*

- 1 Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) is amended in accordance with the following provisions of this Part.

*Meaning of “related transaction”*

- 2 (1) Section 84 (debits and credits brought into account) is amended as follows.
- (2) In subsection (5) (meaning of “related transaction” in the section) for “In this section” substitute “ In this Chapter ”.
- (3) In subsection (6) (disposals and acquisitions for the purposes of the section) for “for the purposes of this section” substitute “ for the purposes of subsection (5) above ”.

*Exchange gains and losses from loan relationships etc*

F118<sup>3</sup> .....

**Textual Amendments**

F118 Sch. 23 para. 3 repealed (with effect in accordance with Sch. 11 Pt. 2(6) Note 3 of the amending Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 11 Pt. 2(6)

*Authorised accounting methods*

F119<sup>4</sup> .....

**Textual Amendments**

F119 Sch. 23 para. 4 repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 42 Pt. 2(6)

*Convertible securities etc: exchange gains and losses*

F120<sup>5</sup> .....

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### Textual Amendments

**F120** Sch. 23 para. 5 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 9(2)(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

*Extension of section 100 to exchange gains and losses and to items other than money debts*

6 For section 100 (interest on judgments, imputed interest, etc) substitute—

#### **“100 Interest, and exchange gains and losses, on debts etc not arising from the lending of money**

(1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—

- (a) the company stands, or has stood, in the position of a creditor or debtor as respects a money debt;
- (b) the money debt is not one which arose from a transaction for the lending of money (so that, in consequence of section 81(1)(b) above, there is no loan relationship); and
- (c) the money debt is one—
  - (i) on which interest is payable to or by the company; or
  - (ii) in relation to which exchange gains or losses arise to the company;

and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly.

(2) Where a company has a relationship to which this section applies—

- (a) this Chapter shall have effect in relation to the interest payable under, or the exchange gains or losses arising to the company from, the relationship as it has effect in relation to interest payable under, or (as the case may be) exchange gains or losses arising to the company from, a loan relationship to which the company is a party; but
- (b) the only credits or debits to be brought into account for the purposes of this Chapter in respect of the relationship are those relating to the interest or (as the case may be) to the exchange gains or losses;

and, subject to paragraph above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.

(3) References in this section to interest payable on a money debt include a reference to any amount which, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), falls to be treated as—

- (a) interest on a money debt; or
- (b) interest on an amount which is treated as a money debt;

and references in the other provisions of this section to a money debt accordingly include a reference to the amount on which that amount so falls to be treated as interest.

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- (4) Except as provided by subsection (7) below, any question whether debits or credits falling to be brought into account by virtue of this section in relation to a company—
- (a) are to be brought into account under section 82(2) above, or
  - (b) are to be treated as non-trading debits or non-trading credits,
- shall be determined in accordance with subsection (5) below (in the case of interest) or subsection (6) below (in the case of an exchange gain or loss).
- (5) In the case of interest, any such question shall be determined according to the extent (if any) to which the interest—
- (a) is paid for the purposes of a trade carried on by the company;
  - (b) is received in the course of activities forming an integral part of such a trade; or
  - (c) in the case of deemed interest, would be deemed to be so paid or received.
- (6) In the case of an exchange gain or loss, any such question shall be determined according to the extent (if any) to which the money debt—
- (a) is owed by the company for the purposes of a trade carried on by the company; or
  - (b) is held in the course of activities forming an integral part of such a trade.
- (7) Any debits or credits which—
- (a) relate to interest payable under the Tax Acts, and
  - (b) fall to be brought into account by virtue of this section in relation to any company,
- are to be treated as non-trading debits or credits.
- (8) To the extent that debits or credits fall to be brought into account by a company under section 82(2) above in the case of a relationship to which this section applies, the company shall be regarded for the purposes of the Corporation Tax Acts as being party to the relationship for the purposes of a trade carried on by the company.
- (9) No exchange gains or losses shall be taken to arise for the purposes of this section if the money debt in question—
- (a) is an amount of tax,
  - (b) is an amount of tax payable under the law of a territory outside the United Kingdom, or
  - (c) is an amount which would, but for any statutory provision or rule of law to the contrary other than section 74(1)(f) or (g) of the Taxes Act 1988, be deductible as an expense in computing profits in accordance with Case I of Schedule D or as an expense of management within section 75 of the Taxes Act 1988,
- except to the extent that, in the case of a money debt falling within paragraph (b) above, a reduction in respect of the tax there mentioned falls to be made under section 811 of the Taxes Act 1988 (double taxation relief: deduction for foreign tax where no credit allowable).

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- (10) For the purposes of this section so far as relating to exchange gains and losses, each of the following shall be treated as a money debt owed to a company—
- (a) any currency held by the company;
  - (b) in the case of a company carrying on insurance business, any deferred acquisition costs, within the meaning of Assets item G.II in the Balance Sheet Format set out after paragraph 9 of Schedule 9A to the Companies Act 1985 (form and content of accounts of insurance companies and groups) as read with note (17) of the Notes on the Balance Sheet Format (which follow immediately after that format).
- (11) For the purposes of this section so far as relating to exchange gains and losses, each of the following shall be treated as a money debt owed by a company—
- (a) any provision made by the company for the purposes of its statutory accounts in respect of a liability to which the company may become subject;
  - (b) in the case of a company carrying on insurance business—
    - (i) any provision made by the company for unearned premiums, within the meaning of Liabilities item C.1 in the Balance Sheet Format set out after paragraph 9 of Schedule 9A to the Companies Act 1985, as read with note (20) of the Notes on the Balance Sheet Format (which follow immediately after that format);
    - (ii) any provision for unexpired risks, as defined in paragraph 81(1) of that Schedule.
- (12) A provision does not fall within paragraph (a) of subsection (11) above unless—
- (a) the duty to settle the liability in question would (if the company were to become subject to it) be owed for the purposes of a trade, a Schedule A business or an overseas property business (within the meaning of section 70A of the Taxes Act 1988); and
  - (b) the provision falls to be taken into account (apart from this Chapter) in computing the profits or losses of the trade, Schedule A business or overseas property business for corporation tax purposes.
- (13) This section has effect subject to the provisions of Schedules 9 and 11 to this Act.”.

### *Interpretation*

- 7 (1) Section 103 is amended as follows.
- (2) In subsection (1) (definitions) insert each of the following definitions at the appropriate place—
- ““exchange gain” and “exchange loss” shall be construed in accordance with subsections (1A) and (1B) below;”;
- ““related transaction” shall be construed in accordance with section 84 above (see subsections (5) and (6) of that section);”.
- (3) After subsection (1) insert—

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“(1A) References in this Chapter to exchange gains or exchange losses, in the case of any company, are references respectively to—

- (a) profits or gains, or
- (b) losses,

which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company.

If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, then for the purposes of this Chapter an exchange gain of nil shall be taken to arise in the case of that comparison.

(1B) Any reference in this Chapter to an exchange gain or loss from a loan relationship of a company is a reference to an exchange gain or loss arising to a company in relation to an asset or liability representing a loan relationship of the company.”.

*Bad debt etc: cases where departure allowed from assumption of prompt payment in full*

F121g .....

**Textual Amendments**

**F121** Sch. 23 para. 8 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

*Bad debts etc where parties have a connection*

- 9 (1) Paragraph 6 of Schedule 9 is amended as follows.
- (2) In sub-paragraph (3) (assumption that debts will be paid in full to be applied as if no departure authorised by virtue of paragraph 5 except as provided by sub-paragraph (4)) for “paragraph 5” substitute “ paragraph 5(1) ”.
- (3) At the end of the paragraph add—
- “(8) Nothing in this paragraph affects the debits or credits to be brought into account for the purposes of this Chapter in respect of exchange gains or losses arising from a debt.”.

*Transactions not at arm’s length*

- 10 (1) Paragraph 11 of Schedule 9 is amended as follows.
- (2) In sub-paragraph (1), for “Subject to sub-paragraphs (2) and (3) below,” substitute “ Subject to sub-paragraphs (2) to (3A) below, ”.
- (3) After sub-paragraph (3) insert—
- “(3A) Sub-paragraph (1) above shall not apply to any exchange gains or losses.”.

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*Exchange gains and losses where loan not on arm's length terms*

11 After paragraph 11 of Schedule 9 insert the following paragraph—

**“Exchange gains and losses where loan not on arm's length terms**

11A (1) Where a company has a debtor relationship in an accounting period and in the case of that accounting period—

- (a) the whole of any interest or other distribution out of the assets of the company in respect of securities of the company that represent the relationship falls by virtue of section 209(2)(da) or (e)(vii) of the Taxes Act 1988 to be regarded as a distribution for the purposes of the Corporation Tax Acts, or
- (b) the profits and losses of the company fall by virtue of Schedule 28AA to that Act (provision not at arm's length) to be computed for tax purposes as if the loan had not been made,

any exchange gains or losses which arise in that accounting period in respect of a liability representing the debtor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter.

(2) Where a company has a debtor relationship in an accounting period and in the case of that accounting period—

- (a) part of any interest or other distribution out of the assets of the company in respect of securities of the company that represent the relationship falls by virtue of section 209(2)(da) or (e)(vii) of the Taxes Act 1988 to be regarded as a distribution for the purposes of the Corporation Tax Acts, or
- (b) the profits and losses of the company fall by virtue of Schedule 28AA to that Act to be computed for tax purposes as if the loan had in part not been made,

the proportionate part of any exchange gains or losses which arise in that accounting period in respect of a liability representing the debtor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter.

(3) In sub-paragraph (2) above, the “proportionate part” of an exchange gain or loss is that part which bears to the whole the proportion which—

- (a) in a case falling within paragraph (a) of that sub-paragraph, the part of the interest or other distribution out of assets that falls to be regarded as a distribution for the purposes of the Corporation Tax Acts bears to the whole of that interest or other distribution out of assets; or
- (b) in a case falling within paragraph (b) of that sub-paragraph, the part of the loan that falls to be treated as if it had not been made bears to the whole of the loan.

(4) Where—

- (a) a company has a creditor relationship in an accounting period,
- (b) the transaction giving rise to the loan is such that it would not have been entered into at all if the parties had been dealing at arm's length, and

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- (c) there is no corresponding debtor relationship such that there would, or would apart from section 84A(2) to (10) of this Act, fall to be brought into account for the purposes of this Chapter, in respect of exchange gains or losses from that debtor relationship, debits or (as the case may be) credits corresponding to, and of the same amount as, the credits or debits that would (apart from this paragraph) fall to be brought into account for the purposes of this Chapter in respect of exchange gains or losses from the creditor relationship,

any exchange gains or losses which arise in that accounting period in respect of an asset representing the creditor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter.

(5) Where—

- (a) a company has a creditor relationship in an accounting period,
- (b) the circumstances are such that, had the parties to the transaction giving rise to the loan been dealing at arm's length, the terms would have been the same, except that the amount of the loan would have been an amount (referred to in sub-paragraph (6) below as “the adjusted amount”) greater than nil but less than its actual amount, and
- (c) there is no such corresponding debtor relationship as satisfies, in relation to that creditor relationship, the condition set out in sub-paragraph (4)(c) above,

sub-paragraph (4) above shall not apply, but the excess portion of any exchange gain or loss which arises in the accounting period in respect of an asset representing the creditor relationship shall be left out of account in determining the debits or credits to be brought into account for the purposes of this Chapter.

- (6) In sub-paragraph (5) above, the “excess portion” of an exchange gain or loss is so much of the gain or loss as remains after subtracting that part which bears to the whole the proportion which the adjusted amount bears to the amount of the loan.”.

*Continuity of treatment: groups etc*

- 12 In paragraph 12 of Schedule 9, for sub-paragraph (8) (which applies sub-paragraphs (4) and (5) of paragraph 11 of the Schedule) substitute—

“(8) Sub-paragraph (5) of paragraph 11 above has effect for the purposes of this paragraph as it has effect for the purposes of that paragraph.”.

*Loan relationships for unallowable purposes*

- 13 In paragraph 13 of Schedule 9, in sub-paragraph (1) (which disallows debits attributable to unallowable purposes)—

- (a) for “the debits”, where first occurring, substitute the following paragraphs—

- “(a) the debits, and
- (b) the credits in respect of exchange gains,”;

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and

- (b) after “the debits”, where next occurring, insert “ or credits (as the case may be) ”.

#### *Life assurance business*

- 14 (1) Paragraph 1 of Schedule 11 is amended as follows.
- (2) Before sub-paragraph (2) (effect on debits and credits of applying I minus E basis to profits and gains from loan relationships of insurance companies referable to life assurance business) insert—
- “(1B) In applying the I minus E basis for any accounting period in respect of any life assurance business carried on by an insurance company, no exchange gains or losses shall be taken to arise for the purposes of section 100 of this Act except to the extent that the money debt for the purposes of that section—
- (a) arises as a result of an amount of income or expenses which falls to be taken into account in applying the I minus E basis not being paid when it is due and payable; or
- (b) is one that is treated as a money debt for the purposes of that section by virtue of subsection (11)(a) of that section in accordance with subsection (12) of that section by reference to a Schedule A business or an overseas property business.

This sub-paragraph has effect notwithstanding sub-paragraph (1) above.”.

#### *Special provisions for insurers: apportionments*

- 15 In paragraph 3A of Schedule 11 (cases where money debt of insurance company is represented by a liability of the long term business fund) in sub-paragraph (1)—
- (a) in paragraph (a), for “money debt” substitute “ loan relationship ”; and
- (b) in paragraph (b), omit “debt or”.

#### *Savings and transitional provisions in the Finance Act 1996*

- 16 In Schedule 15 (savings and transitional provisions) omit paragraphs 22 to 24.

## **PART 2**

### AMENDMENTS OF OTHER LEGISLATION

#### *The Income and Corporation Taxes Act 1988*

#### *Charges on income*

- 17 (1) Section 494 of the Taxes Act 1988 is amended in accordance with the following provisions of this paragraph.



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- (2) Subsection (2) (debts not to be brought into account in a manner which results in the reduction of what would otherwise be the company's ring fence profits, except as provided in the subsequent paragraphs) is amended as follows.
- (3) In paragraph (c) (debts in respect of a deemed loan relationship)—
- (a) for “a loan relationship deemed to exist for the purposes of section 100 of that Act,” substitute “ a relationship to which section 100 of that Act applies, ”;
  - (b) after “to the extent that” insert “ (i) ”; and
  - (c) after “above;” insert “or
    - (ii) the exchange loss arising from that relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure;
- as the case may be; ”.
- (4) In paragraph (d) (debts in respect of debtor relationship which is creditor relationship of associated company)—
- (a) for “in the case of debits” substitute “ in the case of a net debit for an accounting period ”; and
  - (b) for “the debit”, in both places where occurring, substitute “ the net debit ”.
- (5) In the second sentence of that subsection (interpretation) for “any loan relationship deemed to exist for the purposes of section 100 of that Act” substitute “ any relationship to which section 100 of that Act applies ”.
- (6) After the second sentence insert the following as a third sentence—
- “For the purposes of paragraph (d) above, the net debit for an accounting period in respect of a debtor relationship of a company is the amount if any by which—
- (i) the aggregate of the debits for the period in respect of the relationship, exceeds
  - (ii) the credits in respect of exchange gains arising from the relationship for the period.”.

(7) After subsection (2) insert—

“(2ZA) Credits in respect of exchange gains from a company's loan relationships shall not be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of any loan relationship of a company in any manner that results in an increase of what would otherwise be the company's ring fence profits, except to the extent that, if the credit had been a debit in respect of an exchange loss from the relationship, it would have been brought into account by virtue of any of paragraphs (a) to (c) of subsection (2) above.”.

(8) In subsection (2A) (debts prevented from reducing ring fence profits by subsection (2) to be brought into account for purposes of Chapter 2 of Part 4 of Finance Act 1996 (c. 8) as non-trading debits)—

    - (a) after “Where any debit” insert “ or credit ”;
    - (b) in paragraph (b)—
      - (i) after “in accordance with subsection (2)” insert “ or (2ZA) ”; and
      - (ii) after “reduction” insert “ or, as the case may be, increase ”; and
    - (c) in the closing words—

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- (i) after “that debit” insert “ or credit ”; and
- (ii) after “non-trading debit” insert “ or, as the case may be, non-trading credit ”.

(9) After subsection (2A) insert—

“(2B) Where, in accordance with subsection (2) above, any proportion (including the whole) of a net debit, within the meaning of paragraph (d) of that subsection, cannot be brought into account in a manner that results in any reduction of what would otherwise be the company’s ring fence profits, subsection (2A) above shall apply—

- (a) separately in relation to that proportion of each of the debits and each of the credits brought into account in determining the amount of the net debit, and
- (b) on the assumption that that proportion of each of those debits and credits falls within paragraph (b) of that subsection.”.

*Supplementary charge in respect of ring fence trades*

- 18 (1) In section 501A of the Taxes Act 1988, subsection (5) (computation of financing costs) is amended as follows.
- (2) In paragraph (a) (costs giving rise to debits in respect of debtor relationships) after “(loan relationships)” insert “, other than debits in respect of exchange losses from such relationships (see section 103(1A) and (1B) of that Act) ”.
- (3) For paragraph (b) (exchange gain or loss, within the meaning of Chapter 2 of Part 2 of the Finance Act 1993 (c. 34), in relation to debt finance) substitute—
- “(b) any exchange gain or loss from a debtor relationship, within the meaning of that Chapter (see section 103(1A) and (1B) of that Act), in relation to debt finance;”.

F12219 .....

**Textual Amendments**

F122 Sch. 23 para. 19 repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(6\)](#)

*Double taxation relief*

- 20 (1) Section 798B of the Taxes Act 1988 (adjustments of interest and dividends for spared tax etc) is amended as follows.
- (2) In subsection (5) (meaning of “qualifying losses”) for paragraph (a) (exchange losses under Finance Act 1993) substitute—
- “(a) exchange losses falling to be brought into account as debits for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships); and”.

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*Provision not at arm's length: foreign exchange gains and losses*

- 21 (1) In Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) paragraph 8 (foreign exchange gains and losses etc) is amended as follows.
- (2) In sub-paragraph (1) (exceptions)—
- (a) for “Subject to sub-paragraph (2)” substitute “ Subject to sub-paragraph (3) ”; and
- (b) for paragraph (a) (which relates to Chapter 2 of Part 2 of the Finance Act 1993) substitute—
- “(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) in respect of exchange gains or losses from loan relationships (as defined in section 103(1A) and (1B) of that Act), or”.
- (3) For sub-paragraph (2) (saving for certain provisions of sections 136 and 136A of the Finance Act 1993 (application of arm's length test)) substitute—
- “(3) Sub-paragraph (1) above shall not affect so much of paragraph 11A of Schedule 9 to the Finance Act 1996 (loan relationships: exchange gains or losses where loan not on arm's length terms) as has effect by reference to whether profits or losses fall to be computed by virtue of this Schedule as if the whole or any part of a loan had not been made.”.

*The Finance Act 1995*

*Miscellaneous amendments*

- 22 (1) The Finance Act 1995 (c. 4) is amended as follows.
- (2) Omit section 131(which made transitional provision in relation to exchange gains and losses and which is spent).
- (3) In Part 2 of Schedule 24 (amendments of certain enactments) in paragraph 7 (commencement on day appointed under section 165(7)(b) of Finance Act 1993) for the words following “come into force on” substitute “ 23rd March 1995 ”.

*The Finance Act 2000*

*Tonnage tax*

- 23 (1) Schedule 22 to the Finance Act 2000 (c. 17) is amended as follows.
- (2) In paragraph 50 (relevant shipping income: certain interests etc) in sub-paragraph (2) (income to which paragraph 50 applies) at the end of paragraph (a) insert “ and ”.
- (3) In paragraph 63 (meaning of “finance costs”) in sub-paragraph (2)(c) (exchange gain or loss) for “within the meaning of Chapter II of Part II of the Finance Act 1993” substitute “ within the meaning given by section 103(1A) of the Finance Act 1996 ”.

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### *The Finance Act 2002*

#### *Intangible fixed assets: assets entirely excluded: financial assets*

- 24 (1) Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 75 (assets entirely excluded: financial assets) in sub-paragraph (3) for paragraph (a) (money debts) substitute—  
“(a) loan relationships;”.

### **PART 3**

#### TRANSITIONAL PROVISIONS ETC

#### *Anti-avoidance: change of accounting period*

- 25 (1) This paragraph applies where—
- (a) a company changes its accounting date so that it has an accounting period which begins on or after 1st October 2001 but ends before 30th September 2002; and
  - (b) the change of accounting date is or was made for the purpose, or for purposes which include the purpose, specified in sub-paragraph (2).
- (2) The purpose is that of securing, in the case of any subsequent accounting period beginning before 1st October 2002,—
- (a) that where an amount, or a bigger amount, would have fallen to be brought into account as a credit under Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) if the other provisions of this Schedule had had effect in relation to the period, no amount, or a smaller amount, falls to be brought into account in accordance with section 128 or 130 of the Finance Act 1993 (c. 34); or
  - (b) that where no amount, or a smaller amount, would have fallen to be brought into account as a debit under that Chapter if the other provisions of this Schedule had had effect in relation to the period, an amount, or a bigger amount, falls to be brought into account in accordance with section 128 or 130 of the Finance Act 1993.
- (3) Where this paragraph applies, the other provisions of this Schedule shall have effect in relation to the subsequent accounting period mentioned in sub-paragraph (2) as if it were an accounting period beginning on or after 1st October 2002.
- (4) In this paragraph, any reference to this Schedule includes a reference to—
- (a) subsection (1) of section 79;
  - (b) the amendments made by Schedule 24, so far as relating to the amendments and other provisions made by or under this Schedule; and
  - (c) any repeal of any enactment which is consequential on any provision made by or under this Schedule.

#### *Deferred foreign exchange gains*

- 26 (1) The repeal of sections 139 to 143 of the Finance Act 1993 (c. 34) (foreign exchange gains and losses) does not prevent the making of a claim under section 139 of that

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Act (deferral of unrealised gains) by a company in respect of a gain accruing in an accrual period which begins with, or at any time in, the last accounting period of the company which begins before 1st October 2002; but any such claim shall have effect subject to the following provisions of this paragraph and (subject to regulations under section 81) regulations under Chapter 2 of Part 2 of that Act.

- (2) Amounts which, but for the repeal of subsections (4) to (10) of section 140 of the Finance Act 1993, would fall to be treated by virtue of those subsections as exchange gains for an accrual period which consists of, or falls in, an accounting period beginning on or after 1st October 2002—
  - (a) shall be brought into account for that accounting period as if they were credits falling for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) to be brought into account in respect of the company's loan relationships;
  - (b) shall be treated for the purposes of that Chapter as non-trading credits, to the extent that they would, but for the repeal of subsections (5), (8) and (9) of section 140 of the Finance Act 1993, have fallen to be treated by virtue of those subsections as non-trading exchange gains; and
  - (c) except as provided by paragraph (b), shall be brought into account under section 82(2) of the Finance Act 1996 (trading credits).
- (3) Before the expiration of the period of 2 years following the end of its first accounting period beginning on or after 1st October 2002, a company may elect for any amounts that would otherwise fall to be brought into account for that accounting period in accordance with paragraph (a) of sub-paragraph (2) instead to be brought into account in accordance with that sub-paragraph, but—
  - (a) over the first 6 accounting periods of the company which begin on or after 1st October 2002; and
  - (b) in instalments of an equal amount for each such accounting period.
- (4) If a company—
  - (a) makes an election under sub-paragraph (3), but
  - (b) ceases to be within the charge to corporation tax before six accounting periods of the company which begin on or after 1st October 2002 have elapsed,

any instalment under that sub-paragraph which does not fall to be brought into account for an earlier accounting period shall be brought into account for the accounting period in which the company ceases to be within the charge to corporation tax.

<sup>F123</sup>(5) .....

#### Textual Amendments

**F123** Sch. 23 para. 26(5) repealed (with effect in accordance with Sch. 11 Pt. 2(6) Note 3 of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(6)**

*Status: Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.  
Changes to legislation: Finance Act 2002 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 24

Section 80

CORPORATION TAX: CURRENCY

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

**C12** Sch. 24 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(4\)\(8\)\(11\)](#)

*The Finance Act 1993*

*Introductory*

F124<sub>1</sub> .....

**Textual Amendments**

**F124** Sch. 24 paras. 1-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 2\(6\)](#)

*The basic rule: sterling to be used*

F124<sub>2</sub> .....

**Textual Amendments**

**F124** Sch. 24 paras. 1-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 2\(6\)](#)

*Use of currency other than sterling: accounts as a whole etc in foreign currency*

F124<sub>3</sub> .....

**Textual Amendments**

**F124** Sch. 24 paras. 1-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 2\(6\)](#)

*Use of currency other than sterling: accounts etc partly from statements in foreign currency*

F124<sub>4</sub> .....

**Textual Amendments**

**F124** Sch. 24 paras. 1-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 2\(6\)](#)

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*Rules for ascertaining currency equivalents: general*

F124<sup>5</sup> .....

**Textual Amendments**

**F124** Sch. 24 paras. 1-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

*Rules for ascertaining sterling equivalent for section 93(4) or (5)*

F124<sup>6</sup> .....

**Textual Amendments**

**F124** Sch. 24 paras. 1-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

*The Finance Act 1994*

*Lloyd's underwriters: corporations etc*

- 7 (1) Section 226 of the Finance Act 1994 (c. 9) (provisions which are not to apply to corporate members of Lloyd's) is amended as follows.
- (2) Subsection (1) (which prevents sections 92 to 95 of the Finance Act 1993 (c. 34) from applying) shall cease to have effect (and sections 92 to 94AB of that Act shall accordingly apply for the purposes of computing for the purposes of corporation tax the profits or losses of a corporate member's underwriting business).

SCHEDULE 25

Section 82

LOAN RELATIONSHIPS

**PART 1**

AMENDMENTS OF THE FINANCE ACT 1996

*Introductory*

- 1 Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) is amended in accordance with the following provisions of this Part of this Schedule.

*Meaning of "loan relationship" etc: method of settlement*

- 2 (1) Section 81 is amended as follows.

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- (2) In subsection (2) (which defines a money debt as a debt which falls to be settled by the payment of money etc)—
- (a) for “which falls” substitute “ which is, or has at any time been, one that falls, or that may at the option of the debtor or of the creditor fall, ”; and
  - (b) after paragraph (b) insert—
 

“disregarding any other option exercisable by either party.”.

#### *Non-trading deficit on loan relationships*

- 3 (1) Section 83 is amended as follows.
- (2) In subsection (2) (ways in which relief may be given on a claim in respect of the whole or any part of the deficit) after “the deficit”, where first occurring, insert “ (to the extent that it is not surrendered as group relief by virtue of section 403 of the Taxes Act 1988) ”.
  - (3) At the end of paragraph (a) of that subsection (claim to set off against other profits of the period) insert “ or ”.
  - (4) Paragraph (b) of that subsection (claim to treat as eligible for group relief) shall cease to have effect.
  - (5) Paragraph (d) of that subsection (claim to carry forward and set against non-trading profits of next accounting period) shall cease to have effect.
  - (6) For subsection (3) (any balance to be carried forward and treated as a deficit of the next accounting period) substitute—
 

“(3A) So much of the deficit for the deficit period as is not—

    - (a) surrendered as group relief by virtue of section 403 of the Taxes Act 1988, or
    - (b) treated in any of the ways specified in subsection (2) above,

shall be carried forward and set against non-trading profits of the company for succeeding accounting periods.”.
  - (7) Subsection (4) (provisions relating to amount carried forward and treated as deficit for next accounting period, which becomes of no further utility) shall cease to have effect.
  - (8) In subsection (9) (which introduces Schedule 8) for “subsection (2) above” substitute “ subsection (2)(a) or (c) above or where subsection (3A) above has effect ”.

#### *Debits and credits brought into account*

F125<sup>4</sup> . . . . .

#### **Textual Amendments**

**F125** Sch. 25 paras. 4-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)



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### Authorised accounting methods

F125<sub>5</sub> .....

#### Textual Amendments

**F125** Sch. 25 paras. 4-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

### Application of accounting methods

F125<sub>6</sub> .....

#### Textual Amendments

**F125** Sch. 25 paras. 4-6 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

### Accounting method where parties have a connection

- 7 (1) Section 87 is amended as follows.
- (2) In subsection (3) (meaning of connection between company and another person) in paragraph (a)(case where one company has had control of the other in an accounting period or in the two years preceding it)—
- (a) omit “, or in the two years before the beginning of that period,”; and
- (b) at the end of the paragraph, insert “ or ”.
- (3) In paragraph (b) of that subsection (case where both companies under control of same person in that period or those two years) omit “, or in those two years,”.
- (4) Omit paragraph (c) of that subsection (company was close company and other person was participator or associate of participator in that period or those two years).
- (5) In subsection (5) (persons indirectly standing in position of creditor or debtor by reference to a series of loan relationships) after “series of loan relationships” insert “ or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor ”.
- (6) After subsection (5) insert—
- “(5A) Where a trade, profession or business is carried on by two or more persons in partnership (“the firm”) and the firm stands in the position of a creditor or debtor as respects a money debt, any question—
- (a) whether there is for the purposes of this Chapter a connection, within the meaning of this section, between any two companies for an accounting period in the case of a loan relationship, or
- (b) to what extent any amount is to be treated under this Chapter in any particular way as a result of there being, or not being, such a connection,

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shall be determined as if to the extent of his appropriate share each of the partners separately, instead of the firm, stood in the position of a creditor or, as the case may be, debtor as respects the money debt.

The reference in the words following paragraph (b) above to partners does not include a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.

(5B) For the purposes of subsection (5A) above, a partner's "appropriate share" is the share that would be apportioned to him if an apportionment were made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 for the accounting period in question would be apportioned between the partners under subsection (2) of that section."

(7) Omit subsections (6) to (8)(meaning of "control", "participator" and "associate").

#### *Meaning of "control" in section 87*

8 After section 87 insert—

#### **"87A Meaning of "control" in section 87**

(1) For the purposes of section 87 above, "control", in relation to a company, means the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) There shall be left out of account for the purposes of this section—

- (a) any shares held by a company, and
- (b) any voting power or other powers arising from shares held by a company,

if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988, assets of an insurance company's long-term insurance fund (see section 431(2) of that Act).

(3) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this section, as respects any time in an accounting period of the partnership, as if—

- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
- (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section,

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but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.”.

*Inconsistent application of accounting methods*

9 Section 89(which has become unnecessary because, in accordance with generally accepted accounting practice, a similar adjustment falls to be recognised in the profit and loss account of the company and debits or credits accordingly fall to be brought into account pursuant to section 84(1) of the Finance Act 1996 (c. 8)) shall cease to have effect.

*Changes of accounting method*

F126 10 .....

**Textual Amendments**

**F126** Sch. 25 para. 10 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

*Payments subject to deduction of tax*

11 Section 91 shall cease to have effect.

*Indexed gilt-edged securities*

F127 12 (1) .....

F128 (2) .....

[F129(3) In subsection (6) (the percentage increase or decrease in retail prices index) after paragraph (b) insert—

“except that where the earlier time falls at the beginning of an accounting period which begins with the first day of a month, the index for the previous month shall be used for the purposes of paragraph (a) above.”]

**Textual Amendments**

**F127** Sch. 25 para. 12 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F128** Sch. 25 para. 12(2) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(7\)](#)

**F129** Sch. 25 para. 12(3) restored (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 27\(1\)](#)

*Manufactured interest*

13 (1) Section 97 is amended as follows.

(2) In subsection (1) (application of section)—

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- (a) for “This section applies where—” substitute “ For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where— ”;
- (b) in paragraph (a), for “any company” substitute “ the company ”;
- (c) in paragraph (b), for “that relationship” substitute “ that loan relationship ”; and
- (d) after paragraph (b), add—

“and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly”.

- (3) For subsection (2) (treatment of the manufactured interest) substitute—

“(2) Where a company has a relationship to which this section applies—

- (a) this Chapter shall have effect in relation to the company and the manufactured interest under the relationship—

- (i) as it would have effect if the manufactured interest were interest payable on a loan by, or (as the case may be) to, the company and were accordingly interest under a loan relationship to which the company is a party, and

- (ii) where that company is the company to which the manufactured interest is payable, as if that relationship were the one under which the real interest is payable, but

- (b) the only credits or (subject to subsection (4A) below) debits to be brought into account for the purposes of this Chapter by virtue of this section in respect of a relationship are those relating to that interest,

and, subject to paragraphs (a)(ii) and (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.”.

<sup>F130</sup>(4) .....

- (5) In subsection (4) (which applies the section to a deemed manufactured payment under section 737A(5) of the Taxes Act 1988 as if such a representative payment had in fact been made) before “737A(5)” insert “ 736B(2) or ”.

- (6) After subsection (4) insert—

“(4A) Where, for the purposes of section 736B of the Taxes Act 1988, a company is the borrower under a stock lending arrangement, then (pursuant to subsection (2A) of that section (which precludes deductions or group relief for the borrower)) no debits are to be brought into account for the purposes of this Chapter by that company in respect of the deemed representative payment under that section which is treated under subsection (4) above as if it had in fact been made.”.

#### Textual Amendments

**F130** Sch. 25 para. 13(4) repealed (with effect in accordance with Sch. 11 Pt. 2(8) Note of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(8)**

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*Interpretation: “shares” not to include building society shares*

- 14 In section 103(1) (definitions) in the definition of “share”, at the end insert “ but does not include a share in a building society ”.

*Interpretation: miscellaneous*

- 15 In section 103(1) (definitions) insert the following definitions at the appropriate place—

““derivative contract” has the same meaning as in Schedule 26 to the Finance Act 2002;”;

““statutory accounts” has the meaning given by section 86(8) above”.

*Provision continuing to be made on accruals basis after company ceases to be party*

- 16 At the end of section 103 (interpretation) insert—

“(6) Where—

- (a) a company ceases to be a party to a loan relationship in an accounting period (the “cessation period”),
- (b) profits, gains or losses arise to the company from the loan relationship or a related transaction in that accounting period, and
- (c) the credits or debits brought into account for the purposes of this Chapter for that accounting period do not include credits or debits which represent the whole of those profits, gains or losses,

credits or debits in respect of so much of those profits, gains or losses as are not represented by credits or debits brought into account for the cessation period shall continue to be brought into account under this Chapter over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a loan relationship to which the company is a party in those periods, and subsections (7) and (8) below shall apply.

(7) In any case falling within subsection (6) above, any question—

- (a) whether, in a post-cessation period, the company is to any extent a party to the loan relationship—
  - (i) for the purposes of a trade carried on by it, or
  - (ii) for any other particular purpose or purposes, or
- (b) whether, in a post-cessation period, the loan relationship is to any extent referable to a particular business, or a particular class, category or description of business, carried on by the company,

shall be determined by reference to the circumstances immediately before the company ceased to be a party to the loan relationship instead of the circumstances in the post-cessation period.

(8) In any case falling within subsection (6) above, any question—

- (a) whether the loan relationship has to any extent a particular purpose in a post-cessation period, or
- (b) whether there is a connection between the company and any other person for a post-cessation period,

shall be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.”.

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*Claims to treat deficit as eligible for group relief*

- 17 In Schedule 8 (loan relationships: claims relating to deficits) paragraph 2(claims under section 83(2)(b)) shall cease to have effect.

*Claim to carry back deficit to previous accounting periods*

- 18 (1) Paragraph 3 of Schedule 8 is amended as follows.
- (2) In sub-paragraph (2)(a)(i) (which refers to a claim under section 83(2)(a) or (b)) for “under subsection (2)(a) or (b)” substitute “ under subsection (2)(a) ”.
- (3) In sub-paragraph (6)(e) (which refers to a claim under section 83(2)(a) or (b)) for “under section 83(2)(a) or (b)” substitute “ under section 83(2)(a) ”.

*Deficit carried forward and set against non-trading profits of succeeding accounting periods*

- 19 (1) Paragraph 4 of Schedule 8 (claim to carry forward deficit to next accounting period) is amended as follows.
- (2) For sub-paragraph (1) (application of paragraph) substitute—
- “(1) This paragraph applies where, pursuant to section 83(3A) of this Act, any of the deficit for a deficit period is to be carried forward and set against non-trading profits for succeeding accounting periods.”.
- (3) In sub-paragraph (2) (treatment of amount to which the claim relates) for “The amount to which the claim relates” substitute “ The amount carried forward from the deficit period, reduced by any amount claimed under sub-paragraph (3) below, ”.
- (4) Re-number sub-paragraph (3) (definition of “non-trading profits”) as sub-paragraph (6) and before that sub-paragraph insert—
- “(3) The company may make a claim for so much of the amount carried forward from the deficit period as may be specified in the claim to be excepted from being set against non-trading profits of the accounting period immediately following the deficit period.
- (4) Any claim under sub-paragraph (3) above must be made before the expiration of the period of 2 years following the end of that accounting period.
- (5) So much of the amount carried forward from the deficit period as—
- (a) cannot be relieved under sub-paragraph (2) above against non-trading profits of the accounting period immediately following the deficit period, or
- (b) is the subject of a claim under sub-paragraph (3) above in respect of that accounting period,
- shall be treated for the purposes of this Chapter as if it were an amount of non-trading deficit on the company’s loan relationships for that accounting period which, pursuant to section 83(3A) of this Act, falls to be carried forward and set against non-trading profits of succeeding accounting periods (and this paragraph shall apply accordingly).”.
- (5) In consequence of the amendments made by this paragraph—

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- (a) the heading to that paragraph becomes “ *Carry forward of deficit to succeeding accounting periods* ”; and
- (b) in the title of the Schedule, “claims” becomes “ claims etc ”.

#### *Distributions*

20 In Schedule 9 (loan relationships: special computational provisions) in paragraph 1, at the beginning insert “ (1) ” and at the end insert—

“(2) Nothing in section 80(5) of this Act prevents an amount which, by virtue of sub-paragraph (1) above, is not brought into account for the purposes of this Chapter from being brought into account for the purposes of corporation tax apart from this Chapter.”.

#### *Life assurance policies and capital redemption policies*

21 After paragraph 1 of Schedule 9 insert—

##### **“Life assurance policies and capital redemption policies**

1A (1) The credits and debits to be brought into account for the purposes of this Chapter shall not include any credits or debits relating to—

- (a) a policy of life assurance; or
- (b) a capital redemption policy, within the meaning of Chapter 2 of Part 13 of the Taxes Act 1988.

(2) Nothing in section 80(5) of this Act prevents an amount which, by virtue of sub-paragraph (1) above, is not brought into account for the purposes of this Chapter from being brought into account for the purposes of corporation tax apart from this Chapter.”.

#### *Late interest: further cases where paragraph 2 of Schedule 9 applies*

22 (1) Paragraph 2 of Schedule 9 is amended as follows.

(2) In sub-paragraph (1) (application of paragraph) for the words following “company” substitute “ (“the debtor company”) in a case falling within any of sub-paragraphs (1A) to (1D) below. ”.

(3) After sub-paragraph (1) insert—

“(1A) The first case is where there is, for the relevant accounting period, a connection (within the meaning of section 87 of this Act) between the debtor company and a person standing in the position of creditor as respects the loan relationship.

(1B) The second case is where there is a time in the relevant accounting period when the debtor company is a close company and a person standing in the position of a creditor as respects the loan relationship is—

- (a) a participator in the debtor company,
- (b) the associate of a person who is such a participator at that time, or
- (c) a company of which such a participator has control or in which such a participator has a major interest,

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and the debt is not one that is owed to, or to persons acting for, a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.

(1C) The third case is where—

- (a) a person standing in the position of a creditor as respects the loan relationship is a company (“the creditor company”); and
- (b) there is a time in the relevant accounting period when the debtor company has a major interest in the creditor company or the creditor company has a major interest in the debtor company.

(1D) The fourth case is where the loan is one made by trustees of a retirement benefits scheme (as defined in section 611 of the Taxes Act 1988) and—

- (a) there is a time in the relevant accounting period when the debtor company is the employer of employees to whom the scheme relates; or
- (b) there is for the relevant accounting period a connection, within the meaning of section 87 of this Act, between the debtor company and such an employer; or
- (c) a company is such an employer and there is a time in the relevant accounting period when the debtor company has a major interest in that company or that company has a major interest in the debtor company.”.

(4) After sub-paragraph (2) insert—

“(3) References in this paragraph to a person who stands in the position of a creditor as respects a loan relationship include references to a person who indirectly stands in that position by reference to a series of loan relationships or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor.

(4) Where this paragraph applies in relation to a debtor relationship by virtue of sub-paragraph (3) above, the reference to the corresponding creditor relationship in sub-paragraph (2)(b) above is a reference to the creditor relationship of the person who indirectly stands in the position of a creditor as respects the debtor relationship.

(5) For the purposes of this section, section 414 of the Taxes Act 1988 (meaning of “close company” in the Tax Acts) shall have effect with the omission of subsection (1)(a) (exclusion of companies not resident in the United Kingdom).

(6) In this paragraph—

“associate” has the meaning given by section 417(3) and (4) of the Taxes Act 1988;

“control” has the same meaning as in section 87 of this Act (see section 87A);

“participator”, in relation to a close company, means a person who, by virtue of section 417 of the Taxes Act 1988, is a participator in the company for the purposes of Part 11 of that Act, other than a person who is a participator for those purposes by virtue only of being a loan creditor of the company;



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“the relevant accounting period” means the accounting period mentioned in sub-paragraph (2)(a) above.

(7) Paragraph 20 below (major interests) applies for the purposes of this paragraph.”.

### *Bad debts and consortium relief*

23 In Schedule 9, after paragraph 5 (bad debt etc) insert—

#### **“Bad debts and consortium relief**

- 5A (1) This paragraph applies where the conditions in sub-paragraphs (2) and (3) below are satisfied.
- (2) The first condition is that by virtue of paragraph 5 above a debit is or has been brought into account for the purposes of this Chapter for any group accounting period by—
- (a) a company (“the member company”) which is a member of a consortium by which a consortium company is owned; or
  - (b) a company (a “group member”) which is a member of the same group of companies as the member company but is not itself a member of the consortium.
- (3) The second condition is that the debit is or was in respect of a creditor relationship of the member company or group member and—
- (a) the consortium company, or
  - (b) if that company is a holding company, a consortium company which is a subsidiary of that company,
- is or, as the case may be, was the debtor (“the debtor consortium company”).
- (4) Any reference in this paragraph to a “relevant creditor relationship” is a reference to a creditor relationship (whether of the member company or a group member) which falls within sub-paragraph (3) above.
- (5) For the purposes of this paragraph there is for any group accounting period a “relevant net debit” in relation to the relevant creditor relationships if—
- (a) the total of the debits brought into account for that period by virtue of paragraph 5 above in respect of those relationships by—
    - (i) the member company, and
    - (ii) every group member,exceeds
  - (b) the total of any related debt recovery credits so brought into account by those companies for that period in respect of those relationships,
- and the amount of the relevant net debit is the amount of that excess.
- (6) Where there is for any group accounting period a relevant net debit in relation to the relevant creditor relationships, the amount of the relevant net debit shall be reduced by so much of any amount which—

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- (a) may be surrendered as group relief by the debtor consortium company, and
  - (b) is claimed as group relief for that accounting period by the member company or any group member,
- as does not exceed the amount of the relevant net debit.
- (7) Where a relevant net debit falls to be reduced under sub-paragraph (6) above by any amount (“the relevant reduction”), each of the debits brought into account in determining the relevant net debit shall be reduced by an amount found by apportioning between those debits, in proportion to their respective amounts, the amount of the relevant reduction.
- (8) For the purposes of this paragraph there is for any group accounting period a “surplus of related debt recovery credits” in relation to the relevant creditor relationships if—
- (a) the total amount of any related debt recovery credits brought into account under paragraph 5 above for the period in respect of those relationships by—
    - (i) the member company, and
    - (ii) every group member,
 exceeds
  - (b) the total of the debits brought into account for that period by virtue of paragraph 5 above in respect of those relationships by those companies.
- (9) Where there is for any group accounting period a surplus of related debt recovery credits in relation to the relevant creditor relationships, each of the related debt recovery credits falling to be brought into account by virtue of paragraph 5(2) above in respect of those relationships shall be reduced (but not below nil) by the appropriate amount.
- For the purposes of this sub-paragraph “the appropriate amount” is the amount found by apportioning between those related debt recovery credits, in proportion to their respective amounts, the cumulative net sub-paragraph (6) reduction for earlier group accounting periods in respect of the relevant creditor relationships.
- (10) In this paragraph, for any group accounting period the cumulative net sub-paragraph (6) reduction for earlier group accounting periods in respect of the relevant creditor relationships is—
- (a) the total amount by which the relevant net debits in respect of those relationships for any previous group accounting periods have been reduced by virtue of sub-paragraph (6) above; less
  - (b) so much of that total amount as has been previously apportioned under sub-paragraph (9) above.
- (11) Any reference in this paragraph to a “relevant claim for group relief” is a reference to a claim by the member company or a group member for group relief in respect of an amount which may be surrendered as group relief by the debtor consortium company.

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- (12) Any relevant claim for group relief for a group accounting period shall be reduced by so much of the cumulative net amount of relevant net debits for earlier group accounting periods in respect of the relevant creditor relationships as does not exceed the total amount of the claim.

Where there are two or more such claims for the same group accounting period which in total exceed that cumulative net amount, each of them shall be reduced by an amount found by apportioning that cumulative net amount between them in proportion to their respective amounts.

- (13) In this paragraph, for any group accounting period the cumulative net amount of relevant net debits for earlier group accounting periods in respect of the relevant creditor relationships is the total amount of the relevant net debits for those earlier periods in respect of those relationships, after any reductions falling to be made under this paragraph in the amounts of those relevant net debits.

- (14) If there is for any group accounting period—
- (a) a relevant claim for group relief (as reduced by virtue of sub-paragraph (12) above, where applicable), and
  - (b) no relevant net debit in respect of the relevant creditor relationships,

the claim (as so reduced) shall be carried forward and treated for the purposes of sub-paragraph (12) above as increasing any relevant claim for group relief made by the claimant company for its next accounting period (or, if there is no other relevant claim for group relief made by that company for that period, as the relevant claim for group relief by that company for that period).

- (15) Where—
- (a) the debtor consortium company has brought an amount into account by virtue of paragraph 5(3) above for an accounting period in relation to a debtor relationship, and
  - (b) the corresponding creditor relationship is a relevant creditor relationship,

an equal amount shall be treated for the purposes of this paragraph as not being a debit brought into account for that period under paragraph 5(1) in relation to the creditor relationship.

- (16) Where section 403C of the Taxes Act 1988 (amount of relief in consortium cases) applies, effect shall be given to that section before effect is given to this paragraph.

- (17) In this paragraph “group accounting period” means—
- (a) any accounting period of the member company beginning on or after 1st October 2002, or
  - (b) any accounting period of a group member which begins on or after that date and corresponds to such an accounting period of the member company,

and any such accounting period of the member company and any such corresponding accounting periods of one or more group members

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shall be regarded for the purposes of this paragraph as being the same accounting period.

(18) For the purposes of this paragraph an accounting period of a group member corresponds to an accounting period of the member company if—

- (a) the two accounting periods coincide;
- (b) the accounting period of the member company includes more than half of the accounting period of the group member; or
- (c) the accounting period of the member company includes part of the accounting period of the group member, but the remainder of that period does not fall within any accounting period of the member company.

(19) In this paragraph—

“consortium claim” means a claim for group relief made by virtue of section 402(3) of the Taxes Act 1988;

“consortium company” means a company falling within any of paragraphs (a) to (c) of section 402(3) of the Taxes Act 1988 (surrender of relief between members of consortia);

“cumulative net amount of relevant net debits” shall be construed in accordance with sub-paragraph (13) above;

“cumulative net sub-paragraph (6) reduction” shall be construed in accordance with sub-paragraph (10) above;

“debtor consortium company” shall be construed in accordance with sub-paragraph (3) above;

“group accounting period” shall be construed in accordance with sub-paragraphs (17) and (18) above;

“group member” shall be construed in accordance with sub-paragraph (2)(b) above;

“group relief” has the meaning given by section 402(1) of the Taxes Act 1988;

“holding company” means a company falling within section 402(3)(c) of the Taxes Act 1988;

“member”, in relation to a consortium, has the same meaning as in Chapter 4 of Part 10 of the Taxes Act 1988 (group relief);

“member company” shall be construed in accordance with sub-paragraph (2)(a) above;

“related debt recovery credit”, in relation to a group accounting period, means a credit falling to be brought into account for the purposes of this Chapter for that period by the member company or a group member by virtue of paragraph 5(2) above in connection with a bad debt owed by the debtor consortium company;

“relevant claim for group relief” shall be construed in accordance with sub-paragraph (11) above;

“relevant creditor relationship” shall be construed in accordance with sub-paragraph (4) above;

“relevant net debit” shall be construed in accordance with sub-paragraph (5) above;

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“subsidiary”, in relation to a company which is a holding company, means a company falling within section 402(3)(b) of the Taxes Act 1988 by reference to that holding company;

“surplus of related debt recovery credits” shall be construed in accordance with sub-paragraph (9) above;

“surrendering company” has the meaning given by section 402(1) of the Taxes Act 1988.

- (20) Any reference in this paragraph to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).
- (21) Any reference in this paragraph to a company being owned by a consortium shall be construed in accordance with section 413(6) of the Taxes Act 1988.”.

*Bad debt etc where parties have a connection*

- 24 (1) Paragraph 6 of Schedule 9 is amended as follows.
- (2) In sub-paragraph (2) (credits and debits to be computed subject to sub-paragraphs (3) to (6)) after “sub-paragraphs (3) to (6)” insert “ and paragraphs 6A and 6B ”.
- (3) In sub-paragraph (3) (assumption that every amount will be paid in full to be applied, subject to any departure allowed by sub-paragraph (4)) after “sub-paragraph (4)” insert “ or paragraph 6A or 6B ”.

*Bad debt etc: parties having connection and creditor company in insolvent liquidation etc*

- 25 After paragraph 6 of Schedule 9 insert—

**“Bad debt etc: parties having connection and creditor in insolvent liquidation etc**

- 6A (1) This paragraph applies in any case falling within paragraph 6(1) above where—
- (a) the company which has the creditor relationship (“the creditor company”) has gone into insolvent liquidation;
  - (b) an administration order is in force in relation to that company under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989;
  - (c) an appointment of a provisional liquidator is in force in relation to that company under section 135 of that Act or Article 115 of that Order; or
  - (d) under the law of a country or territory outside the United Kingdom, an event has occurred, or circumstances exist, corresponding to any of those described in paragraphs (a) to (c) above.
- (2) Where this paragraph applies, a departure from the assumption that every amount payable under the relationship will be paid in full shall

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be allowed in relation to any amount accruing to the creditor company under the relationship—

- (a) in a case falling within paragraph (a) of sub-paragraph (1) above, at a time after the commencement of the winding up;
  - (b) in a case falling within paragraph (b) of that sub-paragraph, at a time when the administration order is in force;
  - (c) in a case falling within paragraph (c) of that sub-paragraph, at a time when the appointment of the provisional liquidator is in force; or
  - (d) in a case falling within paragraph (d) of that sub-paragraph, at a time corresponding to that described in paragraph (a), (b) or (c) above (as the case may be).
- (3) For the purposes of this paragraph, a company goes into insolvent liquidation if it goes into liquidation, as defined in section 247(2) of the Insolvency Act 1986 or Article 6(2) of the Insolvency (Northern Ireland) Order 1989, at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.”

F131<sup>26</sup> .....

#### Textual Amendments

F131 Sch. 25 para. 26 repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(5\)](#)

*Bad debt etc: departure not permitted by paragraph 6: subsequent cessation of connection*

27 After paragraph 6B of Schedule 9 insert—

#### **“Bad debt etc: departure not permitted by paragraph 6: cessation of connection**

- 6C (1) Where, in the case of a creditor relationship of a company,—
- (a) a departure that would otherwise have been allowed under paragraph 5(1) above in respect of an amount is or was, by virtue of paragraph 6 above, not allowed in the case of an accounting period; and
  - (b) there is a subsequent accounting period for which there is, within the meaning of section 87 of this Act, no connection between the company and any person standing in the position of a debtor as respects the debt,
- sub-paragraphs (2) and (3) below shall apply.
- (2) Where this sub-paragraph applies, no credit shall be required to be brought into account by virtue of paragraph 5(2) above in respect of an amount—
- (a) for the first accounting period falling within sub-paragraph (1) (b) above, or
  - (b) for any subsequent such accounting period,

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to the extent that the amount in question corresponds to the amount mentioned in sub-paragraph (1)(a) above.

(3) Where this sub-paragraph applies, no debit shall be brought into account in respect of an amount—

- (a) for the first accounting period falling within sub-paragraph (1)(b) above, or
- (b) for any subsequent such accounting period,

to the extent that the amount in question represents the amount mentioned in sub-paragraph (1)(a) above.”.

#### *Imported losses etc*

28 In paragraph 10 of Schedule 9 at the end insert—

“(5) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Chapter as respects any matter are in consequence also amounts which, in accordance with section 80(5) of this Act, are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Chapter.”.

#### *Continuity of treatment: groups etc*

29 (1) Paragraph 12 of Schedule 9 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) This paragraph does not apply where the transferor company uses an authorised mark to market basis of accounting as respects the loan relationship, but in any such case—

- (a) the amount to be brought into account by the transferee company in respect of the transaction, the result of the series of transactions, or the transfer must be the fair value of the asset, or of the rights under or interest in the asset, as at the date on which the transferee company becomes party to the loan relationship; and
- (b) paragraph (b) of sub-paragraph (2) above shall have effect for the purposes of section 90 of this Act (changes of accounting method).”.

#### *Loan relationships for unallowable purposes*

30 In paragraph 13 of Schedule 9, after sub-paragraph (1) insert—

“(1A) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Chapter as respects any matter are in consequence also amounts which, in accordance with section 80(5) of this Act, are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Chapter.”.

#### *Debits and credits treated as relating to capital expenditure*

31 (1) Paragraph 14 of Schedule 9 is amended as follows.

(2) In sub-paragraphs (1) and (2), for “normal accountancy practice”, in each place where occurring, substitute “generally accepted accounting practice”.

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(3) After sub-paragraph (2) add—

“(3) No debit may be brought into account by virtue of this paragraph if it is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Schedule 29 to the Finance Act 2002 (gains and losses of a company from intangible fixed assets).”.

*Repo transactions and stock lending*

32 (1) Paragraph 15 is amended as follows.

(2) After sub-paragraph (4) (equivalent rights) insert—

“(4A) In consequence of sub-paragraph (1) above—

- (a) the person transferring the rights mentioned in sub-paragraph (3) (a) above does not, as a result of the transfer, fall to be regarded for the purposes of this Chapter as ceasing to be party to the loan relationship; and
- (b) the person to whom those rights are transferred does not, as a result of the transfer, fall to be regarded for the purposes of this Chapter as being party to the loan relationship;

but nothing in sub-paragraph (1) or paragraph (b) above shall prevent any credit in respect of interest from being brought into account for the purposes of this Chapter by the person described in that paragraph.”.

(3) After sub-paragraph (6) (which provides that the paragraph is without prejudice to section 730A(2) and (6)) insert—

“(6A) Nothing in this paragraph affects section 807A(2A) of the Taxes Act 1988 (double taxation relief in the case of repo or stock lending agreement).”.

*Discounted securities where companies have a connection*

33 (1) Paragraph 17 of Schedule 9 is amended as follows.

(2) In sub-paragraph (1) (accounting periods to which the paragraph applies) for paragraph (b) substitute—

“(b) at any time in that period another company stands in the position of a creditor as respects that security;”.

(3) In sub-paragraph (5) (meaning of “connection” between companies) in paragraph (a) (one of the companies has had control of the other in the accounting period or the preceding two years)—

- (a) omit “, or in the period of two years before the beginning of that period,”; and
- (b) after “control of” insert “, or a major interest in,”.

(4) In paragraph (b) of that sub-paragraph (both companies under control of same person in that period or those two years) omit “, or in those two years,”.

(5) For sub-paragraph (8) (which defines what it is for the benefit of a security to be available to a company) substitute—

“(8) Any reference in this paragraph to a person who stands in the position of a creditor as respects a relevant discounted security includes a reference to



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a person who indirectly stands in that position by reference to a series of relevant discounted securities.

(8A) Where this paragraph applies by virtue of sub-paragraph (8) above, the reference to the corresponding creditor relationship in sub-paragraph (1) (d) above is a reference to the creditor relationship of the company which indirectly stands in the position of a creditor as respects the relevant discounted security.”

(6) For sub-paragraph (9) (meaning of “control”) substitute—

“(9) For the purposes of this paragraph “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).

(10) Paragraph 20 below (major interests) applies for the purposes of this paragraph.”

*Discounted securities of close companies*

34 (1) Paragraph 18 of Schedule 9 is amended as follows.

(2) In sub-paragraph (1)(accounting periods to which the paragraph applies)—

- (a) after “any accounting period” insert “ (“the relevant period”) ”;
- (b) in paragraph (a), after “a close company” insert “ (“the issuing company”) ”; and
- (c) omit the word “and” immediately preceding paragraph (b).

(3) In paragraph (b) of that sub-paragraph, for the words preceding sub-paragraph (i) (which relate to beneficial ownership at any time in or before the accounting period in question) substitute—

“(b) at any time in that period there is a person who stands in the position of a creditor as respects that security and who at that time is—”.

<sup>F132</sup>(4) .....

(5) After sub-paragraph (1) insert—

“(1A) But for any such accounting period this paragraph shall not apply in relation to that debtor relationship if—

- (a) at all times in the period when there is such a person as is described in sub-paragraph (1)(b) above, that person is a company; and
- (b) credits representing the full amount of the discount that is referable to the period are brought into account for the purposes of this Chapter in respect of the corresponding creditor relationship.”.

(6) For sub-paragraph (2) (debits not to be brought into account by the issuing company for any accounting period before that in which the security is redeemed) substitute—

“(2) The debits falling in the case of the issuing company to be brought into account for the purposes of this Chapter in respect of the loan relationship shall be adjusted so that every debit relating to the amount of the discount that is referable to the relevant period (“the relevant debits”) is brought into account for the accounting period in which the security is redeemed, instead of for the relevant period.

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This sub-paragraph does not apply where the relevant period is the accounting period in which the security is redeemed.

(2A) Where at some (but not all) times in the relevant period there is such a person as is described in sub-paragraph (1)(b) above—

- (a) part only of the relevant debits shall be brought into account in accordance with sub-paragraph (2) above; and
- (b) that part is the part which bears to the whole of the relevant debits the proportion which the part of the relevant period for which there is such a person bears to the whole of that period.”.

(7) After sub-paragraph (2A) insert—

“(2B) References in this paragraph to the amount of the discount that is referable to an accounting period are references to the amount relating to the difference between—

- (a) the issue price of the security, and
- (b) the amount payable on redemption,

which (apart from sub-paragraphs (2) and (2A) above) would for that accounting period be brought into account for the purposes of this Chapter in the case of the issuing company.”.

(8) After sub-paragraph (2B) insert—

“(2C) Any reference in this paragraph to a person who stands in the position of a creditor as respects a relevant discounted security includes a reference to a person who indirectly stands in that position by reference to a series of relevant discounted securities.

(2D) Where this paragraph applies by virtue of sub-paragraph (2C) above, the reference to the corresponding creditor relationship in sub-paragraph (1A)(c) above is a reference to the creditor relationship of the person who indirectly stands in the position of a creditor as respects the relevant discounted security.”.

(9) After sub-paragraph (3) insert—

“(3A) For the purposes of this paragraph there is a connection between one company and another for an accounting period if—

- (a) there is a time in that period when one of the companies has had control of the other, or
- (b) there is a time in that period when both the companies have been under the control of the same person.

(3B) In this paragraph “control”, in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).”.

(10) In sub-paragraph (4)(definitions) omit the definition of “control”.

(11) In that sub-paragraph, in the definition of “participator”—

- (a) after ““participator”” insert “, in relation to a company, ”; and
- (b) for the words from “by virtue only” to the end of the definition substitute “ by reason only that he is a loan creditor of the company. ”.

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### Textual Amendments

**F132** Sch. 25 para. 34(4) repealed (with effect in accordance with Sch. 11 Pt. 2(9) Note of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 11 Pt. 2(9)**

### *Partnerships involving companies*

35 In Schedule 9, after paragraph 18 insert—

#### **“Partnerships involving companies**

- 19 (1) This paragraph applies where—
- (a) a trade, profession or business is carried on by persons in partnership (“the firm”);
  - (b) any of those persons is a company (a “company partner”); and
  - (c) a money debt is owed by or to the firm.
- (2) In any such case—
- (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if the partnership were a company) no debits or credits shall be brought into account under this Chapter in relation to the money debt or any loan relationship that would fall to be treated for the purposes of the computation as arising from the money debt; but
  - (b) debits and credits shall be brought into account under this Chapter in relation to the money debt (and any loan relationship treated as arising from it) in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in subparagraph (1) above are satisfied.
- (3) The debits and credits to be brought into account as mentioned in subparagraph (2)(b) above shall be determined separately in the case of each company partner.
- (4) For the purpose of determining those debits and credits in the case of any particular company partner—
- (a) the money debt owed by or to the firm shall be treated as if it were instead owed by or, as the case may be, to that company partner, for the purposes of the trade, profession or business which that company partner carries on,
  - (b) the money debt shall continue to be regarded as arising from a transaction for the lending of money if that is in fact the case (so that the company partner is treated as having a loan relationship), and
  - (c) anything done by or in relation to the firm in connection with the money debt shall be treated as done by or in relation to the company partner,
- and debits and credits (the “gross debits and credits”) shall be determined accordingly.

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- (5) The debits and credits to be brought into account under this Chapter pursuant to sub-paragraph (2)(b) above in the case of any particular company partner shall be that company partner's appropriate share of the gross debits and credits determined in accordance with sub-paragraph (4) above in the case of that company partner.
- (6) For the purposes of sub-paragraph (5) above, the "appropriate share", in the case of a company partner, is the share that would be apportioned to that company partner if—
- (a) the gross debits and credits determined in accordance with sub-paragraph (4) above in the case of that company partner fell to be apportioned between the partners; and
  - (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section.
- (7) If, in a case where the money debt owed by or to the firm arises from a transaction for the lending of money, there is a time in an accounting period of any company at which—
- (a) a person who is a company partner stands in relation to the debt in the position of a creditor (if it is owed by the firm) or a debtor (if it is owed to the firm) and accordingly has a creditor relationship or debtor relationship (as the case may be),
  - (b) that company partner, whether alone or taken together with one or more other company partners connected with it, controls the partnership, and
  - (c) that or any other company partner falls to be treated in accordance with sub-paragraph (4) above as if it had the debtor relationship or creditor relationship that corresponds to the creditor relationship or debtor relationship mentioned in paragraph (a) above,
- sub-paragraph (8) below shall apply with respect to that accounting period, if it is an accounting period of a company partner mentioned in paragraph (a) or (c) above.
- (8) Where this sub-paragraph applies, there shall be taken for the purposes of this Chapter to be a connection by virtue of section 87(3)(a) of this Act for the accounting period of the company partner mentioned in paragraph (a) of sub-paragraph (7) above, between that company partner and each company partner (including that company partner) that falls within paragraph (c) of that sub-paragraph.
- (9) For the purposes of sub-paragraph (7) above, one company partner is connected with another at any time in an accounting period if at that or any other time in the accounting period one controls the other or both are under the control of the same person.
- (10) The only accounting method authorised for use by a company partner in determining the debits and credits to be brought into account under this paragraph is an authorised accruals basis of accounting, but this sub-paragraph is subject to sub-paragraph (11) below.

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- (11) Where the company partner uses an authorised mark to market basis of accounting in relation to its interest in the partnership, the only accounting method authorised for use in determining the debits and credits to be brought into account under this paragraph by that company partner is an authorised mark to market basis of accounting, unless a provision of this Chapter requires the use of an authorised accruals basis of accounting.
- (12) Subsection (3) of section 84A of this Act does not apply in relation to a company partner as respects the debits and credits to be brought into account by virtue of this paragraph except to the extent that, in the accounts of the firm, exchange gains and losses are carried to or sustained by a reserve in a manner corresponding to that described in that section in relation to a company.
- (13) Where the firm holds a relevant discounted security, within the meaning of paragraph 17 above, each of the partners shall be treated for the purposes of this paragraph as beneficially entitled to that share of the security to which he would be entitled if all the partners were companies and such an apportionment as is described in sub-paragraph (6)(b) above were made.
- (14) In this paragraph “control”—
- (a) in relation to a company, has the same meaning as in section 87 of this Act (see section 87A); and
  - (b) in relation to a partnership, has the meaning given by section 840 of the Taxes Act 1988.”

*Interpretation of Schedule 9: “major interest”*

36 In Schedule 9, after paragraph 19 insert—

**“Interpretation of references to major interests**

- 20 (1) For the purposes of any provision which applies this paragraph, the cases where a company (“company A”) has a major interest in another company (“company B”) at any time are those cases where at that time—
- (a) company A and one other person, taken together, have control of company B;
  - (b) company A and the other person each have interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which company A and the other person fall to be taken as having control of company B; and
  - (c) company A, or a company connected with it, and the other person, or, if that person is a company, a company connected with it, both satisfy the first condition, or both satisfy the second condition, in sub-paragraph (2) below.
- (2) A person—
- (a) satisfies the first condition if he stands in the position of a creditor in relation to a loan relationship as respects which company B stands in the position of a debtor; and

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- (b) satisfies the second condition if he stands in the position of a debtor in relation to a loan relationship as respects which company B stands in the position of a creditor.
- (3) The reference in sub-paragraph (1)(b) above to interests, rights and powers does not include interests, rights or powers arising from shares held by a company if—
- (a) a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company; and
  - (b) the shares are not, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988, assets of an insurance company's long-term insurance fund (see section 431(2) of that Act).
- (4) For the purposes of sub-paragraph (1) above, any question—
- (a) whether two persons taken together have control of a company at any time, or
  - (b) whether a person has at any time interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of a company,
- shall be determined after attributing to any person which is a company all the interests, rights and powers of any company connected with it.
- (5) Where section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses) applies in relation to a partnership, any property, rights or powers held or exercisable for the purposes of the partnership shall be treated for the purposes of this paragraph, as respects any time in an accounting period of the partnership, as if—
- (a) the property, rights or powers had been apportioned between, and were held or exercisable by, the partners severally, and
  - (b) the apportionment had been in the shares in which the profit or loss of the accounting period of the partnership would be apportioned between the partners under subsection (2) of that section,
- but taking the references in paragraphs (a) and (b) above to partners as not including a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.
- (6) Where a trade, profession or business is carried on by two or more persons in partnership (“the firm”) and the firm stands in the position of a creditor or debtor as respects a money debt, any question—
- (a) whether a company has a major interest (within the meaning of this paragraph) in another company for an accounting period in the case of a loan relationship, or
  - (b) to what extent any amount is to be treated under this Chapter in any particular way as a result of a company having, or (as the case may be) not having, such a major interest in another company,
- shall be determined as if to the extent of his appropriate share each of the partners separately, instead of the firm, stood in the position of a creditor or, as the case may be, debtor as respects the money debt.

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The reference in the words following paragraph (b) above to partners does not include a reference to the general partner of a limited partnership which is a collective investment scheme within the meaning of section 235 of the Financial Services and Markets Act 2000.

- (7) For the purposes of sub-paragraph (6) above, a partner's "appropriate share" is the share that would be apportioned to him if an apportionment were made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 for the accounting period in question would be apportioned between the partners under subsection (2) of that section.
- (8) For the purposes of this paragraph, a company is connected with another company if one controls the other or both are controlled by the same company.
- (9) For the purposes of this paragraph, "control", in relation to a company, has the same meaning as in section 87 of this Act (see section 87A).
- (10) Where two or more persons taken together have the power mentioned in subsection (1) of section 87A of this Act (as read with the other provisions of that section) they shall be taken for the purposes of sub-paragraph (1)(a) above to have control of the company in question."

*Investment trusts and venture capital trusts: treatment of capital reserves*

37 (1) Schedule 10 (collective investment schemes) is amended as follows.

(2) For paragraph 1 substitute—

**"Investment trusts and venture capital trusts: capital reserves**

1A (1) Where any profits, gains or losses arising to an investment trust from a creditor relationship for an accounting period are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for that accounting period, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.

(2) Where any profits, gains or losses arising to a venture capital trust from a creditor relationship for an accounting period—

(a) are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice used for the accounting period as if the venture capital trust were an investment trust, or

(b) would be carried to or sustained by a capital reserve if the venture capital trust were an investment trust and were using that Statement of Recommended Practice,

those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.

(3) For the purposes of this paragraph, the "Statement of Recommended Practice" used for an accounting period is—

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- (a) in relation to an accounting period for which it is permitted to be used, the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in December 1995, as from time to time modified, amended or revised, or
- (b) in relation to any accounting period for which it is permitted to be used, any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.”.

*Authorised unit trusts and open-ended investment companies*

- 38 (1) Schedule 10 (collective investment schemes) is amended as follows.
- (2) For paragraph 2 (which makes special provision in relation to authorised unit trusts and is applied to open-ended investment companies by regulations under section 152 of the Finance Act 1995 (c. 4)) and the heading immediately preceding it substitute—

**“Authorised unit trusts**

- 2A (1) Where any profits, gains or losses arising to an authorised unit trust from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under—
- (a) the heading “net gains/losses on investments during the period”, or
  - (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period.
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means—
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised; or
  - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to authorised unit trust schemes, as from time to time modified, amended or revised.
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification,



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amendment, revision or replacement of a Statement of Recommended Practice.

- (6) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases; and
  - (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).

### **Open-ended investment companies**

- 2B (1) Where any profits, gains or losses arising to an open-ended investment company from a creditor relationship in an accounting period are capital profits, gains or losses, those profits, gains or losses must not be brought into account as credits or debits for the purposes of this Chapter, notwithstanding section 84(2)(b) of this Act.
- (2) For the purposes of this paragraph, capital profits, gains or losses arising from a creditor relationship in an accounting period are such profits, gains or losses arising from a creditor relationship as fall to be dealt with under—
- (a) the heading “net gains/losses on investments during the period”, or
  - (b) the heading “other gains/losses”,
- in the statement of total return for the accounting period.
- (3) For the purposes of sub-paragraph (2) above, the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period.
- (4) For the purposes of sub-paragraph (3) above, “Statement of Recommended Practice” means—
- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised; or
  - (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent Statement of Recommended Practice relating to open-ended investment companies, as from time to time modified, amended or revised.
- (5) The Treasury may by order amend this paragraph so as to alter the definition of capital profits, gains or losses in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.
- (6) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases; and
  - (b) to make such consequential, supplementary, incidental or transitional provision, or savings, as appear to the Treasury to

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be necessary or expedient (including provision amending any enactment or any instrument made under any enactment).”.

### *Distributing offshore funds*

39 For paragraph 3 of that Schedule substitute—

- “3 (1) For the purposes of paragraph 5(1) of Schedule 27 to the Taxes Act 1988 (computation of UK equivalent profit), the assumptions to be made in determining what, for any period, would be the total profits of an offshore fund are to include the assumptions in sub-paragraphs (2) and (3) below.
- (2) The first assumption is that the provisions of this Chapter so far as they relate to the creditor relationships of a company do not apply for the purposes of corporation tax in computing the profits or loss of an offshore fund.
- (3) The second assumption is that for the purposes of corporation tax the profits and gains, and losses, that are to be taken to arise from the creditor relationships of an offshore fund are to be computed—
- (a) in accordance with the provisions applicable, in the case of unauthorised unit trusts, for the purposes of income tax; and
  - (b) as if the provisions so applicable had effect in relation to an accounting period of an offshore fund as they have effect, in the case of unauthorised unit trusts, in relation to a year of assessment.
- (4) In this paragraph “unauthorised unit trust” means the trustees of any unit trust scheme which is not an authorised unit trust but is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988.”.

### *Life assurance business*

- 40 (1) In Schedule 11 (loan relationships: special provisions for insurers) Part 1 (insurance companies) is amended as follows.
- (2) In paragraph 1 (I minus E basis) after sub-paragraph (1) (which provides that nothing in the Chapter prevents profits and gains from loan relationships of insurance companies referable to life assurance business from being included in profits and gains chargeable in accordance with the I minus E basis) insert—
- “(1A) Where—
- (a) the I minus E basis is applied for any accounting period in respect of any life assurance business carried on by an insurance company, and
  - (b) in that accounting period the insurance company is a party to a loan relationship which is to any extent referable to that business,
- then, in applying the I minus E basis to that business, sections 92(1)(f), 93(1)(a) and (b) and 96(1)(b) of this Act shall be disregarded in relation to that loan relationship to that extent.”.

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*Adjustments in the case of chargeable assets etc*

41 (1) In Schedule 15 (loan relationships: savings and transitional provisions) paragraph 11 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) If, in a case where the continuing loan relationship is a creditor relationship,

- (a) the company acquired its rights under the relationship on or before 31st March 1996 by virtue of an arm’s length transaction,
- (b) for the accounting period in which it acquired those rights—
  - (i) there was no connection (as defined in sub-paragraph (2C) below) between the company and the person from whom the company acquired the asset, but
  - (ii) there was such a connection between the company and a company standing in the position of a debtor as respects the money debt, and
- (c) there had been no such connection between the companies mentioned in paragraph (b)(ii) above at any time in the period which—
  - (i) begins 4 years before the date on which the company acquired those rights, and
  - (ii) ends twelve months before that date,

this paragraph shall have effect as if the amount mentioned in sub-paragraph (2)(b) above were an amount equal to the greater of the amounts mentioned in sub-paragraph (2B) below.

(2B) Those amounts are—

- (a) the fair value of the rights at the time when the company ceases to be a party to the loan relationship; and
- (b) the fair value of the rights on 1st April 1996.

(2C) For the purposes of sub-paragraph (2A) above there is a connection between a company and another person at any time if at that time—

- (a) the other person is a company and one of the companies has control of the other,
- (b) the other person is a company and both companies are under the control of the same person, or
- (c) the company is a close company and the other person is a participator in that company or the associate of a person who is such a participator,

and there is a connection between a company and another person for an accounting period if there is a connection (within paragraphs (a) to (c) above) between the company and the person at any time in that accounting period.

(2D) For the purposes of sub-paragraph (2C) above—

- (a) subsections (2) to (6) of section 416 of the Taxes Act 1988 (meaning of control) shall apply as they apply for the purposes of Part 11 of that Act;

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- (b) subject to paragraph (c) below, “participator” and “associate” have the meaning given for the purposes of that Part by section 417 of that Act;
- (c) a person shall not be regarded as a participator in relation to a company by reason only that he is a loan creditor of the company.”.

*Reduction of paragraph 11 credit where s.251(4) of 1992 Act prevents paragraph 8 loss*

42 In Schedule 15, after paragraph 11 (other adjustments in the case of chargeable assets etc) insert—

**“Reduction of paragraph 11 credit where s.251(4) of 1992 Act prevents paragraph 8 loss**

- 11A (1) This paragraph applies where, in the case of any asset representing in whole or in part a loan relationship of a company, an amount representing a deemed allowable loss would (apart from this paragraph) fall or have fallen to be brought into account in accordance with paragraph 8(3) above for an accounting period (whenever beginning or ending), but for section 251(4) of the 1992 Act (no allowable loss on disposal of debt acquired from connected person).
- (2) Where this paragraph applies, the amount of any credit falling within sub-paragraph (3) below shall be treated for the purposes of this Chapter as reduced (but not below nil) by the amount described in sub-paragraph (1) above.
- (3) A credit falls within this sub-paragraph if (apart from this paragraph)—
- (a) the credit falls to be given by virtue of paragraph 11(3)(a) above for an accounting period beginning on or after 1st October 2002; and
  - (b) the loan relationship mentioned in paragraph 11(1)(a) above in the case of the credit is the same loan relationship as the one mentioned in sub-paragraph (1) above.”.

## PART 2

### AMENDMENTS OF OTHER ENACTMENTS

#### *The Taxes Act 1988*

*Introductory*

43 The Taxes Act 1988 is amended as follows.

*Incidental costs of obtaining loan finance*

44 In section 77(2)(a) (meaning of “qualifying loan” etc) omit sub-paragraph (ii) (interest deductible under section 338 against total profits).

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### Group relief

- 45 In section 403ZC (amounts eligible for group relief: non-trading deficit on loan relationships) omit subsection (2) (which refers to a claim under section 83(2) of the Finance Act 1996 (c. 8)).

F133 46 .....

#### Textual Amendments

**F133** Sch. 25 para. 46 repealed (with effect in accordance with Sch. 43 Pt. 3(12) Note 1 of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 43 Pt. 3\(12\)](#)

### Building society shares: regulations for deduction of tax

- 47 (1) Section 477A(3) (where regulations apply for any year of assessment, dividends or interest to be dealt with for the purposes of corporation tax as there described) is amended as follows.
- (2) In paragraph (a) (liability to pay to be treated as a liability arising under a loan relationship) at the beginning insert “ to the extent that it would not otherwise fall to be so regarded, ”.
- (3) In paragraph (aa) (dividends or interest payable to company to be treated as payable in pursuance of right under loan relationship) after “payable to a company,” insert “ then, to the extent that they would not otherwise fall to be so regarded, ”.

### Building society shares: incidental costs of issuing qualifying shares

- 48 In section 477B, after subsection (1) (which allows deduction of such costs) insert—
- “(1A) A deduction shall not be allowed by virtue of subsection (1) above to the extent that the costs in question fall to be brought into account as debits for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships).”.

### European Economic Interest Groupings

- 49 (1) Section 510A is amended as follows.
- (2) In paragraph (b) of subsection (3) (charging tax in respect of gains) for “gains” substitute “ chargeable gains ”.
- (3) After that paragraph add
- “;but paragraph (a) above is subject to subsection (6A) below.”.
- (4) After subsection (6) (trade or profession carried on by grouping treated for tax on income and gains as carried on by a partnership) insert—
- “(6A) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) shall have effect in relation to a grouping as it has effect in relation to a partnership (see in particular section 87A of, and paragraphs 19 and 20 of Schedule 9 to, that Act).”.

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*Funding bonds issued in respect of interest on certain debts*

50 In section 582, after subsection (3) insert—

“(3A) Chapter 2 of Part 4 of the Finance Act 1996 has effect subject to and in accordance with this section, notwithstanding anything in section 80(5) of that Act (matters to be brought into account in the case of loan relationships only under Chapter 2 of Part 4 of that Act).”.

*Transfers of income arising from securities*

F13451 .....

**Textual Amendments**

**F134** Sch. 25 para. 51 repealed (with effect in accordance with Sch. 11 Pt. 2(8) Note of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 11 Pt. 2\(8\)](#)

*Treatment of price differential on sale and repurchase of securities*

52 (1) Section 730A is amended as follows.

(2) After subsection (5) insert—

“(5A) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—

- (a) the circumstances are as set out in subsection (1) above; and
- (b) interest on a deemed loan is deemed by virtue of subsection (2) above to be paid by or to the company;

and references to a relationship to which this section applies, and to a company’s being party to such a relationship, shall be construed accordingly.”.

(3) For subsection (6) (application of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in relation to deemed interest) substitute—

“(6) Where a company has a relationship to which this section applies—

- (a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) shall, as respects that company, have effect in relation to the interest deemed by virtue of subsection (2) above to be paid or received by the company under that relationship as it would have effect if it were interest under a loan relationship to which the company is a party,
- (b) the debits and credits falling to be brought into account for the purposes of that Chapter so far as they relate to the deemed interest shall be those given by the use in relation to the deemed interest of an authorised accruals basis of accounting, and
- (c) the only debits or credits to be brought into account for the purposes of that Chapter by virtue of this subsection in respect of a relationship are those relating to that deemed interest,

and, subject to paragraphs (b) and (c) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.”.

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(4) After subsection (6A) (trading or non-trading debits or credits) insert—

“(6B) To the extent that debits or credits fall to be brought into account by a company under section 82(2) above in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as being party to the relationship for the purposes of a trade carried on by the company.”

#### *Restriction of relief for payments of interest*

53 (1) Section 787 is amended as follows.

(2) After subsection (1) insert—

“(1A) This section has effect in relation to Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) but taking the reference in subsection (1) above to giving relief to any person in respect of any payment of interest as including a reference to the bringing into account by any person in accordance with that Chapter of any debit in respect of interest (whether a payment or not); and other references in this section to relief shall be construed accordingly.”

(3) For subsection (3) (determination of question as to benefit that might be expected to accrue in a case where the relief is claimed by virtue of section 83(2)(b) of the Finance Act 1996) substitute—

“(3) Where the relief is claimed by virtue of section 403—

- (a) in respect of a deficit to which section 83 of the Finance Act 1996 applies (non-trading deficit on loan relationships), or
- (b) in respect of trading losses, in a case where in computing those losses debits in respect of loan relationships are treated under section 82(2)(b) of that Act as expenses of the trade which are deductible in computing the profits of the trade,

any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.”

#### *Limits on credit: corporation tax*

54 In section 797, in subsection (3B) (amounts that must be allocated to trading profits) in paragraph (b) (claims under section 83(2)(d) of the Finance Act 1996) for “a claim under subsection (2)(d) of” substitute “ subsection (3A) of”.

#### *Foreign tax on items giving rise to a non-trading credit*

55 (1) Section 797A is amended as follows.

(2) In subsection (5) (which specifies certain amounts under section 83 of the Finance Act 1996 (c. 8) which are to be aggregated for the purposes of subsection (4))—

- (a) in paragraph (a)—
  - (i) for “(2)(b), (c) or (d)” substitute “ (2)(c) ”; and
  - (ii) for the words from “(group relief” to “deficits)” substitute “ (deficit carried back and set against profits) ”;
- (b) after paragraph (a) insert—

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“(aa) so much of any non-trading deficit for that period as is surrendered as group relief by virtue of section 403 of the Taxes Act 1988; and”;

and

(c) in paragraph (b), for “(3)” substitute “(3A)”.

(3) In subsection (6), for “in pursuance of a claim under section 83(2)(d)” substitute “under section 83(3A)”.

#### *Investment trusts*

56 (1) Section 842 is amended as follows.

(2) In paragraph (a) of subsection (1) (income must be wholly or mainly eligible investment income)—

(a) after “the company’s income” insert “(as determined in accordance with subsection (1AB) below)”; and

(b) after “eligible investment income” insert “(as so determined)”.

(3) In paragraph (e) of subsection (1) (company must not retain more than 15% of eligible investment income)—

(a) for “more than” substitute “an amount which is greater than”; and

(b) after “eligible investment income” insert “(determined in accordance with subsection (1AB) below)”.

(4) After subsection (1AA) insert—

“(1AB) In determining for the purposes of paragraph (a) or (e) of subsection (1) above (and accordingly of subsection (2A)(b) below)—

(a) the amount of a company’s income, or

(b) the amount of income which a company derives from shares or securities,

the amounts to be brought into account under Chapter 2 of Part 4 of the Finance Act 1996 in respect of the company’s loan relationships shall be determined without reference to any debtor relationships of the company.”.

#### *Venture capital trusts*

57 (1) Section 842AA is amended as follows.

(2) In paragraph (f) of subsection (2) (company must not retain more than 15% of income derived from shares or securities) for “more than” substitute “an amount which is greater than”.

(3) In section 842AA(11) (which applies provisions of section 842 to provisions of section 842AA)—

(a) before paragraph (a) insert the following paragraph—

“(za) subsection (1AB) of that section shall apply in relation to subsection (2)(a) above as it applies in relation to subsection (1)(a) of that section;”;

and



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- (b) in paragraph (b) (which applies subsections (2A) to (2C) of section 842 to subsection (2)(f) of section 842AA) after “subsections” insert “ (1AB) and ”.

*Change in ownership of investment company*

- 58 (1) Schedule 28A is amended as follows.
- (2) In paragraph 6(dc) (amounts in issue for the purposes of section 768B: non-trading deficit carried forward under section 83(3) of the Finance Act 1996 (c. 8)) for “83(3)” substitute “ 83(3A) ”.
  - (3) In paragraph 7(1)(d) (apportionment for section 768B in case of debits falling to be brought into account otherwise than on the assumption that interest does not accrue until paid) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and
    - (iv) so falls to be brought into account without any adjustment under paragraph 17 or 18 of that Schedule (debit relating to amount of discount referable to the relevant accounting period to be brought into account instead for the accounting period in which the security is redeemed),”.
  - (4) In paragraph 7(1)(e) (apportionment for section 768B in case of debits falling to be brought into account on the assumption that interest does not accrue until paid) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and
    - (iv) so falls to be brought into account with such an adjustment as is mentioned in paragraph (d)(iv) above,”.
  - (5) Omit paragraph 7(2) (which relates to charges consisting of interest and which accordingly has no further application).
  - (6) In paragraph 11(1) (debts that fall within paragraph 11)—
    - <sup>F135</sup>(a) .....
    - (b) in paragraph (c) (accounting period in which the debit would have been brought into account, apart from the sub-paragraph mentioned in paragraph (b)) for “apart from that sub-paragraph” substitute “ apart from paragraphs 2(2), 17 and 18 of that Schedule, ”.
  - (7) In paragraph 13(1)(ec) (amounts in issue for the purposes of section 768C: non-trading deficit carried forward under section 83(3) of the Finance Act 1996 (c. 8)) for “83(3)” substitute “ 83(3A) ”.
  - (8) In paragraph 16(1)(d) (manner of apportionment in case of debits falling to be brought into account otherwise than on the assumption that interest does not accrue until paid) omit “and” immediately preceding sub-paragraph (iii) and at the end of that sub-paragraph insert “, and
    - (iv) so falls to be brought into account without any adjustment under paragraph 17 or 18 of that Schedule (debit relating to amount of discount referable to the relevant accounting period to be brought into account instead for the accounting period in which the security is redeemed),”.

<sup>F136</sup>(9) .....

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- (10) Omit paragraph 16(2) (which relates to charges consisting of interest and which accordingly has no further application).

#### Textual Amendments

- F135** Sch. 25 para. 58(6)(a) repealed (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. 66(2)**
- F136** Sch. 25 para. 58(9) repealed (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. 66(3)**

### *The Finance Act 1988*

#### *Commercial woodlands*

- 59 (1) Schedule 6 to the Finance Act 1988 (c. 39) is amended as follows.
- (2) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) in paragraph 3 (abolition of Schedule D election etc) omit—
- sub-paragraphs (3)(a), (4)(a) and (5)(a) and (b);
  - in sub-paragraph (5), in the words following paragraph (c), the word “group”; and
  - sub-paragraph (6).

### *The Taxation of Chargeable Gains Act 1992*

#### *Interest charged to capital*

- 60 (1) Section 40 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) After subsection (3) add—
- “(4) In consequence of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) this section does not have effect in relation to interest referable to an accounting period ending on or after 1st April 1996.”.

## PART 3

### TRANSITIONAL PROVISIONS

#### *Interpretation*

- 61 In this Part of this Schedule—
- “new accounting period” means an accounting period beginning on or after 1st October 2002;
- “old accounting period” means an accounting period beginning before 1st October 2002.

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### *Non-trading deficit carried forward from last old accounting period*

- [<sup>F137</sup>61A Any amount carried forward to a new accounting period under subsection (3) of section 83 of the Finance Act 1996 (carry forward of so much of the non-trading deficit on a company's loan relationships as is not the subject of a claim under subsection (2) of that section)—
- (a) shall be disregarded for the purposes of any claim under subsection (2) of that section; and
  - (b) shall not be surrendered as group relief by virtue of section 403 of the Taxes Act 1988.]

#### **Textual Amendments**

**F137** S. 61A and heading inserted (retrospectively) by [Finance Act 2003 \(c. 14\), Sch. 37 para. 6](#)

### *Discounted securities where companies have a connection*

- 62 Where—
- (a) in consequence of the amendments made by paragraph 33 above, the condition in sub-paragraph (1)(c) of paragraph 17 of Schedule 9 to the Finance Act 1996 (connection between issuing company and other company) is satisfied as respects a new accounting period of the issuing company, but
  - (b) that condition would not have been satisfied had the accounting period been an old accounting period, and
  - (c) the debtor relationship in question is a debtor relationship of the issuing company on the first day of its first new accounting period,
- that paragraph shall not have effect in relation to that debtor relationship.

### *Discounted securities of close companies*

- 63 (1) This paragraph applies in any case where—
- (a) by virtue of paragraph 18 of Schedule 9 to the Finance Act 1996 an amount (“the deferred amount”) is not brought into account by a company for the purposes of Chapter 2 of Part 4 of that Act in respect of a debtor relationship for an old accounting period; and
  - (b) the relevant discounted security concerned has not been redeemed before the beginning of the company's first new accounting period.
- (2) As regards any new accounting period, paragraph 18(2) of that Schedule shall be taken to have had effect in relation to the old accounting period as if, instead of preventing the bringing of amounts into account for any accounting period before that in which the security is redeemed, it had provided for the deferred amount to be brought into account for the accounting period in which the security is redeemed instead of for the old accounting period.

### *Authorised unit trusts and open-ended investment companies*

- 64 (1) Where—
- (a) an amount of interest under a creditor relationship of an authorised unit trust or open-ended investment company is paid to the trust or company,

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- (b) the amount paid is not interest which, in the case of the trust or company, was brought into account for the purposes of corporation tax for an old accounting period,
- (c) the amount paid is not interest in relation to which any credit falls (apart from under this sub-paragraph) to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships) in the case of the trust or company, and
- (d) the amount paid is not an amount of interest which, in relation to a transfer before the first new day, was unrealised interest within the meaning of section 716 of the Taxes Act 1988,

credits shall be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in the case of the trust or company as if the amount paid were interest accruing, and becoming due and payable, at the time when it is paid.

- (2) Where, apart from Chapter 2 of Part 4 of the Finance Act 1996, any authorised unit trust or open-ended investment company would be treated under subsection (2) or (4) of section 714 of the Taxes Act 1988 (treatment of deemed sums and reliefs under accrued income scheme)—

- (a) as receiving any amount at the end of a period beginning before, and ending during, the trust or company's first new accounting period, or
- (b) as entitled to any allowance of any amount in such a period,

that amount shall be brought into account as a non-trading credit or, as the case may be, a non-trading debit given for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 for the trust or company's first new accounting period.

- (3) Where—

- (a) an authorised unit trust or open-ended investment company holds a relevant discounted security on the last old day,
- (b) the security was not transferred or redeemed on that day, and
- (c) there is an amount which, if the trust or company had made a transfer of that security on that day, by selling it for its adjusted closing value,—
  - (i) would have been charged under paragraph 1 of Schedule 13 to the Finance Act 1996 to tax under Case III or IV of Schedule D, or
  - (ii) would have been eligible for relief from tax on a claim for the purposes of paragraph 2 of that Schedule,

that amount shall be brought into account as a non-trading credit, or (as the case may be) a non-trading debit, given for the purposes of Chapter 2 of Part 4 of that Act for the accounting period mentioned in sub-paragraph (4) below.

- (4) That period is the accounting period in which falls whichever is the earliest of the following, that is to say,—

- (a) the first day that falls after the last old day and is a day on which, under the terms on which the security was issued, the holder of the security is entitled to require it to be redeemed;
- (b) the day on which the security is redeemed; or
- (c) the day on which the trust or company makes a disposal of the security.

- (5) For the purposes of sub-paragraph (3)(c), the “adjusted closing value” of a relevant discounted security held by the trust or company on the last old day is the amount which for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) is the

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opening value, as at the first new day, of the trust or company's rights and liabilities under the relationship represented by that security.

(6) Sub-paragraph (7) of paragraph 5 of Schedule 15 to the Finance Act 1996 (determination of opening value where accruals basis of accounting is used) applies for the purposes of sub-paragraph (5) as it applies for the purposes of that paragraph, but—

- (a) taking the reference to 1st April 1996 as a reference to the first new day; and
- (b) applying paragraph 4 of that Schedule (determination of amounts treated as accruing on or after 1st April 1996) for these purposes with the same modification.

(7) [<sup>F138</sup>Subject to sub-paragraph (9),] In sub-paragraphs (3) to (6)—

“redeem” shall be construed in accordance with Schedule 13 to the Finance Act 1996 (discounted securities: income tax provisions);

“relevant discounted security” has the same meaning as in that Schedule;

“transfer” has the same meaning as in that Schedule.

(8) In this paragraph—

“creditor relationship” has the same meaning as in Chapter 2 of Part 4 of the Finance Act 1996;

“the first new day” means the first day of the trust or company's first new accounting period;

“the last old day” means the last day of the trust or company's last old accounting period;

“the trust or company” means the authorised unit trust or open-ended investment company in question.

[<sup>F139</sup>(9) So far as sub-paragraphs (3) to (6) are capable of applying at any time after 5th April 2005—

- (a) they have effect as if any reference in them to a relevant discounted security were a reference to a security that is a deeply discounted security for the purposes of Chapter 8 of Part 4 of the Income Tax (Trading and Other Income) Act 2005 (profits from deeply discounted securities) (see 430 of that Act), and
- (b) in those sub-paragraphs—

“redeem” means make a disposal, within the meaning of that Chapter (except by a transfer within the meaning of that Chapter), or convert as mentioned in section 437(1)(c) of that Act, and

“transfer” has the same meaning as in that Chapter.]

#### Textual Amendments

**F138** Words in Sch. 25 para. 64(7) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 579\(2\)](#) (with Sch. 2)

**F139** Sch. 25 para. 64(9) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 579\(3\)](#) (with Sch. 2)

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## SCHEDULE 26

Section 83

## DERIVATIVE CONTRACTS

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

- C13** Sch. 26 modified by 1996 c. 8, s. 86(3C) (as inserted (24.7.2002 with effect as mentioned in s. 82(2) of the amending Act) by 2002 c. 23, s. 82, **Sch. 25 Pt. 1 para. 6(3)**)
- C14** Sch. 26 extended (retrospective to 30.9.2002) by Finance Act 2003 (c. 14), s. 177(4)(8)(11)
- C15** Sch. 26 applied by 1988 c. 1, s. 440(2B) (as amended (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 10 para. 70**)
- C16** Sch. 26 modified by 1996 c. 8, s. 94A (as inserted (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 10 para. 13**)
- C17** Sch. 26 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 24** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C18** Sch. 26 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 12** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C19** Sch. 26 modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 7**; S.I. 2005/1444, art. 2(1), Sch. 1
- C20** Sch. 26 modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 19**; S.I. 2005/1444, art. 2(1), Sch. 1

**PART 1**

## INTRODUCTION

*Profits arising from derivative contracts*

- 1 (1) For the purposes of corporation tax all profits arising to a company from its derivative contracts shall be chargeable to tax as income in accordance with this Schedule.
- (2) Except where otherwise indicated, the amounts to be brought into account in accordance with this Schedule in respect of any matter are the only amounts to be brought into account for the purposes of corporation tax in respect of that matter.

**PART 2**

## DERIVATIVE CONTRACTS

*Derivative contracts and relevant contracts*

- 2 <sup>F140</sup>(1) For the purposes of the Corporation Tax Acts, a company's derivative contracts are those of its relevant contracts—
- (a) which satisfy any of the conditions in paragraphs (a) to (c) of paragraph 3(1), and
- (b) which are not prevented from being derivative contracts by paragraph 4 or any other provision of the Corporation Tax Acts.]
- (2) For the purposes of this Schedule a “relevant contract” is—
- (a) an option,

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- (b) a future, or
  - (c) a contract for differences.
- [<sup>F141</sup>(3) Sub-paragraph (4) applies where a company, in accordance with generally accepted accounting practice, treats rights and liabilities under a contract to which it is party and which is not a loan relationship, as divided between—
- (a) rights and liabilities under one or more derivative financial instruments (“embedded derivatives”), and
  - (b) the remaining rights and liabilities (the “host contract”).
- (4) The company shall be treated for the purposes of [<sup>F142</sup>this Schedule] as—
- (a) party to a relevant contract whose rights and liabilities consist only of those of the embedded derivative, or
  - (b) if there is more than one embedded derivative, party to relevant contracts each of whose rights and liabilities consist only of those of one of the embedded derivatives.
- (5) Each relevant contract to which the company is treated as party under sub-paragraph (4) [<sup>F143</sup>(an “embedded derivative contract”)] shall be treated as an option, a future or a contract for differences according to whether the rights and liabilities of the embedded derivative would be of that character if contained in a separate contract.]

**Textual Amendments**

- F140** Sch. 26 para. 2(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), 3
- F141** Sch. 26 para. 2(3)-(5) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), 3
- F142** Words in Sch. 26 para. 2(4) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), 3
- F143** Words in Sch. 26 para. 2(5) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, 4

*Contracts to satisfy accounting requirements etc*

- 3 (1) A relevant contract is not a derivative contract for the purposes of this Schedule for any accounting period unless—
- (a) it is treated for accounting purposes as a derivative financial instrument,  
<sup>F144</sup>  
...
  - [<sup>F145</sup>(b) it is a relevant contract which—
    - (i) does not fall within paragraph (a) solely because it does not meet the requirement in paragraph 9(b) of Financial Reporting Standard 26 issued in December 2004 by the Accounting Standards Board, but
    - (ii) is treated for accounting purposes as, or as forming part of, a financial asset or liability, or]
  - <sup>F146</sup>(b) .....

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- (c) in the case of a relevant contract which [<sup>F147</sup>does not fall within] paragraph (a) [<sup>F148</sup>or (b)]<sup>F149</sup> ..., it falls within sub-paragraph (2).
- (2) A relevant contract falls within this sub-paragraph if—
- (a) its underlying subject matter is commodities, or
- [<sup>F150</sup>(b) it is a contract for differences whose underlying subject matter is—
- (i) land (wherever situated),
- (ii) tangible movable property, other than commodities which are tangible assets,
- (iii) intangible fixed assets,
- (iv) weather conditions, and
- (v) creditworthiness.]
- (3) For the purposes of sub-paragraph (1)(a), a relevant contract of a company is treated for accounting purposes as a derivative financial instrument for an accounting period if, for that accounting period, it is so treated for the purposes of the relevant accounting standard used by the company for that accounting period (or would be so treated if the company were a company [<sup>F151</sup>which used a relevant] accounting standard in respect of the relevant contract).
- [<sup>F152</sup>(4) For the purposes of sub-paragraph (1)(b), a relevant contract of a company is treated for accounting purposes as, or as forming part of, a financial asset or liability for an accounting period if, for that accounting period, it is so treated for the purposes of the relevant accounting standard used by the company for that accounting period (or would be so treated if the company were a company which used a relevant accounting standard for that accounting period in respect of the relevant contract).]
- <sup>F153</sup>(4) .....
- (5) [<sup>F154</sup>In this paragraph “relevant accounting standard” means—]
- (a) in relation to any accounting period [<sup>F155</sup>beginning before 1st January 2005] for which it is required or permitted to be used by the company, Financial Reporting Standard 13 issued in September 1998 by the Accounting Standards Board, as it has effect for periods of account ending on 31st December 2002, <sup>F156</sup> ...
- [<sup>F157</sup>(aa) in relation to any accounting period for which it is required or permitted to be used by the company, Financial Reporting Standard 25 issued in December 2004 by the Accounting Standards Board, or]
- (b) in relation to any accounting period for which it is required or permitted to be used by the company, any subsequent accounting standard dealing with transactions which are derivative financial instruments <sup>F158</sup>... under Financial Reporting Standard [<sup>F159</sup>25] , as from time to time amended.

#### Textual Amendments

**F144** Word in Sch. 26 para. 3(1)(a) omitted (with effect in accordance with art. 1(3) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), 4(2)

**F145** Sch. 26 para. 3(1)(b) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), 4(3)



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- F146** Sch. 26 para. 3(1)(b) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(2)(b)**
- F147** Words in Sch. 26 para. 3(1)(c) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(b)**
- F148** Words in Sch. 26 para. 3(1)(c) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **4(4)**
- F149** Words in Sch. 26 para. 3(1)(c) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(2)(c)**
- F150** Sch. 26 para. 3(2)(b) substituted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(c)**
- F151** Words in Sch. 26 para. 3(3) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **4(5)**
- F152** Sch. 26 para. 3(4) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **4(6)**
- F153** Sch. 26 para. 3(4) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(d)**
- F154** Words in Sch. 26 para. 3(5) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **4(7)**
- F155** Words in Sch. 26 para. 3(5)(a) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(3)(a)(i)**
- F156** Word in Sch. 26 para. 3(5)(a) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(3)(a)(ii)**
- F157** Sch. 26 para. 3(5)(aa) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(3)(b)**
- F158** Words in Sch. 26 para. 3(5)(b) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **4(e)(ii)**
- F159** Word in Sch. 26 para. 3(5)(b) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **3(3)(c)**

*Contracts excluded by virtue of their underlying subject matter*

- 4 (1) A relevant contract is not a derivative contract for the purposes of this Schedule if its underlying subject matter consists wholly of any one or more of the excluded types of property or is treated as consisting wholly of such property.

<sup>F160</sup>(1A) .....

[<sup>F161</sup>(2) For the purposes of this paragraph the excluded types of property are—

- (a) in relation to an option or future, intangible fixed assets; and
- (b) in relation to relevant contracts which satisfy the conditions specified in subparagraph [<sup>F162</sup>(2A), (2B), (2C) or (2D)] —

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- (i) shares in a company, [<sup>F163</sup>other than shares excluded by sub-paragraph (2ZA); or]
- (ii) rights of a unit holder under a unit trust scheme [<sup>F164</sup>other than a scheme to which paragraph 4 of Schedule 10 to the Finance Act 1996 applies].

[<sup>F165</sup>(2ZA) The shares excluded by this sub-paragraph are—

- (a) shares in relation to which section 91A or 91B of the Finance Act 1996 has effect;
- (b) shares in an open-ended investment company to which paragraph 4 of Schedule 10 to the Finance Act 1996 applies.]

(2A) The conditions specified in this sub-paragraph are—

- (a) the relevant contract is entered into by a company carrying on life assurance business; [<sup>F166</sup>and]
- (b) the relevant contract is an approved derivative for the purposes of Rule 4.3.5 of the Integrated Prudential Sourcebook; <sup>F167</sup>...

<sup>F167</sup>(c) .....

(2B) The conditions specified in this sub-paragraph are—

- (a) the relevant contract is entered into or acquired by a company otherwise than for the purposes of a trade carried on by it or the company is a mutual trading company, <sup>F168</sup>...
- (b) there is a hedging relationship between the contract and [<sup>F169</sup>—
  - (i)] an asset of the company which consists of shares or rights of a unit holder under a unit trust scheme, [<sup>F170</sup>or
  - (ii) any share capital of the company,] and
- (c) the relevant contract is not a deemed relevant contract to which the company is treated as party under section 94A(2)(b) of the Finance Act 1996.

[<sup>F171</sup>(2C) The conditions specified in this sub-paragraph are—

- (a) the relevant contract is entered into or acquired—
  - (i) by a company otherwise than for the purposes of a trade carried on by it or by a company which is a mutual trading company; or
  - (ii) by a company for the purposes of its life assurance business; and
- (b) the relevant contract is an option, quoted on a recognised stock exchange, to subscribe for shares in a company.

(2D) The conditions specified in this sub-paragraph are—

- (a) the company that holds the relevant contract has a hedging relationship between—
  - (i) the relevant contract, and
  - (ii) an asset [<sup>F172</sup>or liability] representing a loan relationship which is treated as mentioned in section 94A(1) of the Finance Act 1996, and
- (b) each relevant contract to which the company is treated as party under section 94A(2)(b) in the case of that loan relationship is a derivative contract to which paragraph 45D, 45F, 45FA, 45J or 45K applies.]

<sup>F173</sup>(3) .....

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(4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of any one or more of the excluded types of property.

<sup>F174</sup>(5) . . . . . ]

#### Textual Amendments

- F160** Sch. 26 para. 4(1A) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **4(2)**
- F161** Sch. 26 para. 4(2)(2A)(2B) substituted for Sch. 26 para. 4(2) (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **4(3)**
- F162** Words in Sch. 26 para. 4(2)(b) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **5(2)(a)**
- F163** Words in Sch. 26 para. 4(2)(b)(i) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **5(2)**
- F164** Words in Sch. 26 para. 4(2)(b)(ii) added (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **5(3)**
- F165** Sch. 26 para. 4(2ZA) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **5(4)**
- F166** Word in Sch. 26 para. 4(2A) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **5(3)(a)**
- F167** Sch. 26 para. 4(2A)(c) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **5(3)(b)**
- F168** Word in Sch. 26 para. 4(2B)(a) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **5(4)(a)**
- F169** Word in Sch. 26 para. 4(2B)(b) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **5(5)(a)**
- F170** Sch. 26 para. 4(2B)(b)(ii) and preceding word inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **5(5)(b)**
- F171** Sch. 26 para. 4(2C)(2D) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **5(5)**
- F172** Words in Sch. 26 para. 4(2D)(a)(ii) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **5(6)**
- F173** Sch. 26 para. 4(3) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **4(4)**
- F174** Sch. 26 para. 4(5) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **4(4)**

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*Contracts which become derivative contracts: chargeable assets*

[<sup>F175</sup>4A(1) This paragraph applies to a company if the conditions in sub-paragraph (2) are satisfied in relation to a relevant contract.

(2) The conditions are—

- (a) the company is a party to the relevant contract both immediately before and at 3.00 p.m. on 16th March 2005;
- (b) the relevant contract—
  - (i) was not a derivative contract immediately before 3.00 p.m. on 16th March 2005, but
  - (ii) as from that time is a derivative contract; and
- (c) the relevant contract was, immediately before 3.00 p.m. on 16th March 2005, a chargeable asset.

(3) Where this paragraph applies, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceased to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—

- (a) that it had made a disposal of the asset immediately before 3.00 p.m. on 16th March 2005, and
- (b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company's accounting period immediately before its first new period.

(4) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies.)

**Textual Amendments**

**F175** Sch. 26 para. 4A inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), 5

[<sup>F176</sup>4B(1) This paragraph applies to a company if the conditions in sub-paragraph (2) are satisfied in relation to a relevant contract.

(2) The conditions are—

- (a) the company is a party to the relevant contract both immediately before and on 28th July 2005,
- (b) the relevant contract—
  - (i) was not a derivative contract immediately before that date, but
  - (ii) would (apart from this paragraph) be a derivative contract on that date, if an accounting period of the company began on that date, and
- (c) the relevant contract was a chargeable asset immediately before that date.

(3) The company shall, when it ceases to be a party to the relevant contract, bring into account, for the accounting period in which it ceased to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—

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- (a) that it had made a disposal of the relevant contract immediately before 28th July 2005, and
  - (b) that the disposal had been for a consideration equal to the fair value of the relevant contract on that date.
- (4) The relevant contract shall be treated for the purposes of this Schedule as a derivative contract entered into by the company on 28th July 2005 for a consideration equal to the fair value of the contract on that date.
- (5) Sub-paragraph (4) of paragraph 4A (meaning of chargeable asset) also applies for the purposes of this paragraph.

**Textual Amendments**

**F176** Sch. 26 paras. 4B, 4C inserted (with effect in accordance with art. 1(5)(b) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(5)(a), **6**

- 4C. (1) This paragraph applies to a company if the conditions in sub-paragraph (2) are satisfied in relation to a relevant contract to which it becomes a party on or after 28th July 2005.
- (2) The conditions are that (apart from this paragraph) the relevant contract—
- (a) is not a derivative contract on the date on which the company becomes a party to it, but
  - (b) would be a derivative contract on that date, if an accounting period of the company began on that date, and
  - (c) is a chargeable asset when the company becomes a party to it.
- (3) The relevant contract shall be treated for the purposes of this Schedule as a derivative contract on and after that date.
- (4) Sub-paragraph (4) of paragraph 4A (meaning of chargeable asset) also applies for the purposes of this paragraph.]

**Textual Amendments**

**F176** Sch. 26 paras. 4B, 4C inserted (with effect in accordance with art. 1(5)(b) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(5)(a), **6**

**F177**5 .....

**Textual Amendments**

**F177** Sch. 26 para. 5 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **6**

**F178**5A. ....

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**Textual Amendments**

**F178** Sch. 26 para. 5A omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), [6](#)

**F179**<sup>6</sup> .....

**Textual Amendments**

**F179** Sch. 26 para. 6 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), [6](#)

**F180**<sup>7</sup> .....

**Textual Amendments**

**F180** Sch. 26 para. 7 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), [6](#)

**F181**<sup>8</sup> .....

**Textual Amendments**

**F181** Sch. 26 para. 8 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), [6](#)

*Underlying subject matter which is subordinate or of small value disregarded*

- 9 (1) This paragraph applies in relation to a relevant contract which falls within any of <sup>F182</sup>sub-paragraph (2) or (4) .
- (2) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of—
  - (a) any one or more of the excluded types of property falling within paragraphs <sup>F183</sup>(a) or (b) of sub-paragraph (2) of paragraph (4) <sup>F184</sup> ..., and
  - (b) other underlying subject matter which is—
    - (i) subordinate in relation to any of the property referred to in paragraph (a), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.

<sup>F185</sup>(3) .....

- (4) A relevant contract falls within this sub-paragraph if its underlying subject matter consists of—

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- (a) any one or more of the excluded types of property falling within [F186 paragraph (b)] of sub-paragraph (2) of paragraph 4, and
  - (b) other underlying subject matter which is—
    - (i) subordinate in relation to any of the property referred to in paragraph (a), or
    - (ii) of small value in comparison with the value of the underlying subject matter as a whole.
- (5) Where this paragraph applies in relation to a relevant contract, its underlying subject matter shall be treated for the purposes of this Schedule as if it consisted wholly of—
- (a) in the case of a relevant contract falling within sub-paragraph (2), the excluded types of property referred to in paragraph (a) of that sub-paragraph, [F187 or]
  - [F188](b) .....
  - (c) in the case of a relevant contract falling within sub-paragraph (4), the excluded types of property referred to in paragraph (a) of that sub-paragraph.
- (6) For the purposes of this paragraph whether part of the underlying subject matter of a relevant contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the relevant contract.

**Textual Amendments**

- F182** Words in Sch. 26 para. 9(1) substituted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **11(a)**
- F183** Words in Sch. 26 para. 9(2)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **7(2)(a)**
- F184** Words in Sch. 26 para. 9(2)(a) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **7(2)(b)**
- F185** Sch. 26 para. 9(3) omitted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **11(c)**
- F186** Words in Sch. 26 para. 9(4)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **7(3)**
- F187** Word in Sch. 26 para. 9(5)(a) inserted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **11(e)(i)**
- F188** Sch. 26 para. 9(5)(b) omitted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **11(e)(ii)**

[F189]10 .....

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### Textual Amendments

**F189** Sch. 26 para. 10 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **8**

### Meaning of “underlying subject matter”

- 11 (1) [<sup>F190</sup>In this Schedule] references to the underlying subject matter of a relevant contract are to be construed in accordance with this paragraph.
- (2) The underlying subject matter of an option is—
- (a) the property which would fall to be delivered if the option were exercised, or
  - (b) where the property which would so fall to be delivered is a derivative contract, the underlying subject matter of that derivative contract.
- (3) The underlying subject matter of a future is—
- (a) the property which, if the future were to run to delivery, would fall to be delivered at the date and price agreed when the contract is made, or
  - (b) where the property which would so fall to be delivered is a derivative contract, the underlying subject matter of that derivative contract.
- (4) The underlying subject matter of a contract for differences is—
- (a) where the contract for differences relates to fluctuations in the value or price of property described in the contract, the property so described, or
  - (b) where an index or factor is designated in the contract for differences, the matter by reference to which the index or factor is determined.
- (5) In the case of a contract for differences, its underlying subject matter may include—
- (a) interest rates;
  - (b) weather conditions;
  - (c) creditworthiness.
- (6) Interest rates are not the underlying subject matter of a relevant contract in a case where, under the terms of that contract,—
- (a) the date on which a party to that contract becomes subject to a duty to make a payment is a variable date, and
  - (b) the amount of that payment varies according to the date of payment,
- and the terms of the relevant contract refer to an interest rate or rates for the purpose only of establishing that amount.
- [<sup>F191</sup>(7) Where the underlying subject matter of a relevant contract consists of or includes income from any of the following—
- (a) land (wherever situated),
  - (b) shares in a company,
  - (c) rights of a unit holder under a unit trust scheme,
- the underlying subject matter shall not be treated, by reason only of that income, as being land or such shares or rights (as the case may be).]



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### Textual Amendments

- F190** Words in Sch. 26 para. 11(1) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), 7
- F191** Sch. 26 para. 11(7) added (with effect in accordance with art. 1(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), 12

### Definition of terms relating to derivative contracts

- 12<sup>[F192]</sup>(1) This paragraph defines the following expressions for the purposes of this Schedule—
- (a) a capital redemption policy (see sub-paragraph (2));
  - (b) a contract for differences (see sub-paragraphs (3) to (5));
  - <sup>[F193]</sup>(bza) a contract of long-term insurance (see sub-paragraph (16));]
  - <sup>[F194]</sup>(ba) a depositary receipt, in relation to shares (see sub-paragraph (17));]
  - <sup>[F195]</sup>(bb) designated (see sub-paragraph (13));]
  - (c) a future (see sub-paragraphs (6), (7) and (10));
  - <sup>[F196]</sup>(cc) <sup>[F197]</sup>a] hedging relationship between a relevant contract and an asset <sup>[F198]</sup>or a liability], in the case of any company (see sub-paragraph (14));]
  - (d) intangible fixed assets (see sub-paragraph (11));
  - <sup>[F199]</sup>(dd) Integrated Prudential Sourcebook (see sub-paragraph (15));]
  - (de) long-term insurance fund (see sub-paragraph (16));]
  - (e) an option (see sub-paragraphs (8) and (10));
  - (f) shares in a company (see sub-paragraph (12));
  - (g) a warrant (see sub-paragraph (9)).]
- (2) A “capital redemption policy” is a contract effected in the course of capital redemption business (within the meaning of section 458 of the Taxes Act 1988).
- (3) A “contract for differences” is a contract the purpose or pretended purpose of which is to make a profit or avoid a loss by reference to fluctuations in—
- (a) the value or price of property described in the contract, or
  - (b) an index or other factor designated in the contract.
- (4) For the purposes of sub-paragraph (3)(b) an index or factor may be determined by reference to any matter and, for those purposes, a numerical value may be attributed to any variation in a matter.
- (5) None of the following is a contract for differences—
- (a) a future;
  - (b) an option;
  - (c) a contract of insurance;
  - (d) a capital redemption policy;
  - (e) a contract of indemnity;
  - (f) a guarantee;
  - (g) a warranty;
  - (h) a loan relationship.
- (6) A “future” is a contract for the sale of property under which delivery is to be made—

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- (a) at a future date agreed when the contract is made, and
  - (b) at a price so agreed.
- (7) For the purposes of sub-paragraph (6)(b) a price is to be taken to be agreed when the contract is made—
- (a) notwithstanding that it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract; or
  - (b) in a case where the contract is expressed to be by reference to a standard lot and quality, notwithstanding that provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (8) An “option” includes a warrant.
- (9) A “warrant” is an instrument which entitles the holder to subscribe for shares in a company or assets representing a loan relationship of a company; and for these purposes it is immaterial whether the shares or assets to which the warrant relates exist or are identifiable.
- (10) References to a future or option do not include references to a contract whose terms provide—
- (a) that, after setting off their obligations to each other under the contract, a cash payment is to be made by one party to the other in respect of the excess, if any, or
  - (b) that each party is liable to make to the other party a cash payment in respect of all that party’s obligations to the other under the contract,
- and do not provide for the delivery of any property.
- Nothing in this sub-paragraph has effect to exclude, from references to a future or option, references to a future or option whose underlying subject matter is currency.
- [<sup>F200</sup>(11) “Intangible fixed assets” has the same meaning as in Schedule 29 to this Act; and paragraphs 73 to 76 of that Schedule (and paragraph 72 of that Schedule so far as it relates to those paragraphs) have effect for the purposes of this Part as they have effect for the purposes of that Schedule.]
- [<sup>F201</sup>(12) “Share”, in relation to a company, means any share in the company under which an entitlement to receive distributions may arise; and any reference to a share includes a reference to each of the following—
- (a) a depositary receipt for shares under which such an entitlement may arise;
  - (b) in the case of a company that has no share capital, any interests in the company possessed by members of the company;]

[<sup>F202</sup>(13) “Designated” has the same meaning as for accounting purposes.

(14) A company has a hedging relationship between a relevant contract on the one hand (“the hedging instrument”) and an asset [<sup>F203</sup>or a liability] on the other (“the hedged item”) if and to the extent that—

    - (a) the hedging instrument and the hedged item are designated by the company as a hedge; or
    - (b) in any other case the hedging instrument is intended to act as a hedge of the exposure to changes in fair value of a hedged item which is a recognised asset [<sup>F204</sup>or liability] or an identified portion of such an asset [<sup>F204</sup>or liability]

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that is attributable to a particular risk and could affect profit or loss of the company.

[<sup>F205</sup>For the purposes of this sub-paragraph the liabilities of a company include its own share capital.]

(15) “Integrated Prudential Sourcebook” means the Integrated Prudential Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000.

(16) “Long-term insurance fund” [<sup>F206</sup>and “contract of long-term insurance” have] the meaning given in section 431(2) of the Taxes Act 1988.]

[<sup>F207</sup>(17) “Depository receipt”, in relation to shares (within the meaning of this Schedule) has the same meaning as it has in Part 4 of the Finance Act 1986 in relation to shares (within the meaning of that Part).]

#### Textual Amendments

- F192** Sch. 26 para. 12(1) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **13(2)**
- F193** Sch. 26 para. 12(1)(bza) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **6(2)(a)**
- F194** Sch. 26 para. 12(1)(ba) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **8(2)**
- F195** Sch. 26 para. 12(1)(bb) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **9(2)(a)**
- F196** Sch. 26 para. 12(1)(cc) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **9(2)(b)**
- F197** Word in Sch. 26 para. 12(1)(cc) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **6(2)(b)(i)**
- F198** Words in Sch. 26 para. 12(1)(cc) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **6(2)(b)(ii)**
- F199** Sch. 26 para. 12(1)(dd)(de) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **9(2)(c)**
- F200** Sch. 26 para. 12(11) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **13(3)**
- F201** Sch. 26 para. 12(12) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **8(3)**
- F202** Sch. 26 para. 12(13)-(16) added (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **9(3)**
- F203** Words in Sch. 26 para. 12(14) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **6(3)(a)**

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- F204** Words in Sch. 26 para. 12(14)(b) inserted (with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2002, Schedule 26 (Parts 2 and 9) (Amendment No. 3) Order 2005 (S.I. 2005/3440), arts. 1, **6(3)(b)**
- F205** Words in Sch. 26 para. 12(14) added (with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2002, Schedule 26 (Parts 2 and 9) (Amendment No. 3) Order 2005 (S.I. 2005/3440), arts. 1, **6(3)(c)**
- F206** Word in Sch. 26 para. 12(16) substituted (with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2002, Schedule 26 (Parts 2 and 9) (Amendment No. 3) Order 2005 (S.I. 2005/3440), arts. 1, **6(4)**
- F207** Sch. 26 para. 12(17) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **8(4)**

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

- C21** Sch. 26 para. 12(6)-(10) applied by 1992 c. 12, s. 275B(3) (as inserted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 4 para. 5**)
- C22** Sch. 26 para. 12(14) applied by 1996 c. 8, Sch. 9 para. 12A(9) (as inserted (with effect in accordance with Sch. 7 para. 18(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 18**)

#### **[<sup>F208</sup>Power to amend paragraphs 2 to 12 and Part 9]**

- 13 [<sup>F209</sup>(1) The Treasury may by order amend—
- (a) any of paragraphs 2 to 12, or
  - (b) Part 9 of this Schedule.]
- (2) The provision that may be made by an order under this paragraph includes provision—
- (a) adding to, or varying, the descriptions of contract which are derivative contracts within paragraph 2 or removing any such description of contract, or
  - (b) adding to, or varying, the descriptions of contracts which are excluded under paragraph 4 or removing any such description of contract.
- (3) The provision that may be made under sub-paragraph (2)(b), in relation to contracts which are excluded under paragraph 4, includes provision adding to, or varying, the provisions which qualify the exclusion of contracts under that paragraph or removing any such qualifying provision.
- [<sup>F210</sup>(4) An order under this paragraph may provide for any of its provisions to have effect in relation to accounting periods ending on or after the day on which the order comes into force (whenever beginning).]
- (5) The power to make an order under this paragraph includes power—
- (a) to make different provision for different cases, and
  - (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

#### **Textual Amendments**

- F208** Sch. 26 para. 13 heading substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 9 para. 2(4)**
- F209** Sch. 26 para. 13(1) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 9 para. 2(2)**

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**F210** Sch. 26 para. 13(4) substituted (22.7.2004) by Finance Act 2004 (c. 12), Sch. 9 para. 2(3)

### PART 3

#### METHOD OF TAXATION

##### *Method of bringing amounts into account*

- 14 (1) For the purposes of corporation tax the profits and losses arising from the derivative contracts of a company shall be computed in accordance with this paragraph using the credits and debits given for the accounting period in question by the following provisions of this Schedule.
- (2) To the extent that, in any accounting period, a derivative contract of a company is one to which the company is party for the purposes of a trade carried on by it, the credits and debits given in respect of that contract for that period shall be treated (according to whether they are credits or debits) either—
- (a) as receipts of that trade falling to be brought into account in computing the profits of that trade for that period; or
  - (b) as expenses of that trade which are deductible in computing those profits.
- (3) Where for any accounting period there are, in respect of the derivative contracts of a company, credits and debits that are not brought into account under sub-paragraph (2), they shall be brought into account for that accounting period as if they were non-trading credits or non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of loan relationships of the company.
- (4) Sub-paragraph (2), so far as it provides for any amount to be deductible as mentioned in paragraph (b) of that sub-paragraph, shall have effect notwithstanding anything in section 74 of the Taxes Act 1988 (allowable deductions).

##### *Credits and debits brought into account*

- 15 (1) The credits and debits to be brought into account in the case of any company in respect of its derivative contracts shall be the sums which, <sup>F211</sup>... when taken together, fairly represent, for the accounting period in question—
- (a) all profits and losses of the company which (disregarding any charges or expenses) arise to the company from its derivative contracts and related transactions; and
  - (b) all charges and expenses incurred by the company under or for the purposes of its derivative contracts and related transactions.

<sup>F212</sup>(2) .....

<sup>F213</sup>(3) .....

- (4) The reference in sub-paragraph (1)(b) to charges and expenses incurred for the purposes of a company's derivative contracts and related transactions does not include a reference to any charges or expenses other than those incurred directly—
- (a) in bringing any of those contracts into existence;
  - (b) in entering into or giving effect to any of those transactions;

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- (c) in making payments under any of those contracts or in pursuance of any of those transactions; or
- (d) in taking steps for ensuring the receipt of payments under any of those contracts or in accordance with any of those transactions.

(5) Where—

- (a) any charges or expenses are incurred by a company for purposes connected—
  - (i) with entering into a derivative contract or related transaction, or
  - (ii) with giving effect to any obligation that might arise under a derivative contract or related transaction,
- (b) at the time when the charges or expenses are incurred, the contract or transaction is one into which the company may enter but has not entered, and
- (c) if that contract or transaction had been entered into by that company, the charges or expenses would be charges or expenses incurred as mentioned in sub-paragraph (4),

those charges or expenses shall be treated for the purposes of this Schedule as charges or expenses in relation to which debits may be brought into account in accordance with sub-paragraph (1)(b) to the same extent as if the contract or transaction had been entered into.

<sup>F214</sup>(6) .....

- (7) In this Schedule “related transaction”, in relation to a derivative contract, means any disposal or acquisition (in whole or in part) of rights or liabilities under the derivative contract.
- (8) The cases where there shall be taken for the purposes of sub-paragraph (7) to be a disposal or acquisition of rights or liabilities under a derivative contract shall include—
  - (a) those where such rights or liabilities are transferred or extinguished by any sale, gift, surrender or release, and
  - (b) those where the contract is discharged by performance in accordance with its terms.

(9) This paragraph has effect subject to [<sup>F215</sup>the following provisions of this Schedule].

#### Textual Amendments

- F211** Words in Sch. 26 para. 15(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 47\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F212** Sch. 26 para. 15(2) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 47\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F213** Sch. 26 para. 15(3) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 47\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F214** Sch. 26 para. 15(6) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 47\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F215** Words in Sch. 26 para. 15(9) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 47\(4\)](#)

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*Exchange gains and losses arising from derivative contracts*

16 (1) The reference in paragraph 15(1)(a) to the profits and losses arising to a company from its derivative contracts and related transactions includes a reference to exchange gains and losses arising to the company from its derivative contracts.

(2) Sub-paragraph (1) is subject to the following provisions of this paragraph.

[<sup>F216</sup>(3) Sub-paragraph (1) does not apply to an exchange gain or loss of a company to the extent that it—

- (a) arises in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, or
- (b) results from the translation from one currency to another of the profit or loss of part of the company's business,

and is recognised in the company's statement of recognised gains and losses or statement of changes in equity.

(3A) Sub-paragraph (1) above does not apply to so much of an exchange gain or loss arising to a company, in relation to a derivative contract whose underlying subject matter consists wholly or partly of currency, as falls within a description prescribed for the purpose in regulations made by the Treasury.]

<sup>F217</sup>(4) . . . . .

<sup>F217</sup>(5) . . . . .

<sup>F217</sup>(6) . . . . .

<sup>F217</sup>(7) . . . . .

(8) The Treasury may by regulations make provision for or in connection with bringing into account in prescribed circumstances amounts in relation to which sub-paragraph (1) does not, by virtue of sub-paragraph (3) [<sup>F218</sup>or (3A)], have effect.

(9) The reference in sub-paragraph (8) to bringing amounts into account is a reference to bringing amounts into account—

- (a) for the purposes of this Schedule, as credits or debits arising to a company from its derivative contracts and related transactions; or
- (b) for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).

(10) Any power to make regulations under this paragraph includes power to make different provision for different cases [<sup>F219</sup>and power to make provision subject to an election or to other prescribed conditions].

**Textual Amendments**

**F216** Sch. 26 para. 16(3)(3A) substituted for Sch. 26 para. 16(3) (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(2\)](#)

**F217** Sch. 26 para. 16(4)-(7) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(3\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F218** Words in Sch. 26 para. 16(8) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(4\)](#)

**F219** Words in Sch. 26 para. 16(10) added (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 48\(5\)](#)

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

- C23** Sch. 26 para. 16(3) excluded by S.I. 2004/3256, reg. 7(4) (as inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Loan Relationships and Derivative Contracts \(Disregard and Bringing into Account of Profits and Losses\) \(Amendment\) Regulations 2005](#) (S.I. 2005/2012), regs. 1(1), **8(5)**)

### PART 4

#### [<sup>F220</sup>COMPUTATION OF AMOUNTS TO BE BROUGHT INTO ACCOUNT]

#### Textual Amendments

- F220** Words in Sch. 26 Pt. 4 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 49](#)

#### *Computation in accordance with generally accepted accounting practice*

- [<sup>F221</sup>17(A)] Subject to the provisions of this Schedule, the amounts to be brought into account by a company for any period for the purposes of this Schedule are those that, in accordance with generally accepted accounting practice, are recognised in determining the company's profit or loss for the period.
- (2) If a company does not draw up accounts in accordance with generally accepted accounting practice ("correct accounts")—
- (a) the provisions of this Schedule apply as if correct accounts had been drawn up, and
  - (b) the amounts referred to in this Schedule as being recognised for accounting purposes are those that would have been recognised if correct accounts had been drawn up.
- (3) If a company draws up accounts that rely to any extent on amounts derived from an earlier period of account for which the company did not draw up correct accounts, the amounts referred to in this Schedule as being recognised for accounting purposes in the later period are those that would have been recognised if correct accounts had been drawn up for the earlier period.
- (4) The provisions of sub-paragraphs (2) and (3) apply where the company does not draw up accounts at all as well as where it draws up accounts that are not correct.

#### Textual Amendments

- F221** Sch. 26 paras. 17A-17C substituted for Sch. 26 paras. 17-20 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 50](#)

#### *Amounts recognised in determining company's profit or loss*

- 17B (1) Any reference in this Schedule to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—
- (a) in the company's profit and loss account [<sup>F222</sup>or income statement],



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- (b) in the company's statement of recognised gains and losses or statement of changes in equity, or
- (c) in any other statement of items brought into account in computing the company's profits and losses for that period.

[<sup>F223</sup>(2) An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in subparagraph (1) shall be brought into account for the purposes of this Schedule in computing the company's profits and losses for the period to which the statement relates.

This does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.]

#### Textual Amendments

**F221** Sch. 26 paras. 17A-17C substituted for Sch. 26 paras. 17-20 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 50**

**F222** Words in Sch. 26 para. 17B(1)(a) inserted (17.4.2005) by [Finance Act 2005 \(c. 7\)](#), Sch. 4 para. 34(2)

**F223** Sch. 26 para. 17B(2) substituted (17.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 4 para. 34(3)**

#### *Power to make further provision by regulations*

- 17C (1) The Treasury may by regulations make provision—
- (a) excluding amounts of a prescribed description from paragraph 17B(1);
  - (b) requiring amounts of a prescribed description that do not fall within paragraph 17B (1) (by virtue of regulations under paragraph (a) above or otherwise) to be brought into account in determining a company's profit or loss for a period in prescribed circumstances;
  - (c) as to the manner in which any such amounts are to be brought into account.
- (2) The regulations may (in particular) make provision by reference to the fact that amounts derive from or otherwise relate to amounts brought into account in a prescribed manner in a previous period of account.
- (3) The power to make regulations under this paragraph includes—
- (a) power to make different provision for different cases; and
  - (b) power to make provision subject to an election or to other prescribed conditions.
- (4) Regulations under this paragraph may apply, exclude or modify any of the provisions of this Schedule in relation to cases for which provision is made by the regulations.]

#### Textual Amendments

**F221** Sch. 26 paras. 17A-17C substituted for Sch. 26 paras. 17-20 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 50**

#### *Basis of accounting for contracts falling within paragraph 6, 7 or 8*

<sup>F224</sup><sub>21</sub> .....

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**Textual Amendments**

**F224** Sch. 26 para. 21 omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **9**

**PART 5**

SPECIAL PROVISION FOR [<sup>F225</sup>RELEASE OF LIABILITY]

**Textual Amendments**

**F225** Words in Sch. 26 Pt. 5 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 52**

[<sup>F226</sup>Release of liability under derivative contract ]

- 22 <sup>F227</sup>(1) . . . . .
- <sup>F227</sup>(2) . . . . .
- <sup>F227</sup>(3) . . . . .
- <sup>F227</sup>(4) . . . . .

- (5) Where—
  - (a) in the case of a derivative contract of a company, a liability owed by the company to pay an amount under the contract is released, and
  - <sup>F228</sup>(b) . . . . .
 no credit in respect of the release shall be required to be brought into account in the case of the company if the release is part of a [<sup>F229</sup>statutory insolvency arrangement].

**Textual Amendments**

- F226** Sch. 26 para. 22 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 53(2)**
- F227** Sch. 26 para. 22(1)-(4) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 53\(3\)](#), **Sch. 42 Pt. 2(6)**
- F228** Sch. 26 para. 22(5)(b) and preceding word repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 53\(4\)](#), **Sch. 42 Pt. 2(6)**
- F229** Words in Sch. 26 para. 22(5) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), **Sch. 4 para. 19**

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## PART 6

### SPECIAL COMPUTATIONAL PROVISIONS

#### *Deemed assignment of derivative contracts on company ceasing to be resident in UK etc*

- [<sup>F230</sup>22A] This paragraph applies if at any time (“the relevant time”)—
- (a) a company ceases to be resident in the United Kingdom, or
  - (b) in the case of a company not resident in the United Kingdom, the rights and liabilities of the company under a derivative contract to any extent cease to be held or owed for the purposes of a permanent establishment of the company in the United Kingdom in circumstances not involving a related transaction.
- (2) In a case falling within sub-paragraph (1)(a), this Schedule shall have effect as if the company had—
- (a) immediately before the relevant time, assigned its rights and liabilities under its derivative contracts for a consideration of an amount equal to their fair value at that time, and
  - (b) immediately reacquired them for a consideration of the same amount.
- (3) Sub-paragraph (2) does not apply in relation to a derivative contract to the extent that, immediately after the relevant time, the company’s rights and liabilities under the contract are held or owed for the purposes of a permanent establishment of the company in the United Kingdom.
- (4) In a case falling within sub-paragraph (1)(b), this Schedule shall have effect as if the company had—
- (a) immediately before the relevant time, assigned the rights and liabilities, so far as ceasing to be held or owed for the purposes of the permanent establishment, for a consideration of an amount equal to their fair value at that time, and
  - (b) immediately reacquired them for a consideration of the same amount.
- <sup>F231</sup>(5) . . . . . ]

#### **Textual Amendments**

**F230** Sch. 26 para. 22A and cross-heading inserted (with effect in accordance with Sch. 9 para. 3(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 9 para. 3\(1\)](#)

**F231** Sch. 26 para. 22A(5) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 54](#), [Sch. 42 Pt. 2\(6\)](#)

#### *Derivative contracts for unallowable purposes*

- 23 (1) Where in any accounting period a derivative contract of a company has an unallowable purpose, this paragraph shall apply for the purpose of determining the credits and debits which fall, in the case of the company, to be brought into account for the purposes of this Schedule.
- (2) Subject to sub-paragraph (4), the credits to be brought into account in the case of the derivative contract for the accounting period shall not include so much of

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- the exchange credits <sup>F232</sup> ... as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.
- (3) Subject to sub-paragraph (4), the debits to be brought into account in the case of the derivative contract for the accounting period shall not include so much of the debits <sup>F233</sup> ... as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.
- (4) If, in the case of the derivative contract,—
- (a) the amount of the debits referable to the unallowable purpose, in accordance with sub-paragraph (3), for that accounting period, exceeds
  - (b) the amount of the exchange credits referable to that purpose, in accordance with sub-paragraph (2), for that accounting period,
- the difference between the amounts (the “net loss”) may be brought into account as a debit to the extent permitted by sub-paragraph (5).
- (5) An amount of accumulated net losses may be brought into account for an accounting period if, and to the extent that, there is for that period an amount of accumulated credits (other than exchange credits).
- (6) For the purposes of sub-paragraph (5) the amount of accumulated net losses is, in relation to an accounting period,—
- (a) the amount of any net loss arising, in the case of the derivative contract, for that accounting period or any earlier accounting period, in accordance with sub-paragraph (4), less
  - (b) the amount of any such net loss as was brought into account in accordance with sub-paragraph (5) in any earlier accounting period.
- (7) For the purposes of sub-paragraph (5) the amount of accumulated credits (other than exchange credits) is, in relation to an accounting period,—
- (a) the amount of any credits (other than exchange credits) arising, in the case of the derivative contract, for that accounting period or any earlier accounting period, less
  - (b) an amount equal to <sup>F234</sup>—
    - (i) so much of any debits arising, in the case of the derivative contract, for that accounting period or any earlier accounting period as is not, in accordance with sub-paragraph (3), referable to the unallowable purpose, and
    - (ii) to the amount of any net loss, arising in the case of the derivative contract, which was brought into account in accordance with sub-paragraph (5) in any earlier accounting period.
- (8) Amounts which, by virtue of this paragraph, are not brought into account for the purposes of this Schedule as respects any matter are in consequence also amounts which, in accordance with paragraph 1(2), are not to be brought into account for the purposes of corporation tax as respects that matter apart from this Schedule.
- (9) For the purposes of this paragraph, a credit is an exchange credit, in the case of a company, to the extent that it is attributable to any exchange gains arising to the company <sup>F235</sup> ....
- (10) This paragraph is supplemented by paragraph 24.24

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### Textual Amendments

- F232** Words in Sch. 26 para. 23(2) repealed (with effect in accordance with [s. 52\(3\)](#) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 55, Sch. 42 Pt. 2(6)
- F233** Words in Sch. 26 para. 23(3) repealed (with effect in accordance with [s. 52\(3\)](#) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 55, Sch. 42 Pt. 2(6)
- F234** Words in Sch. 26 para. 23(7)(b)(i)(ii) inserted (with effect in accordance with [Sch. 9 para. 4\(2\)](#) of the amending Act) by Finance Act 2004 (c. 12), Sch. 9 para. 4(1)
- F235** Words in Sch. 26 para. 23(9) repealed (with effect in accordance with Sch. 11 Pt. 2(6) Note 3 of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), Sch. 11 Pt. 2(6)

### *Derivative contracts for unallowable purposes: supplementary*

- 24 (1) For the purposes of paragraph 23 a derivative contract to which a company is party shall be taken to have an unallowable purpose in an accounting period where the purposes for which, at times during that period, the company—
- is party to the contract, or
  - enters into transactions which are related transactions by reference to that contract,
- include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (2) For the purposes of this paragraph the business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (3) For the purposes of this paragraph, where one of the purposes for which a company—
- is party to a derivative contract at any time, or
  - enters into a transaction which is a related transaction by reference to any derivative contract of the company,
- is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the contract at that time or, as the case may be, for which the company enters into that transaction.
- (4) The reference in sub-paragraph (3) to a tax avoidance purpose is a reference to any purpose that consists in securing a tax advantage (whether for the company or any other person).
- (5) In this paragraph “tax advantage” has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (tax avoidance).

### *Debits and credits treated as relating to capital expenditure*

- 25 (1) This paragraph applies where any debit or credit <sup>F236</sup>... for any accounting period in respect of a company’s derivative contract is allowed by generally accepted accounting practice to be treated, in the accounts of the company, as an amount brought into account in determining the value of a fixed capital asset or project.
- (2) Notwithstanding the application to it of the treatment allowed by generally accepted accounting practice, the debit or credit shall be brought into account for the purposes of corporation tax, for the accounting period for which it is given, in the same way as

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a debit or credit which, in accordance with generally accepted accounting practice, is brought into account in determining the company's profit or loss for that period.

- (3) No debit may be brought into account by virtue of this paragraph if it is taken into account in arriving at the amount of expenditure in relation to which a debit may be given by Schedule 29 to this Act.
- [<sup>F237</sup>(4) Where a debit is brought into account by a company in accordance with sub-paragraph (1), no debit shall be brought into account in respect of—
- (a) the writing down of so much of the value of the fixed capital asset or project as is attributable to that debit, or
  - (b) so much of any amortisation or depreciation as represents a writing off of the interest component of the asset.]

#### Textual Amendments

**F236** Words in Sch. 26 para. 25(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 56\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F237** Sch. 26 para. 25(4) added (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 56\(3\)](#)

#### *Debits and credits recognised in equity or shareholders' funds*

- [<sup>F238</sup>25A Where in accordance with generally accepted accounting practice a debit or credit for a period in respect of a derivative contract of a company—
- (a) is recognised in equity or shareholders' funds, and
  - (b) is not recognised in any of the statements mentioned in [<sup>F239</sup>paragraph 17B(1)],
- the debit or credit shall be brought into account for that period for the purposes of this Chapter in the same way as a debit or credit that, in accordance with generally accepted accounting practice, is brought into account in determining the company's profit or loss for that period.]

#### Textual Amendments

**F238** Sch. 26 para. 25A inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 35](#)

**F239** Words in Sch. 26 para 25A substituted (retrospective to 7.4.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 6 para. 4\(3\)\(6\)](#)

#### *Transfers of value to connected companies*

- 26 (1) This paragraph applies where—
- (a) as a result of the expiry of an option of a company which, until its expiry, was a derivative contract of the company, there is a transfer of value by the company (“the transferor”) to a company which is a connected company in relation to it (“the transferee”), and
  - (b) the transferee is not chargeable to corporation tax, in respect of the derivative contract, under or by virtue of this Schedule.
- (2) In order to determine, for the purposes of sub-paragraph 1(a), whether there is a transfer of value, it shall be assumed that—

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- (a) if there had not been a connection between the transferor and the transferee, the option would not have expired, and
  - (b) if there had not been such a connection, it would have been exercised on the date on which it expired.
- (3) Where this paragraph applies in relation to the expiry of the option of the transferor, the transferor shall bring the appropriate amount into account in accordance with paragraph 15 for the appropriate accounting period as a credit in respect of the derivative contract.
- (4) In sub-paragraph (3)—
  - (a) the appropriate accounting period is the accounting period of the transferor in which the option expired, and
  - (b) the appropriate amount is the amount (if any) paid by the transferor to the transferee for the grant of the option by the transferee.
- (5) In this paragraph “option” has the same meaning as in paragraph 12, apart from sub-paragraph (10).
- (6) For the purposes of this paragraph, a company is a connected company in relation to another company if, in the accounting period in question, there is a connection between the company and that other company; and whether there is a connection between those companies shall be determined in accordance with sections 87(3) and (4) and 87A of the Finance Act 1996 (c. 8) (disregarding section 88 of that Act).

*Exchange gains and losses where derivative contracts not on arm's length terms*

- 27
- (1) Sub-paragraph (2) applies where—
    - (a) a company is party to a derivative contract in an accounting period,
    - (b) as regards the derivative contract, an exchange gain or exchange loss arises to the company for the accounting period in question, and
    - (c) the profits and losses of the company fall by virtue of Schedule 28AA to the Taxes Act 1988 (provision not at arm's length) to be computed for tax purposes as if the company were not party to the derivative contract.
  - (2) Where this sub-paragraph applies, any exchange gains and losses which arise to the company from the derivative contract for the accounting period in question shall be left out of account in determining the credits and debits which are, in the case of the company, to be brought into account for the purposes of this Schedule.
  - (3) Sub-paragraph (4) applies where—
    - (a) a company is party to a derivative contract in an accounting period,
    - (b) as regards the derivative contract, an exchange gain or exchange loss arises to the company for the accounting period in question, and
    - (c) the profits and losses of the company fall by virtue of Schedule 28AA to the Taxes Act 1988 to be computed for tax purposes as if the terms of the derivative contract were those that would have been agreed by the company and the other party to the derivative contract had they been dealing at arm's length.
  - (4) Where this sub-paragraph applies, the credits and debits which are, in the case of the company, to be brought into account for the purposes of this Schedule shall be determined on the assumption that, in the accounting period in question, the amount

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of any exchange gain or loss arising to the company from the derivative contract is the adjusted amount.

- (5) In sub-paragraph (4) the “adjusted amount” is the amount of an exchange gain or loss (including an exchange gain of nil) which would have arisen from the derivative contract if the terms of the contract were those that would have been agreed by the company and the other party to the derivative contract had they been dealing at arm’s length.

### *Transactions within groups*

- 28 (1) This paragraph applies where, as a result of any transaction or series of transactions falling within sub-paragraph (2), one of the companies there referred to (“the transferee company”) directly or indirectly replaces the other (“the transferor company”) as a party to a derivative contract.
- (2) The transactions or series of transactions referred to in sub-paragraph (1) are—
- (a) a related transaction between two companies that are—
    - (i) members of the same group, and
    - (ii) within the charge to corporation tax in respect of that transaction;
  - (b) a series of transactions having the same effect as a related transaction between two companies each of which—
    - (i) has been a member of the same group at any time in the course of that series of transactions, and
    - (ii) is within the charge to corporation tax in respect of the related transaction;
  - (c) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme; and
  - (d) any transfer between two companies which is a qualifying overseas transfer within the meaning [F240] given by the definition treated as inserted into section 431(2) of the Taxes Act 1988 by paragraph 6(9) of Schedule 19AC to that Act] (transfer of business of overseas life insurance company).
- [F241](3) For the purpose of determining the credits and debits to be brought into account for the purposes of this Schedule in respect of the derivative contract—
- (a) for the accounting period in which the transaction or, as the case may be, the first of the series of transactions takes place, the transferor company shall be treated as having entered into that transaction for a consideration equal to the notional carrying value of the contract; and
  - (b) for any accounting period in which it is a party to the contract, the transferee company shall be treated as if it had acquired the contract for a consideration equal to its notional carrying value.

For the purposes of this sub-paragraph the notional carrying value is the amount that would have been the carrying value of the derivative contract in the accounts of the transferor company if a period of account had ended immediately before the date when the company ceased to be party to the contract.]

- [F242](3A) Where the debits or credits to be brought into account for the purposes of this Schedule in respect of any amounts fall to be determined in accordance with sub-paragraph (3), Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) does not apply in relation to those amounts.]



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- [<sup>F243</sup>(4) References in this paragraph to one company replacing another as party to a derivative contract shall include references to a company becoming party to any derivative contract which—
- (a) confers rights or imposes liabilities, or
  - (b) both confers rights and imposes liabilities,
- where those rights or liabilities, or rights and liabilities, are equivalent to those of the other company under a derivative contract to which that other company has previously ceased to be party.]
- (5) In this paragraph [<sup>F244</sup>“carrying value” has the same meaning as it has for the purposes of paragraph 50A;] “insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000 (c. 8), including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section.
- (6) In this paragraph references to companies being members of the same group of companies shall be construed in accordance with section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (7) This paragraph has effect subject to paragraphs 29 and 30.

#### Textual Amendments

- F240** Words in Sch. 26 para. 28(2)(d) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\)](#), regs. 1(1), **11(4)**
- F241** Sch. 26 para. 28(3) substituted (with effect in accordance with Sch. 7 para. 22(4)-(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 7 para. 22(2)**
- F242** Sch. 26 para. 28(3A) inserted (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 5 para. 15**
- F243** Sch. 26 para. 28(4) substituted (with effect in accordance with s. 179(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **s. 179(3)**
- F244** Words in Sch. 26 para. 28(5) inserted (with effect in accordance with Sch. 7 para. 22(5)(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 7 para. 22(3)**

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

- C24** Sch. 26 para. 28 modified by S.I. 1997/473, reg. 53G (as inserted (30.1.2003) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2003 \(S.I. 2003/23\)](#), regs. 1(1), **10**)

#### *Transactions within groups: exceptions relating to insurance*

- 29 (1) Paragraph 28 does not apply by virtue of sub-paragraph 2(a) or (b) of that paragraph in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, where the asset was within one of the categories set out in section 440(4)(a) to (e) of the Taxes Act 1988 (assets held for certain categories of long term business) either immediately before the transfer or immediately afterwards.
- (2) Paragraph 28 does not apply by virtue of sub-paragraph 2(c) or (d) of that paragraph in relation to any transfer of an asset, or of any rights or duties under or interest in an asset, where the asset—
- (a) was an asset within one of the categories set out in section 440(4) of the Taxes Act 1988 immediately before the transfer, and
  - (b) is not an asset within that category immediately afterwards.

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- (3) For the purposes of sub-paragraph (2) above, where one of the companies is an overseas life insurance company an asset shall be taken to be within the same category both immediately before the transfer and immediately afterwards if it—
- (a) was an asset within one category immediately before the transfer, and
  - (b) is an asset within the corresponding category immediately afterwards.
- (4) In this paragraph “overseas life insurance company” has the same meaning as in Chapter 1 of Part 12 of the Taxes Act 1988.

*Transactions within groups: [F245 fair value accounting]*

- [F246]30(1) Paragraph 28 does not apply where the transferor company uses [F247 fair value accounting] as respects the derivative contract in question, but in any such case—
- (a) the amount to be brought into account by the transferor company in respect of the transaction referred to in that paragraph, or in respect of the series of transactions there referred to, taken together, must be the fair value of the derivative contract as at the date of transfer to the transferee company; and
  - [F248](b) paragraph 28(3)(b) shall have effect in relation to the transferee company.]
- (2) In this paragraph “transferor company” and “transferee company” have the same meaning as in paragraph 28.]

#### Textual Amendments

- F245** Words in Sch. 26 para. 30 heading substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 57(a)**
- F246** Sch. 26 para. 30 substituted (with effect in accordance with s. 179(5) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **s. 179(4)**
- F247** Words in Sch. 26 para. 30(1) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 10 para. 57(b)**
- F248** Sch. 26 para. 30(1)(b) substituted (with effect in accordance with Sch. 7 para. 23(3)(4) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), **Sch. 7 para. 23(2)**

*Transferee leaving group after replacing transferor as party to derivative contract*

- [F249]30(1) This paragraph applies in any case where—
- (a) paragraph 28 applies—
    - (i) by virtue of sub-paragraph (2)(a) of that paragraph (“case A”), or
    - (ii) by virtue of sub-paragraph (2)(b) of that paragraph (“case B”), but
  - (b) before the end of the relevant 6 year period, the transferee company ceases to be a member of the relevant group.
- (2) In any such case, this Schedule shall have effect as if the transferee company had—
- (a) immediately before that cessation, assigned its rights and liabilities under the relevant derivative contract for a consideration of an amount equal to their fair value at that time, and
  - (b) immediately reacquired them for a consideration of the same amount, but only if Condition 1 or 2 is satisfied and sub-paragraph (5) does not apply.

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- (3) Condition 1 is that if sub-paragraph (2) has effect, a credit would in consequence of paragraph (a) of that sub-paragraph fall to be brought into account for the purposes of this Schedule by the transferee company.
- (4) Condition 2 is that—
- (a) Condition 1 is not satisfied,
  - (b) the company has a hedging relationship between the relevant derivative contract and a creditor relationship, and
  - (c) in consequence of paragraph 12A(2)(a) of Schedule 9 to the Finance Act 1996, a credit falls to be brought into account by the transferee company for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of the creditor relationship.
- (5) Where the transferee company ceases to be a member of the relevant group by reason only of an exempt distribution (see sub-paragraph (8))—
- (a) sub-paragraph (2) does not have effect, but
  - (b) if there is chargeable payment within 5 years after the making of the exempt distribution, sub-paragraph (6) applies.
- (6) Where this sub-paragraph applies, this Chapter shall have effect as if—
- (a) the transferee company had, immediately before the making of the chargeable payment, assigned its rights and liabilities under the relevant derivative contract,
  - (b) the assignment had been for a consideration of an amount equal to the fair value of those rights and liabilities immediately before the transferee company ceased to be a member of the relevant group, and
  - (c) the transferee company had immediately reacquired those rights and liabilities for a consideration of the same amount,
- but only if Condition 1 or 2, as modified by sub-paragraph (7), is satisfied.
- (7) The modifications are that—
- (a) in Condition 1, the references to sub-paragraph (2), and paragraph (a) of that sub-paragraph, are to be taken respectively as references to sub-paragraph (6) and paragraphs (a) and (b) of that sub-paragraph, and
  - (b) in Condition 2, the reference to paragraph 12A(2)(a) of Schedule 9 to the Finance Act 1996 is to be taken as a reference to paragraph 12A(6)(a) and (b) of that Schedule.
- (8) In this paragraph—
- “assignment”, in relation to Scotland, means an assignation;
  - “chargeable payment” has the meaning given by section 214(2) of the Taxes Act 1988;
  - “exempt distribution” means a distribution which is exempt by virtue of section 213(2) of the Taxes Act 1988;
  - “creditor relationship” has the same meaning as in Chapter 2 of Part 4 of the Finance Act 1996 (see section 103(1) of that Act);
  - “the relevant 6 year period” means the period of 6 years following—
    - (a) in case A, the transaction mentioned in paragraph 28(2)(a), or
    - (b) in case B, the last of the series of transactions mentioned in paragraph 28(2)(b);

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“the relevant derivative contract” means the derivative contract mentioned in paragraph 28(1);

“the relevant group” means—

- (a) in case A, the group mentioned in paragraph 28(2)(a), or
- (b) in case B, the group mentioned in paragraph 28(2)(b);

“the transferee company” means the company referred to as such in paragraph 28(1).]

#### Textual Amendments

**F249** Sch. 26 para. 30A and cross-heading inserted (with effect in accordance with Sch. 7 para. 24(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 7 para. 24\(1\)](#)

#### *Formation of SE by merger*

[<sup>F250</sup>30~~B~~) This paragraph applies where—

- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
  - (b) each merging company is resident in a member State,
  - (c) the merging companies are not all resident in the same State, and
  - (d) either—
    - (i) immediately after formation the SE is resident in the United Kingdom and within the charge to corporation tax in accordance with section 6 of the Taxes Act 1988, or
    - (ii) immediately after formation the SE is not resident in the United Kingdom but is within the charge to corporation tax in accordance with section 11 of the Taxes Act 1988.
- (2) Where this paragraph applies, the transfer in the course of the merger of rights or liabilities under a derivative contract shall be disregarded except—
- (a) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, and
  - (b) for the purpose of identifying the company in whose case a debit or credit which does not relate to the transfer is to be brought into account.
- (3) Where this paragraph applies, the transferor and the transferee companies of a right or liability under a derivative contract shall be deemed, except for the purposes specified in sub-paragraph (2)(a) and (b), to be the same company.
- (4) Paragraph 30 shall apply, with any necessary modifications, in relation to this paragraph as in relation to paragraph 28.
- (5) Sub-paragraphs (2) and (3) shall apply in relation to a merger only if—
- (a) it is effected for bona fide commercial reasons, and
  - (b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

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- (6) But sub-paragraph (5) shall not have the effect of preventing sub-paragraphs (2) and (3) from applying if before the merger Her Majesty's Revenue and Customs have on the application of the merging companies notified them that Her Majesty's Revenue and Customs are satisfied that sub-paragraph (5) will not have that effect.
- (7) For the purposes of this paragraph a company is resident in a member State if—
- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.]

#### Textual Amendments

**F250** Sch. 26 para. 30B and cross-heading inserted (with effect in accordance with s. 55(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. **55(1)**

#### *Derivative contracts with non-residents*

- 31 (1) This paragraph applies in relation to a company where, as a result of any transaction,
- (a) the company and a non-resident both become party to a derivative contract,
  - (b) the company becomes party to a derivative contract to which a non-resident is party, or
  - (c) a non-resident becomes party to a derivative contract to which the company is party.
- (2) For each accounting period for any part of which the company and the non-resident are both party to a derivative contract, the credits and debits which fall, in the case of the company, to be brought into account for the purposes of this Schedule as respects the derivative contract shall not include, in a case where that contract makes provision for notional interest payments, any relevant debit arising in relation to that contract.
- (3) For the purposes of sub-paragraph (2) the amount of a relevant debit shall be computed by determining, as regards that accounting period, the amount (if any) by which—
- (a) the aggregate of any notional interest payments made by the company to the non-resident while the company and the non-resident are both party to the derivative contract, exceeds
  - (b) the aggregate of any notional interest payments made by the non-resident to the company during that time.
- (4) For the purposes of sub-paragraphs (2) and (3) a notional interest payment is any payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified.
- (5) Sub-paragraph (2) shall not apply where the company is a bank, building society, financial trader or recognised clearing house and—
- (a) the company is party to the derivative contract solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom, and

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- (b) it is party to the derivative contract otherwise than as agent or nominee of another person.
- (6) Sub-paragraph (2) shall not apply where—
  - (a) the non-resident is party to the derivative contract solely for the purposes of a trade or part of a trade carried on by him in the United Kingdom through a branch or agency, and
  - (b) he is party to the derivative contract otherwise than as agent or nominee of another person.
- (7) Sub-paragraph (2) shall not apply where arrangements made in relation to the territory in which the non-resident is resident—
  - (a) have effect by virtue of section 788 of the Taxes Act 1988, and
  - (b) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements).
- (8) Where the non-resident is party to the contract as agent or nominee of another person, sub-paragraph (7) shall have effect as if the reference to the territory in which the non-resident is resident were a reference to the territory in which that other person is resident.
- (9) In this paragraph—
  - “non-resident” means a person who is not resident in the United Kingdom;
  - “recognised clearing house” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (c. 8).

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

**C25** Sch. 26 para. 31(6)(a) modified (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(2\)\(d\)](#)

*Amounts imputed under Schedule 28AA to the Taxes Act 1988*

- [<sup>F251</sup>31(1)] This paragraph applies where, in pursuance of Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), an amount falls to be treated as any of the following—
- (a) an amount of profits or losses (disregarding any charges or expenses) arising to a company from any of its derivative contracts or related transactions;
  - (b) charges or expenses incurred by a company under or for the purposes of any of its derivative contracts or related transactions.
- (2) That Schedule shall have effect<sup>F252</sup>... so as to require credits or debits relating to the amount so treated to be brought into account for the purposes of this Chapter to the same extent as they would be in the case of an actual amount of—
- (a) profits or losses (disregarding any charges or expenses) arising to the company from the derivative contract or related transaction, or
  - (b) charges or expenses incurred under or for the purposes of the derivative contract or related transaction,
- as the case may be.]

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### Textual Amendments

**F251** Sch. 26 para. 31A inserted (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 5 para. 15\(3\)](#)

**F252** Words in Sch. 26 para. 31A(2) repealed (with effect in accordance with [s. 52\(3\)](#) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 58](#), [Sch. 42 Pt. 2\(6\)](#)

## PART 7

### COLLECTIVE INVESTMENT SCHEMES

#### *Authorised unit trusts: capital profits and losses*

32 (1) Where any profits or losses arising to an authorised unit trust from a derivative contract in an accounting period are capital profits or losses, they must not be brought into account as credits or debits for the purposes of this Schedule<sup>F253</sup>....

[<sup>F254</sup>(1A) For the purposes of this paragraph “capital profits, gains or losses”—

- (a) in the case of an authorised unit trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of an authorised unit trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.]

(2) [<sup>F255</sup>In the cases mentioned in sub-paragraph (1A)(a)], capital profits and losses arising from a derivative contract in an accounting period are such profits and losses arising from a derivative contract as fall to be dealt with under—

- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”,

in the statement of total return for the accounting period.

(3) For the purposes of sub-paragraph (2), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the authorised unit trust which deals with the accounting period.

(4) For the purposes of sub-paragraph (3), the “Statement of Recommended Practice” used for an accounting period is—

- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Authorised Unit Trust Schemes issued by the Investment Management Regulatory Organisation Limited in January 1997, as from time to time modified, amended or revised, or
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent statement of recommended practice dealing with accounting requirements relating to authorised unit trust schemes, as from time to time modified, amended or revised.

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#### Textual Amendments

- F253** Words in Sch. 26 para. 32(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 59\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)
- F254** Sch. 26 para. 32(1A) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 59\(3\)](#)
- F255** Words in Sch. 26 para. 32(2) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 59\(4\)](#)

#### *Open-ended investment companies: capital profits and losses*

- 33 (1) Where any profits or losses arising to an open-ended investment company from a derivative contract in an accounting period are capital profits or losses, they must not be brought into account as credits or debits for the purposes of this Schedule<sup>F256</sup>....

[<sup>F257</sup>(1A) For the purposes of this paragraph “capital profits, gains or losses”—

- (a) in the case of an open-ended investment company that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (2) to (4), and
- (b) in the case of an open-ended investment company that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.]

- (2) [<sup>F258</sup>In the cases mentioned in sub-paragraph (1A)(a)], capital profits and losses arising from a derivative contract in an accounting period are such profits and losses arising from a derivative contract as fall to be dealt with under—

- (a) the heading “net gains/losses on investments during the period”, or
- (b) the heading “other gains/losses”,

in the statement of total return for the accounting period.

- (3) For the purposes of sub-paragraph (2), the statement of total return for an accounting period is the statement of total return which, in accordance with the Statement of Recommended Practice used for the accounting period, must be included in the accounts contained in the annual report of the open-ended investment company which deals with the accounting period.

- (4) For the purposes of sub-paragraph (3), the “Statement of Recommended Practice” used for an accounting period is—

- (a) in relation to any accounting period for which it is required or permitted to be used, the Statement of Recommended Practice relating to Open-Ended Investment Companies issued by the Financial Services Authority in November 2000, as from time to time modified, amended or revised, or
- (b) in relation to any accounting period for which it is required or permitted to be used, any subsequent statement of recommended practice dealing with accounting requirements relating to open-ended investment companies<sup>F259</sup> ..., as from time to time modified, amended or revised.

#### Textual Amendments

- F256** Words in Sch. 26 para. 33(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 60\(2\)](#), [Sch. 42 Pt. 2\(6\)](#)



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**F257** Sch. 26 para. 33(1A) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 60\(3\)](#)

**F258** Words in Sch. 26 para. 33(2) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 60\(4\)](#)

**F259** Words in Sch. 26 para. 33(4)(b) repealed (with effect in accordance with Sch. 9 para. 5(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 9 para. 5\(1\)](#), [Sch. 42 Pt. 2\(5\)](#)

### *Power to amend paragraphs 32 and 33*

34 (1) The Treasury may by order amend paragraph 32 or 33 or so as to alter the definition of capital profits or losses [<sup>F260</sup>in paragraph 32(2) to (4) or 33(2) to (4)] in consequence of the modification, amendment, revision or replacement of a Statement of Recommended Practice.

(2) The power to make an order under this paragraph includes power—

- (a) to make different provision for different cases, and
- (b) to make such consequential, supplementary, incidental or transitional provisions, or savings, as appear to the Treasury to be necessary or expedient (including provision amending any enactment or any instrument made under an enactment).

#### **Textual Amendments**

**F260** Words in Sch. 26 para. 34(1) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 61](#)

### *Distributing offshore funds*

<sup>F261</sup>35 .....

#### **Textual Amendments**

**F261** Sch. 26 para. 35 repealed (with effect in accordance with Sch. 26 para. 2(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 26 para. 2\(2\)](#), [Sch. 42 Pt. 2\(18\)](#) (with [Sch. 26 para. 17](#))

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

**C26** Sch. 26 para. 35 saved by [The Offshore Funds Regulations 2004 \(S.I. 2004/2572\)](#), regs. 1(1)(2), [7\(3\)\(b\)](#)

**C27** Sch. 26 para. 35 saved by [The Offshore Funds Regulations 2004 \(S.I. 2004/2572\)](#), regs. 1(1)(2), [6\(3\)\(b\)](#)

### *Contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds*

36 (1) This paragraph applies in relation to a relevant contract to which a company is party in an accounting period if—

- (a) it is not a derivative contract for the purposes of this Schedule, and
- (b) its underlying subject matter consists wholly or partly of a holding which is, in that period, a relevant holding.

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- [<sup>F262</sup>(2) The Corporation Tax Acts have effect for that period (and any succeeding period in which the relevant contract is a relevant contract of the company) as if the relevant contract were a derivative contract.
- (2A) The debits and credits to be brought into account for the purposes of this Schedule as respects the company's relevant holdings must be determined on the basis of fair value accounting.]
- (3) For the purposes of this paragraph a person holds a relevant holding in an accounting period if, at any time in that period, he holds—
- (a) any rights under a unit trust scheme,
  - (b) any shares in an open-ended investment company, or
  - (c) any relevant interests in an offshore fund,
- and there is a time in that period when that scheme, company or fund fails to satisfy the non-qualifying investments test.
- (4) For the purposes of this paragraph—
- (a) “a relevant interest in an offshore fund” has the same meaning as in paragraph 7 of Schedule 10 to the Finance Act 1996 (c. 8), and
  - (b) a unit trust scheme, open-ended investment company or offshore fund fails to satisfy the non-qualifying investments test if it fails to satisfy the test in paragraph 8 of that Schedule.

#### Textual Amendments

**F262** Sch. 26 para. 36(2)(2A) substituted for Sch. 26 para. 36(2) (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 62](#)

#### *Contract which becomes contract to which paragraph 36 applies*

- 37 (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any relevant contract of a company.
- (2) The first condition is that—
- (a) the company is party to the relevant contract in two successive accounting periods (“the first and second accounting periods”), and
  - (b) paragraph 36 applies in relation to that relevant contract for the second accounting period but not the first.
- (3) The second condition is that the relevant contract was, immediately before the beginning of the second accounting period, a chargeable asset.
- (4) Where an opening valuation of the relevant contract falls to be made at the beginning of the second accounting period (for the purposes of bringing an amount into account for that period on a mark to market basis of accounting), the value of that contract at that time shall be taken for the purpose of the opening valuation to be equal to whatever, in relation to a disposal immediately before the end of the first accounting period, would have been taken to be the market value of that contract for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).
- (5) When the company ceases to be a party to the relevant contract it shall bring into account, for the accounting period in which it ceased to be a party to that contract,

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the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—

- (a) that it had made a disposal of the asset immediately before the beginning of the second accounting period, and
- (b) that the disposal had been for a consideration equal to the value (if any) given to the relevant contract in the accounts of the company at the end of the first accounting period.

- (6) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).

*Investment trusts: capital profits, gains or losses*

[<sup>F263</sup>38(1) Capital profits, gains or losses arising to an investment trust from a [<sup>F264</sup>derivative contract] must not be brought into account as credits or debits for the purposes of this Schedule.

- (2) For the purposes of this paragraph “capital profits, gains or losses”—
  - (a) in the case of an investment trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by subparagraphs (3) and (4), and
  - (b) in the case of an investment trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a [<sup>F265</sup>derivative contract] in an accounting period are profits, gains or losses that are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice.
- (4) For the purposes of this paragraph the Statement of Recommended Practice is, for an accounting period for which it is required or permitted to be used—
  - (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.

**Textual Amendments**

**F263** Sch. 26 paras. 38, 38A substituted for Sch. 26 para. 38 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 63](#)

**F264** Words in Sch. 26 para. 38(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)

**F265** Words in Sch. 26 para. 38(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)

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*Venture capital trusts: capital profits, gains or losses*

- 38A (1) Capital profits, gains or losses arising to a venture capital trust from a [<sup>F266</sup>derivative contract] must not be brought into account as credits or debits for the purposes of this Schedule.
- (2) For the purposes of this paragraph “capital profits, gains or losses”—
- (a) in the case of a venture capital trust that prepares accounts in accordance with UK generally accepted accounting practice, has the meaning given by sub-paragraphs (3) and (4), and
  - (b) in the case of a venture capital trust that prepares accounts in accordance with international accounting standards, has the meaning given by order made by the Treasury.
- (3) In the cases mentioned in sub-paragraph (2)(a) capital profits, gains or losses arising from a [<sup>F267</sup>derivative contract] in an accounting period are profits, gains or losses that are carried to or sustained by a capital reserve in accordance with the Statement of Recommended Practice.
- (4) For the purposes of this paragraph the Statement of Recommended Practice is, for an accounting period for which it is required or permitted to be used—
- (a) the Statement of Recommended Practice relating to Investment Trust Companies, issued by the Association of Investment Trust Companies in January 2003, as from time to time modified, amended or revised, or
  - (b) any subsequent Statement of Recommended Practice relating to investment trusts, as from time to time modified, amended or revised.]

**Textual Amendments**

**F263** Sch. 26 paras. 38, 38A substituted for Sch. 26 para. 38 (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 63](#)

**F266** Words in Sch. 26 para. 38A(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), Sch. 4 para. 36

**F267** Words in Sch. 26 para. 38A(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 36](#)

*Investment trusts: approval for purposes of section 842 of the Taxes Act 1988*

- 39 (1) For the purpose of determining whether a company may be approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for any accounting period, the excess of any relevant credits arising in that period over any relevant debits so arising shall be treated for the purposes of that section as income derived from shares or securities.
- (2) For the purposes of this paragraph “relevant credits” and “relevant debits”, in relation to an accounting period, are credits and debits which are brought into account in respect of that period by virtue of paragraph 14(3) as if they were non-trading credits and non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of loan relationships of the company.

*Venture capital trusts: approval for purposes of section 842AA of the Taxes Act 1988*

- 40 (1) For the purpose of determining whether a company may be approved for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) for any accounting

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period, the excess of any relevant credits arising in that period over any relevant debits so arising shall be treated for the purposes of that section as income derived from shares or securities.

- (2) For the purposes of this paragraph “relevant credits” and “relevant debits”, in relation to an accounting period, are credits and debits which are brought into account in respect of that period by virtue of paragraph 14(3) as if they were non-trading credits and non-trading debits falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of loan relationships of the company.

## PART 8

### INSURANCE AND MUTUAL TRADING COMPANIES

#### *Application of Schedule to insurance and mutual trading companies*

- 41 (1) This Schedule shall apply in relation to insurance and mutual trading companies as it applies in relation to other companies.
- (2) Sub-paragraph (1) is subject to paragraphs 42 and 43.

#### *Application of Part 1 of Schedule 11 to the Finance Act 1996*

- 42 (1) Part 1 of Schedule 11 to the Finance Act 1996 (c. 8) (special provision with respect to loan relationships for insurance companies) shall have effect (subject to sub-paragraphs (2) to (4)) in relation to derivative contracts as it has effect in relation to loan relationships.
- (2) Any provision of that Part of that Schedule which applies only to debtor relationships<sup>F268</sup> ... shall not have effect in relation to derivative contracts for the purposes of sub-paragraph (1).
- (3) That Part of that Schedule shall have effect in its application in relation to derivative contracts as if—
- (a) references to Chapter 2 of Part 4 of the Finance Act 1996 were references to this Schedule,
  - (b) references to section 80(5) of that Act were references to paragraph 1(2) of this Schedule,
  - (c) references to section 82(2) of that Act were references to paragraph 14(2) of this Schedule, and
  - (d) references to credits and debits given in respect of a loan relationship by Chapter 2 of Part 4 of that Act were references, respectively, to the credits and debits given in respect of a derivative contract by this Schedule.

<sup>F269</sup>(4) .....

#### **Textual Amendments**

**F268** Words in Sch. 26 para. 42(2) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **18**

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**F269** Sch. 26 para. 42(4) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **11**

**F270** 43 .....

**Textual Amendments**  
**F270** Sch. 26 para. 43 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **12**

**PART 9**

MISCELLANEOUS

*Derivative contracts ceasing to be held for purposes of trade*

- 44<sup>[F271]</sup>(1) This paragraph applies where—
- (a) a company is party to a relevant contract which is a derivative contract whose underlying subject matter consists, or is treated as consisting, wholly of shares or rights of a unit holder under a unit trust scheme,
  - (b) the company entered into or acquired the relevant contract for the purposes of a trade carried on by it,
  - (c) at any time (“the relevant time”) the relevant contract ceases to be held for those purposes,
  - (d) the company continues to be party to the relevant contract after the relevant time, and
  - (e) if the company had entered into or acquired the contract immediately after the relevant time, the relevant contract would not have been a derivative contract.]
- (2) Where this paragraph applies, the company shall be deemed—
- (a) to have disposed of the relevant contract immediately before the relevant time for a consideration of an amount equal to the fair value of the contract at the relevant time, and
  - (b) to have reacquired it immediately after that time for the same consideration.
- [<sup>F272</sup>(3) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (1)(a).]

**Textual Amendments**  
**F271** Sch. 26 para. 44(1) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **11(2)**  
**F272** Sch. 26 para. 44(3) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **11(3)**

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*Contracts becoming held for purposes of trade*

- 45 (1) This paragraph applies where a relevant contract of a company—
- (a) whose underlying subject matter consists, or is treated as consisting, wholly of—
    - (i) shares in a company [<sup>F273</sup>or] ,
    - (ii) rights of a unit holder under a unit trust scheme, <sup>F274</sup> ...
    - <sup>F275</sup>(iii) . . . . .
  - (b) which is a chargeable asset, and
  - (c) which was entered into or acquired by the company otherwise than for the purposes of a trade carried on by it,
- is at any time appropriated by the company for the purposes of a trade carried on by it.
- (2) Where this paragraph applies—
- (a) section 161 of the Taxation of Chargeable Gains Act 1992 (c. 12) (appropriations to and from stock) shall have effect in relation to the appropriation of that contract, but
  - (b) the company may not make an election under subsection (3) of that section in relation to that appropriation.
- (3) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter of a relevant contract is to be treated as consisting wholly of the property referred to in sub-paragraph (1)(a).

**Textual Amendments**

- F273** Word in Sch. 26 para. 45(1)(a)(i) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **14(2)**
- F274** Word in Sch. 26 para. 45(1)(a)(ii) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **14(3)**
- F275** Sch. 26 para. 45(1)(a)(iii) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **14(4)**

*Derivative contracts which are to be taxed on a chargeable gains basis*

- [<sup>F276</sup>45(A)] This paragraph applies to a derivative contract of a company for an accounting period if any of the following provisions applies to the derivative contract for the period—
- (a) paragraph 45C (derivative contracts relating to land or certain tangible movable property);
  - (b) paragraph 45D (creditor relationship with embedded derivative which is an option relating to qualifying ordinary shares or mandatorily convertible preference shares);

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- (c) paragraph 45F (creditor relationship with embedded derivative which is an exactly tracking contract for differences whose subject matter is land or qualifying ordinary shares);
  - (d) paragraph 45G (property based total return swaps).
- (2) Where this paragraph applies to a derivative contract for an accounting period—
- (a) paragraph 14(3) (non-trading credits and debits) shall not apply to the relevant credits and debits, but
  - (b) sub-paragraph (4) shall apply to them instead.
- (3) For the purposes of this paragraph the relevant credits and debits—
- (a) in the case of a derivative contract falling within any of paragraphs (a) to (c) of sub-paragraph (1), are the credits and debits given in relation to the contract for the accounting period by paragraph 15;
  - (b) in the case of a derivative contract falling within paragraph (d) of that sub-paragraph, are the credits and debits described in sub-paragraph (2) of paragraph 45G.
- (4) For the purposes of corporation tax on chargeable gains—
- (a) if C exceeds D, a chargeable gain equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
  - (b) if D exceeds C, a loss equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
- but this is subject to sub-paragraph (6).
- (5) In sub-paragraph (4)—
- C means the sum of the relevant credits for the accounting period in respect of the derivative contract;
  - D means the sum of the relevant debits for the accounting period in respect of the derivative contract.
- (6) Sub-paragraph (4) does not apply in the case of a derivative contract falling within sub-paragraph (1)(b) (embedded option) if, on the assumption that—
- (a) the rights and liabilities that fall to be treated as comprised in the derivative contract by virtue of section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) had been contained in a separate contract,
  - (b) that separate contract were an actual option,
  - (c) that option were disposed of at the end of the accounting period, and
  - (d) a gain accrued for the purposes of corporation tax on chargeable gains to the company on the disposal,
- paragraph 2 of Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (substantial shareholding exemptions: disposal of asset related to shares) would apply to that gain.

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), 15



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*Carry back of net losses on derivative contracts to which paragraph 45A applies*

45B. (1) This paragraph applies in the case of a company if the following conditions are satisfied—

- (a) there is a net amount of paragraph 45A losses (see sub-paragraph (5)(a)) for an accounting period (the “loss period”),
- (b) there is a net amount of paragraph 45A gains (see sub-paragraph (5)(b)) for a previous accounting period (the “gains period”),
- (c) the gains period falls wholly or partly within the period of 24 months immediately preceding the start of the loss period,
- (d) within 2 years after the end of the loss period the company makes a claim for the purpose in respect of the whole or a part of the net amount of paragraph 45A losses for the loss period.

(2) In any such case—

- (a) the net amount of paragraph 45A gains for the gains period, and
- (b) the net amount of paragraph 45A losses for the loss period,

shall each be reduced (but not below nil) by the amount in respect of which the claim is made.

(3) For the purposes of sub-paragraph (2)—

- (a) the net amount of paragraph 45A gains for a later period must be reduced so far as possible before the net amount of paragraph 45A gains for an earlier period, and
- (b) where a gains period falls partly before the start of the 24 month period referred to in sub-paragraph (1), only the appropriate fraction of the net amount of paragraph 45A gains for the gains period may be reduced.

(4) For the purposes of sub-paragraph (3), the “appropriate fraction” is—

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

where—

A is the number of days in the gains period that fall within the 24 month period,  
and

B is the number of days in the gains period.

(5) For the purposes of this paragraph—

- (a) where for any accounting period L exceeds G, there is a net amount of paragraph 45A losses for that period of an amount equal to that excess,
- (b) where for any accounting period G exceeds the sum of L and N, there is a net amount of paragraph 45A gains for that period of an amount equal to that excess.

(6) In the application of sub-paragraph (5) in relation to any accounting period of a company—

G is the sum of the amounts of any chargeable gains treated as accruing to the company in the period under paragraph 45A(4)(a) in respect of derivative contracts of the company (“paragraph 45A gains”),

L is the sum of the amounts of any allowable losses treated as accruing to the company in the period under paragraph 45A(4)(b) in respect of derivative contracts of the company,

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N is the sum of the amounts of any non-paragraph 45A losses that would fall to be deducted in the period from paragraph 45A gains, on the assumption in sub-paragraph (7).

(7) The assumption is that, as respects the accounting period, non-paragraph 45A losses are treated as being deducted from non-paragraph 45A gains, so far as possible, before any remainder is deducted from paragraph 45A gains.

(8) In this paragraph—

“deducted” means deducted in accordance with section 8(1) of the Taxation of Chargeable Gains Act 1992;

“non-paragraph 45A gains” means any chargeable gains accruing to the company in the accounting period, other than paragraph 45A gains;

“non-paragraph 45A losses” means any allowable losses of the company that may be deducted in the accounting period, other than losses accruing in the period under paragraph 45A(4)(b).

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), 15

#### *Derivative contracts relating to land or certain tangible movable property*

45C. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) the derivative contract is not one to which the company is party at any time in the accounting period for the purposes of a trade carried on by the company (but see sub-paragraph (2)),
- (b) the company is not a body falling within sub-paragraph (3);
- (c) the underlying subject matter of the derivative contract falls within sub-paragraph (4);

[<sup>F277</sup>(d) sub-paragraph (1A) does not apply.]

[ This sub-paragraph applies if—

- <sup>F278</sup>(1A) (a) paragraph 45F applies to the derivative contract, or would apply to it but for sub-paragraph (2)(f) of that paragraph, or
- (b) paragraph 45K applies to derivative contract, or would apply to it but for sub-paragraph (2)(e) of that paragraph.]

(2) The condition in sub-paragraph (1)(a) does not apply if the company—

- (a) is party to the derivative contract for the purposes of life assurance business, or
- (b) is a mutual trading company.

(3) The bodies that fall within this sub-paragraph are—

- an authorised unit trust;
- an investment trust;
- an open-ended investment company;
- a venture capital trust.

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- (4) The underlying subject matter of a derivative contract falls within this sub-paragraph if it consists of either or both of the following—
- (a) land (wherever situated);
  - (b) tangible movable property, other than commodities which are tangible assets.

This sub-paragraph is subject to the following qualification.

- (5) Where the underlying subject matter of a derivative contract includes income from property of either or both of the types described in sub-paragraph (4) and that income is—
- (a) subordinate in relation to so much of the underlying subject matter of the derivative contract as consists of property of either or both of those types, or
  - (b) of small value in comparison with the value of the underlying subject matter as a whole,
- that income shall be left out of account in determining for the purposes of sub-paragraph (1)(c) whether the underlying subject matter of the derivative contract falls within sub-paragraph (4).
- (6) For the purposes of sub-paragraph (5) whether part of the underlying subject matter of a derivative contract of a company is subordinate or of small value is to be determined by reference to the time when the company enters into or acquires the contract.

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**

**F277** Sch. 26 para. 45C(1)(d) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **8(2)**

**F278** Sch. 26 para. 45C(1A) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **8(3)**

#### *Creditor relationships: embedded derivatives which are options*

- 45D. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a creditor relationship of the company,
  - (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that creditor relationship,
  - (c) that relevant contract is treated by virtue of subsection (3) of that section as an option,
  - (d) the additional conditions in sub-paragraph (2) are satisfied.
- (2) The additional conditions are—

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- (a) the company is not party to the creditor relationship at any time in the accounting period for the purposes of a trade carried on by it (but see sub-paragraph (3)),
- <sup>F279</sup>(b) .....
- (c) the underlying subject matter of the derivative contract—
- (i) is qualifying ordinary shares (see sub-paragraph (4)), or
- (ii) is mandatorily convertible preference shares (see sub-paragraph (4)),
- (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc),
- (e) this paragraph is not prevented from applying to the derivative contract for the accounting period by paragraph 45E.
- [ the asset representing the creditor relationship is not an existing asset]
- <sup>F280</sup>(f)
- (3) The condition in sub-paragraph (2)(a) does not apply if the company—
- (a) is party to the creditor relationship for the purposes of life assurance business, or
- (b) is a mutual trading company.
- [ Where in any accounting period—
- <sup>F281</sup>(3A) (a) a company is party to a creditor relationship for the purposes of its life assurance business, and
- (b) that creditor relationship is one in relation to which section 94A of the Finance Act 1996 would have effect but for the fact that the company accounts for the creditor relationship at fair value through profit and loss,
- this paragraph shall have effect for that accounting period as it would if the creditor relationship were one in relation to which that section has effect.]
- (4) In this paragraph—
- [<sup>F282</sup>“existing asset” means an asset in relation to which paragraph 9(2) of Schedule 10 to the Finance Act 2004 has effect;]
- “mandatorily convertible preference shares” means shares—
- (a) which represent the creditor relationship,
- (b) which are not qualifying ordinary shares, and
- (c) which are issued upon terms that stipulate that they must be converted into, or exchanged for, qualifying ordinary shares by a relevant time, and for this purpose “relevant time” means a time no more than 24 hours after the acquisition of the shares by a person who, immediately before that acquisition, had the creditor relationship;
- “qualifying ordinary shares” means shares in a company (the “relevant company”) which satisfy the Conditions in sub-paragraphs (5) and (6).
- (5) Condition 1 is that the shares are shares representing some or all of the issued share capital (by whatever name called) of the relevant company, other than—
- (a) capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of that company, or
- (b) capital the holders of which have no right to a dividend of any description nor any other right to share in the profits of that company.

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- (6) Condition 2 is that the shares—
- (a) are listed on a recognised stock exchange, or
  - (b) are shares in a holding company or a trading company.
- (7) In sub-paragraph (6)—
- “holding company” has the meaning given in paragraph 22(1) of Schedule A1 to the Taxation of Chargeable Gains Act 1992;
  - “trading company” has the meaning given by paragraph 22A of that Schedule.
- [<sup>F283</sup>(8) The creditor relationship shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of the Taxation of Chargeable Gains Act 1992.]
- [ See also paragraph 45H (treatment of gains and losses on terminal exercise of <sup>F284</sup>(9) option).]

#### Textual Amendments

- F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**
- F279** Sch. 26 para. 45D(2)(b) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(2)(a)**
- F280** Sch. 26 para. 45D(2)(f) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(2)(b)**
- F281** Sch. 26 para. 45D(3A) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(3)**
- F282** Words in Sch. 26 para. 45D(4) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(4)**
- F283** Sch. 26 para. 45D(8) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(5)**
- F284** Sch. 26 para. 45D(9) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **13(6)**

#### Exclusions from paragraph 45D

- 45E. (1) Paragraph 45D does not apply to a derivative contract of a company for an accounting period if any of the following Conditions is satisfied in the case of the derivative contract in the period.
- (2) In this paragraph “the original asset” means the asset that represents the creditor relationship mentioned in paragraph 45D(1).
  - (3) Condition 1 is that the rights and liabilities that fall to be treated as comprised in the derivative contract are such that the extent to which shares may be acquired in accordance with them is to be determined using a cash value—

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- (a) which is specified in the contract for the original asset, or
  - (b) which is or will be ascertainable by reference to that contract.
- (4) Condition 2 is that the rights and liabilities that fall to be treated as comprised in the derivative contract are such that—
- (a) the company is entitled or obliged to receive a payment instead of the shares which are the underlying subject matter of the derivative contract, and
  - (b) the amount of that payment differs by more than an insignificant amount from the value of the shares which the company would be entitled to acquire in accordance with those rights and liabilities at the time it became entitled or obliged to receive the payment.

F285(5) .....

**Textual Amendments**

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**

**F285** Sch. 26 para. 45E(5) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **14**

*Creditor relationships: embedded derivatives which are exactly tracking contracts for differences*

- 45F. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a creditor relationship of the company,
  - (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that creditor relationship,
  - (c) that relevant contract is treated by virtue of subsection (3) of that section as a contract for differences,
  - (d) the additional conditions in sub-paragraph (2) are satisfied.
- (2) The additional conditions are—
- (a) the creditor relationship is not one to which the company is party at any time in the accounting period for the purposes of a trade carried on by the company (but see sub-paragraph (3)),
  - F286(b) .....
  - (c) the underlying subject matter of the derivative contract—
    - (i) is land (wherever situated), or
    - (ii) is qualifying ordinary shares listed on a recognised stock exchange,
  - (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc),
  - (e) the derivative contract is an exactly tracking contract (see sub-paragraphs (4) to (6)).
    - [ the asset representing the creditor relationship is not an existing asset.]

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F287(f)

- (3) The condition in sub-paragraph (2)(a) does not apply if the company—
- (a) is party to the creditor relationship for the purposes of life assurance business, or
  - (b) is a mutual trading company.
- (4) For the purposes of this paragraph “an exactly tracking contract” is a contract for differences where D is equal to the amount determined by applying R% to C, where—
- D is the amount that must be paid to discharge the rights and liabilities that fall to be treated as comprised in the contract;
  - R% is a relevant percentage change in the value of the underlying subject matter of the contract (see sub-paragraph (5));
  - C is the amount falling for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 to be regarded in accordance with generally accepted accounting practice as the initial cost of the asset which represents the creditor relationship.
- (5) In sub-paragraph (4), the reference to a relevant percentage change in the value of the underlying subject matter of the contract is a reference to the percentage change (if any) over the relevant period in—
- (a) the value of the assets which are the underlying subject matter of the contract,
  - (b) or any index of the value of those assets.
- (6) In sub-paragraph (5) “the relevant period” means—
- (a) the period between—
    - (i) the date when the asset representing the creditor relationship came into existence, and
    - (ii) the date when the corresponding debtor relationship comes to an end; or
  - (b) any other period in which almost all of that period is comprised, and which differs from that period exclusively for purposes connected with giving effect to a valuation in relation to rights or liabilities under the asset representing the creditor relationship.
- (7) In this paragraph [F288—
- “existing asset” means an asset in relation to which paragraph 11(2) of Schedule 10 to the Finance Act 2004 has effect;]
  - “qualifying ordinary shares” means shares which satisfy Condition 1 in paragraph 45D(5).
- [F289(8) The creditor relationship shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of the Taxation of Chargeable Gains Act 1992.]

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**

**F286** Sch. 26 para. 45F(2)(b) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **15**

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- F287** Sch. 26 para. 45F(2)(f) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **15(2)**
- F288** Words in Sch. 26 para. 45F(7) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **15(3)**
- F289** Sch. 26 para. 45F(8) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **15(4)**

*Creditor relationships: existing assets*

- [ **F290** (1) Where paragraph 45D or 45F would apply to a derivative contract for an accounting period but for sub-paragraph (2)(f) of that paragraph—
- (a) paragraph 14(3) (non-trading credits and debits) shall not apply to the relevant credits and debits, and
  - (b) the creditor relationship by virtue of which paragraph 45D or 45F would so apply to that derivative contract shall not be treated as a qualifying corporate bond by virtue of section 117(A1) of the Taxation of Chargeable Gains Act 1992.
- (2) For the purposes of this paragraph the relevant credits and debits are the credits and debits given in relation to the contract for the accounting period by paragraph 15.]

**Textual Amendments**

- F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**
- F290** Sch. 26 para. 45FA inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **16**

*Property based total return swaps*

- 45G. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) the derivative contract is a contract for differences,
  - (b) one or more indices are designated in the contract,
  - (c) at least one index so designated (the “capital value index”) is an index of changes in the value of land (wherever situated),
  - (d) the underlying subject matter of the derivative contract also includes interest rates.
- [ **F291** (e) the additional conditions in sub-paragraph (1A) are satisfied.
- (1A) The additional conditions are—
- (a) the derivative contract is not one to which the company is party at any time in the accounting period for the purposes of a trade carried on by the company (but see sub-paragraph (1B)), and



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- (b) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).
- (1B) The condition in sub-paragraph (1A)(a) does not apply if the company—
- (a) is party to the derivative contract for the purposes of life assurance business, or
  - (b) is a mutual trading company.]
- (2) In any such case, the relevant credits and debits for the purposes of paragraph 45A(3) are those which—
- (a) are given in relation to the derivative contract for the accounting period by paragraph 15, and
  - (b) fall within sub-paragraph (3).
- (3) The credits and debits are those found for the period by applying R% to N, where—
- N is the amount which is the notional principal amount in the case of the derivative contract;
  - R% is the percentage change (if any) in the capital value index over the relevant period.
- (4) In sub-paragraph (3) “the relevant period” means—
- (a) the accounting period, if the company is party to the derivative contract throughout that period;
  - (b) in any other case, any part of the accounting period throughout which the company is party to the derivative contract.

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**

**F291** Sch. 26 para. 45G(1)(e), (1A)(1B) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **8**

#### *Treatment of net gains and losses on terminal exercise of option*

- [ (1) This paragraph applies where—
- <sup>F292</sup>45H. (a) a derivative contract is one to which paragraph 45D applies for an accounting period,
- (b) rights that fall to be treated as comprised in the derivative contract are [<sup>F293</sup>to any extent exercised or otherwise disposed of] in the accounting period, and
- (c) those rights are rights to acquire shares.
- (2) In any such case—
- (a) sub-paragraph (3) has effect in relation to a disposal of the asset representing the creditor relationship mentioned in paragraph 45D(1)(b) (“the associated creditor relationship”), and
  - (b) sub-paragraph (4) has effect in relation to a disposal of all or any of the shares (“the relevant shares”) acquired—

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*Changes to legislation: Finance Act 2002 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F294</sup>(i) as a result of the exercise of rights mentioned in sub-paragraph (1)(b); and  
(ii) in circumstances where a disposal is deemed not to occur by virtue of section 127 of the Taxation of Chargeable Gains Act 1992.]
- (3) For the purpose of computing any chargeable gain accruing to the company on a disposal of the asset representing the associated creditor relationship, the sums allowable as a deduction under section 38(1)(a) of the Taxation of Chargeable Gains Act 1992 (acquisition costs) shall—
- (a) if G exceeds L, be increased by the amount of that excess,
  - (b) if L exceeds G, be reduced by the amount of that excess.
- (4) For the purpose of computing any chargeable gain accruing to the company on a disposal of all the relevant shares, the sums allowable as a deduction under section 38(1)(a) of the Taxation of Chargeable Gains Act 1992 (acquisition costs) shall—
- (a) if G exceeds L, be increased by the amount of that excess,
  - (b) if L exceeds G, be reduced by the amount of that excess,
- and, in the case of a part disposal of those shares, section 42(2) of that Act shall have effect accordingly.
- (5) If the amount of the excess in sub-paragraph (3)(b) or (4)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of the Taxation of Chargeable Gains Act 1992, the amount of the excess that cannot be deducted from the expenditure so allowable shall, for the purpose mentioned in sub-paragraph (3) or (4) (as the case may be), be added to the amount of the consideration for the disposal of the shares.
- (6) In this paragraph—
- G is the sum of—
- (a) the initial carrying value of the derivative contract, and
  - (b) the amounts of any chargeable gains treated as accruing to the company under paragraph 45A(4)(a) in respect of the derivative contract in each relevant accounting period, so far as referable, on a just and reasonable apportionment, to the shares acquired as a result of the exercise of rights mentioned in sub-paragraph (1)(b);
- L is the sum of the amounts of any allowable losses treated as accruing to the company under paragraph 45A(4)(b) in respect of the derivative contract in each relevant accounting period, so far as so referable.
- (7) For the purposes of sub-paragraph (6)—
- (a) the “initial carrying value” of the derivative contract is the amount treated in accordance with section 94A(2) of the Finance Act 1996 as the carrying value of the derivative contract at the time the company became party to the loan relationship;
  - (b) a “relevant accounting period” is—
    - (i) the accounting period in which the disposal in question is made, or
    - (ii) any previous accounting period.

**Status:** Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.

**Changes to legislation:** Finance Act 2002 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

- F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**
- F292** Sch. 26 paras. 45H, 45HA inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **17**
- F293** Words in Sch. 26 para. 45H(1)(b) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **9(2)**
- F294** Sch. 26 para. 45H(2)(b)(i)(ii) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **9(3)**

### *Treatment of credits and debits on terminal exercise of option*

45HA.(1) This paragraph applies where—

- (a) a company is a party to a derivative contract in an accounting period otherwise than by virtue of section 94A(2)(b) of the Finance Act 1996,
- (b) the derivative contract is an option,
- (c) rights comprised in the derivative contract are exercised to any extent in that accounting period, and
- (d) those rights are rights to acquire shares.

(2) In any such case, for the purpose of computing any chargeable gain accruing to the company on a disposal by it of all the shares so acquired, the sums allowable as a deduction under section 38(1)(a) of the Taxation of Chargeable Gains Act 1992 (acquisition costs) shall—

- (a) if G exceeds L, be increased by the amount of that excess,
- (b) if L exceeds G, be reduced by the amount of that excess,

and, in the case of a part disposal of those shares, section 42(2) of that Act shall have effect accordingly.

(3) If the amount of the excess in sub-paragraph (2)(b) is greater than the amount of expenditure allowable under section 38(1)(a) of the Taxation of Chargeable Gains Act 1992, the amount of the excess that cannot be deducted from the expenditure so allowable shall, for the purpose mentioned in sub-paragraph (2), be added to the amount of the consideration for the disposal of the shares.

(4) In this paragraph—

G is the sum of the credits brought into account under [F<sup>295</sup> paragraph 14(3)] in respect of the derivative contract in each relevant accounting period so far as referable, on a just and reasonable apportionment, to the shares acquired as a result of the exercise of the rights mentioned in sub-paragraph (1)(b);

L is the sum of the debits brought into account under [F<sup>295</sup> paragraph 14(3)] in respect of the derivative contract in each relevant accounting period, so far as so referable.

(5) For the purposes of sub-paragraph (4), a “relevant accounting period” is—

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- (a) the accounting period in which the disposal in question is made, or
- (b) any previous accounting period.]

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**

**F292** Sch. 26 paras. 45H, 45HA inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **17**

**F295** Words in Sch. 26 para. 45HA(4) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **10**

*Paragraph 45D: treatment of net gains and losses on terminal exercise of option*

<sup>F296</sup>45H. ....

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **15**

**F296** Sch. 26 para. 45H omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **9**

*Index-linked gilt-edged securities with embedded contracts for differences*

- 45I. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—
- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a creditor relationship of the company,
  - (b) that creditor relationship is an index-linked gilt-edged security,
  - (c) the credits and debits which fall to be brought into account for the accounting period for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of the equivalent deemed loan relationship are non-trading credits and non-trading debits,
  - (d) the derivative contract is the relevant contract to which the company is treated under subsection (2)(b) of section 94A of the Finance Act 1996 as party in the case of the creditor relationship,
  - (e) that relevant contract is treated by virtue of subsection (3) of that section as a contract for differences.
- (2) The credits and debits that would, apart from this paragraph, fall to be brought into account under this Schedule in respect of the derivative contract for the accounting period shall not be so brought into account.
- (3) In this paragraph—

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“the equivalent deemed loan relationship” is the loan relationship to which, in the case of the creditor relationship, the company is treated as party under section 94A(2)(a) of the Finance Act 1996;

“gilt-edged security” has the meaning given by section 103(1) of the Finance Act 1996;

“index-linked gilt-edged security” means any gilt-edged security the amount of the payments under which is determined wholly or partly by reference to the retail prices index;

“the retail prices index” has the same meaning as in the Income Tax Acts (see section 833(2) of the Taxes Act 1988).]

#### Textual Amendments

**F276** Sch. 26 paras. 45A-45I inserted (with effect in accordance with art. 1(2)(3)(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), 15

#### *Issuers of securities with embedded derivatives: deemed options*

[<sup>F297</sup>45(1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a debtor relationship of the company,
- (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that debtor relationship,
- (c) that relevant contract is treated by virtue of subsection (3) of that section as an option,
- (d) the additional conditions in sub-paragraph (2) are satisfied,

(2) The additional conditions are—

- (a) at the time when the company became party to the debtor relationship—
  - (i) it was not carrying on a banking business or a business as a securities house, or
  - (ii) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business,

<sup>F298</sup>(b) .....

- (c) the underlying subject matter of the derivative contract is shares,
- (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).

(3) Where this paragraph applies to a derivative contract for an accounting period—

- (a) paragraph [<sup>F299</sup>14(2) and (3) (trading and non-trading] credits and debits) shall not apply to the credits and debits given in relation to the contract for the accounting period by paragraph 15, but
- (b) sub-paragraph (5), (7) or (9) (as the case may be) of this paragraph shall, subject to sub-paragraph (4), apply instead.

[<sup>F300</sup>(4) If the company was a party to the debtor relationship immediately before its first accounting period to begin on or after 1st January 2005—

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- (a) sub-paragraphs (5) and (9) do not apply, but
- (b) where sub-paragraph (7) applies, E shall be taken to be nil and an allowable loss of an amount equal to F shall accordingly be treated as accruing to the company in the accounting period there mentioned.]

[<sup>F301</sup>(4A) Sub-paragraph (5) applies if—

- (a) the option mentioned in sub-paragraph (1)(c) is exercised at any time in an accounting period, and
- (b) shares are issued or transferred in fulfilment of the obligations under the option (the “relevant disposal”).

(5) Where this sub-paragraph applies—

- (a) section 144(2) of the Taxation of Chargeable Gains Act 1992 (exercise of options) applies to the relevant disposal as if the amount treated in accordance with section 94A(2) of the Finance Act 1996 as the carrying value of the option at the time the company became party to the loan relationship (the “initial carrying value”) was the consideration for the grant of the option;
- (b) to the extent that it would otherwise apply, section 17(1) of the Taxation of Chargeable Gains Act 1992 (deemed market value consideration) does not apply to the relevant disposal.]

(6) Sub-paragraph (7) applies if—

- (a) the option mentioned in sub-paragraph (1)(c) is exercised at any time in an accounting period,
- (b) there is no relevant disposal, and
- (c) an amount is paid in fulfilment of the obligations under the option.

(7) Where this sub-paragraph applies—

- (a) if E exceeds F, a chargeable gain equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,
- (b) if F exceeds E, an allowable loss equal in amount to the amount of the excess shall be treated as accruing to the company in the accounting period,

(8) In sub-paragraph (7)—

E is the initial [<sup>F302</sup>carrying value] of the option;

[<sup>F303</sup>F is—

- (a) the amount paid [<sup>F304</sup>by the debtor] in fulfilment of the obligations under the option, unless paragraph (b) applies, or
- (b) where a single amount is paid in fulfilment of the obligations under the debtor relationship, the part of the amount which falls to be treated for accounting purposes as the amount relating to the option.]

[<sup>F305</sup>(9) This sub-paragraph applies if the company ceases to be a party to the debtor relationship at a time when the option mentioned in sub-paragraph (1)(c) has not been exercised, and where it applies the company is treated for the purposes of corporation tax on chargeable gains—

- (a) as having acquired the option for a consideration equal to so much of any amount paid by the company in consideration for it ceasing to be a party to the debtor relationship as falls to be treated for accounting purposes as the amount relating to the option, and

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(b) as having disposed of the option for a consideration equal to the initial carrying value.]

(10) In this paragraph—

“option” has the same meaning as in paragraph 12, apart from subparagraph (10);

“securities house” means a person—

(a) who is authorised for the purposes of the Financial Services and Markets Act 2000, and

(b) whose business consists wholly or mainly of dealing as a principal in financial instruments within the meaning of section 349(5) and (6) of the Taxes Act 1988.

#### Textual Amendments

**F297** Sch. 26 paras. 45J–45L inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2004 (S.I. 2004/3270), arts. 1(1), **10**

**F298** Sch. 26 para. 45J(2)(b) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment) Order 2005 (S.I. 2005/646), arts. 1(1), **16**

**F299** Words in Sch. 26 para. 45J(3)(a) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **18(2)**

**F300** Sch. 26 para. 45J(4) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **18(3)**

**F301** Sch. 26 para. 45J(4A)(5) substituted for Sch. 26 para. 45J(5) (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **18(4)**

**F302** Words in Sch. 26 para. 45J(8) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **18(5)(a)**

**F303** Words in Sch. 26 para. 45J(8) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **18(5)(b)**

**F304** Words in Sch. 26 para. 45J(8) inserted (with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2002, Schedule 26 (Parts 2 and 9) (Amendment No. 3) Order 2005 (S.I. 2005/3440), arts. 1, **11**

**F305** Sch. 26 para. 45J(9) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2005 (S.I. 2005/2082), arts. 1(2), **18(6)**

#### *Issuers of securities with embedded derivatives: equity instruments*

[ (1) This paragraph applies to a company for an accounting period if the following conditions are satisfied—

<sup>F306</sup>45JA

(a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a debtor relationship of the company,

(b) the division mentioned in subsection (1) of that section in the case of that debtor relationship is between—

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- (i) rights and liabilities under a loan relationship, and
  - (ii) rights and liabilities under an equity instrument,
  - (c) in the case of that debtor relationship, the company is treated under subsection (2)(b)(i) of that section as party to a relevant contract,
  - (d) the relevant contract is treated by virtue of subsection (3) of that section as an option,
  - (e) the relevant contract is not a derivative contract,
  - (f) the company pays an amount in the accounting period to the person who is party to the loan relationship as creditor in discharge of any obligations under that relationship,
  - (g) the additional conditions in sub-paragraph (2) are satisfied.
- (2) The additional conditions are—
- (a) at the time when the company became party to the debtor relationship—
    - (i) it was not carrying on a banking business or a business as a securities house, or
    - (ii) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business;
  - (b) the liability representing the debtor relationship was not owed by the company immediately before its first accounting period to begin on or after 1st January 2005; and
  - (c) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc.).
- (3) If RA exceeds E, an allowable loss equal to the amount of the excess shall be treated as accruing to the company for the purposes of corporation tax on chargeable gains in the accounting period.
- (4) In sub-paragraph (3)—
- RA is—
- (a) the amount paid as mentioned in sub-paragraph (1)(f), less
  - (b) so much of that amount as is treated for accounting purposes as paid in discharge of the liabilities mentioned in sub-paragraph (1)(b)(i);
- E is the amount treated in accordance with section 94A(2) of the Finance Act 1996 as the carrying value of the relevant contract at the time the company became party to the debtor relationship.
- (5) In this paragraph “option” and “securities house” have the same meaning as in paragraph 45J(10).]

#### Textual Amendments

**F297** Sch. 26 paras. 45J-45L inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **10**

**F306** Sch. 26 para. 45JA inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **19**



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*Changes to legislation:* Finance Act 2002 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*Issuers of securities with embedded derivatives: deemed contracts for differences*

45K. (1) This paragraph applies to a derivative contract of a company for an accounting period if the following conditions are satisfied—

- (a) section 94A of the Finance Act 1996 (loan relationships with embedded derivatives) has effect in relation to a debtor relationship of the company,
- (b) the derivative contract is the relevant contract, or one of the relevant contracts, to which the company is treated under subsection (2)(b) of that section as party in the case of that debtor relationship,
- (c) the relevant contract is treated by virtue of subsection (3) of that section as a contract for differences (other than one which falls within paragraph 45J), and
- <sup>F307</sup>(d) the derivative contract—
  - (i) is an exactly tracking contract, within the meaning of paragraph 45F, or
  - (ii) would be such a contract but for any condition in it that D cannot be less than 90% of C (where D and C have the same meaning as in paragraph 45F(4)), and]
- (e) the additional conditions in sub-paragraph (2) are satisfied.

(2) The additional conditions are—

- (a) at the time when the company became party to the debtor relationship—
  - (i) it was not carrying on a banking business or a business as a securities house, or
  - (ii) if it was carrying on such a business, it did not become party to the debtor relationship in the ordinary course of that business,

<sup>F308</sup>(b) .....

- (c) the underlying subject matter of the derivative contract is land (wherever situated) or shares,
- (d) the company is not a body falling within paragraph 45C(3) (authorised unit trusts etc).

<sup>F309</sup>(e) [ the liability representing the debtor relationship was not owed by the company immediately before its first accounting period to begin on or after 1st January 2005.]

(3) Where this paragraph applies to a derivative contract for an accounting <sup>F310</sup>period—

- (a) paragraph 14(2) and (3) (trading and non-trading] credits and debits) shall not apply to credits and debits given in relation to the contract for the accounting period by paragraph 15<sup>F311</sup>, but
- (b) sub-paragraph (3A) shall have effect.]

[ Where—

- <sup>F312</sup>(3A) (a) the debtor relationship comes to an end, and
- (b) an amount (“the discharge amount”) is paid to discharge all the company’s obligations under that relationship,

then, for the purposes of corporation tax on chargeable gains, there shall be treated as accruing to the company a chargeable gain or allowable loss of an amount determined in accordance with sub-paragraph (3B).

(3B) That amount is the amount of the gain or loss (as the case may be) that would accrue on the assumption that—

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- (a) the derivative contract is an asset of the company,
- (b) there is a disposal of that asset at the time when the debtor relationship comes to an end,
- (c) the consideration for the disposal of that asset is equal to the amount of the proceeds of issue of the security representing the debtor relationship, and
- (d) the cost of the asset is equal to the discharge amount.]

(4) In this paragraph “securities house” has the same meaning as in paragraph 45J (see sub-paragraph (10) of that paragraph).

#### Textual Amendments

- F297** Sch. 26 paras. 45J-45L inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **10**
- F307** Sch. 26 para. 45K(1)(d) substituted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **20(2)**
- F308** Sch. 26 para. 45K(2)(b) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **17**
- F309** Sch. 26 para. 45K(2)(e) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **20(3)**
- F310** Sch. 26 para. 45K(3)(a) substituted for words (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **20(4)(a)**
- F311** Sch. 26 para. 45K(3)(b) and word inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **20(4)(b)**
- F312** Sch. 26 para. 45K(3A)(3B) inserted (with effect in accordance with art. 1(3) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **20(5)**

#### *Derivatives not embedded in a loan relationship*

45L. (1) [<sup>F313</sup>This paragraph applies where]—

- (a) a company is treated under paragraph 2(4) as party to [<sup>F314</sup>an embedded derivative contract], <sup>F315</sup> ...
  - [<sup>F316</sup>(aa) the contract is a derivative contract falling within paragraph 3(1)(a),
  - (ab) paragraph 45M does not apply in relation to the contract,]
  - (b) regulation 9 of the Disregard Regulations (interest rate contracts) does not apply to the contract [<sup>F317</sup>, and
  - (c) no election having effect in relation to the derivative contract is or has been made under sub-paragraph (2A),]

<sup>F318</sup> ...

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[<sup>F319</sup>(1A) In this paragraph “the original contract” means the contract mentioned in paragraph 2(3) to which the company is party and as a result of which the company falls to be treated by virtue of paragraph 2(4) as a party to the derivative contract.

(1B) Where this paragraph applies—

- (a) paragraph 14(2) and (3) (trading and non-trading credits and debits) do not apply in relation to the derivative contract, but
- (b) sub-paragraph (1C) or (2) applies in relation to the original contract, according to whether or not that contract is a derivative contract.

(1C) If the original contract is a derivative contract, profits and losses are to be computed for the purposes of this Schedule as if that contract—

- (a) were not one where the rights and liabilities are treated as divided as mentioned in paragraph 2(3), and
- (b) were not one in relation to which a fair value basis of accounting is used.

(2) If the original contract is not a derivative contract, profits and losses are to be brought into account for the purposes of the Corporation Tax Acts in relation to that contract as if that contract—

- (a) were not one where the rights and liabilities are treated as divided as mentioned in paragraph 2(3), and
- (b) were not one in relation to which a fair value basis of accounting is used.

This sub-paragraph has effect notwithstanding paragraph 1(2).]

(2A) A company may elect that this paragraph is not to apply to any of its contracts [<sup>F320</sup>unless—

- (a) the contract is a contract of long-term insurance, or
- (b) the underlying subject matter of the embedded derivative contract is, or includes, commodities.

Paragraph 45LA contains further provisions about elections under this sub-paragraph.]

(2B) Any such election—

- (a) must be made by giving notice in writing to Her Majesty’s Revenue and Customs,
- (b) must be made before the end of the first applicable accounting period of the company, and
- (c) is irrevocable.

(2C) For the purposes of sub-paragraph (2B), the “first applicable accounting period” is the first accounting period ending on or after 17th August 2005 in which the conditions in paragraphs (a) to (b) of sub-paragraph (1) are satisfied.

(3) In this paragraph “the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004.]

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### Textual Amendments

- F297** Sch. 26 paras. 45J-45L inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2004 \(S.I. 2004/3270\)](#), arts. 1(1), **10**
- F313** Words in Sch. 26 para. 45L(1) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(2)(a)**
- F314** Words in Sch. 26 para. 45L(1)(a) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(2)(b)**
- F315** Word in Sch. 26 para. 45L(1)(a) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **21(2)(b)**
- F316** Sch. 26 para. 45L(1)(aa)(ab) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **21(2)(c)**
- F317** Sch. 26 para. 45L(1)(c) and word inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **21(2)(d)**
- F318** Words in Sch. 26 para. 45L(1) omitted (with effect in accordance with art. 1 of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(2)(c)**
- F319** Sch. 26 paras. 45L(1A)-(1C)(2) substituted for Sch. 26 para. 45L(2) (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(3)**
- F320** Words in Sch. 26 para. 45L(2A) added (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **12(4)**

### *Elections under paragraph 45L(2A): further provisions*

<sup>F321</sup>45L(1A). In this paragraph “a disapplication election” means an election under paragraph 45L(2A).

- (2) Where—
- (a) a company makes a disapplication election in relation to its contracts, and
  - (b) another company, which is a member of the same group as the company making the election, is a party to a contract to which the election applies,
- the other company shall be treated, in relation to that contract, as if it had also made a disapplication election.
- (3) Where—
- (a) a company (“the electing company”) makes a disapplication election in relation to its contracts,
  - (b) another company (“the transferee”) becomes party to a contract, to which paragraph 2(3) applies, in place of the electing company (whether before or after the disapplication election is made), and
  - (c) the transferee is a member of the same group of companies as the electing company at the time of the transfer,

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the transferee shall be treated, in relation to the contract referred to in paragraph (b), as if it had also made a disapplication election.

- (4) Where—
- (a) a company (“A”) is treated under paragraph 2(4) as party to a relevant contract to which paragraph 45L(1) applies,
  - (b) another company (“B”), becomes a party to that contract in place of A,
  - (c) A and B are members of the same group of companies when B becomes a party to the contract, and
  - (d) paragraph 45L(1) does not apply to B’s other relevant contracts by reason of a disapplication election (whenever made),
- sub-paragraph (5) applies, unless A, subsequent to B’s becoming party to the contract, makes a disapplication election.
- (5) Where this sub-paragraph applies B shall be treated, in relation to the contract referred to in sub-paragraph (4)(b), as if paragraph 45L(1) applied to it.
- (6) In this paragraph references to companies being members of the same group of companies shall be construed in accordance with section 170 of the Taxation of Chargeable Gains Act 1992.]

#### Textual Amendments

**F321** Sch. 26 para. 45LA and cross-heading inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, 13

#### *Treatment of host contract as a loan relationship*

- [<sup>F322</sup>45L] This paragraph applies where [<sup>F323</sup>for an accounting period] —
- (a) a company is treated under paragraph 2(4) as party to a [<sup>F324</sup>embedded derivative contract],
  - [<sup>F325</sup>(b) the contract is a derivative contract falling within paragraph 3(1)(a) or (b),]
  - (c) the underlying subject matter of that contract consists, or is treated as consisting, wholly of—
    - (i) shares in a company, or
    - (ii) rights of a unit holder under a unit trust scheme<sup>F326</sup>, and
  - (d) the host contract is treated for accounting purposes as, or as forming part of, a financial asset.]
- (2) Where this paragraph applies—
- (a) the host contract shall be treated for the purposes of the Corporation Tax Acts as if it were a creditor relationship of the company<sup>F327</sup> ..., and
  - (b) the derivative contract shall be treated as satisfying the conditions in paragraph 4(2A).
- <sup>F328</sup>(3) .....
- (4) Paragraph 9 applies for the purpose of determining whether the underlying subject matter is to be treated as consisting wholly of property referred to in sub-paragraph (1)(c).

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- [ For the purposes of sub-paragraph (1)(d), the host contract is treated for accounting purposes as, or as forming part of, a financial asset for an accounting period if, for that accounting period,—
- <sup>F329</sup>(5) purposes as, or as forming part of, a financial asset for an accounting period if, for that accounting period,—
- (a) it is so treated for the purposes of the relevant accounting standard used by the company for that accounting period, or
  - (b) it would be so treated if the company used a relevant accounting standard for that accounting period in respect of the host contract.
- (6) Sub-paragraph (5) of paragraph 3 (meaning of “relevant accounting standard”) applies for the purposes of sub-paragraph (5) as it applies for the purposes of sub-paragraphs (3) and (4) of that paragraph.]]

#### Textual Amendments

- F322** Sch. 26 para. 45M inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **18**
- F323** Words in Sch. 26 para. 45M(1) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(2)(a)**
- F324** Words in Sch. 26 para. 45M(1)(a) substituted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, **14**
- F325** Sch. 26 para. 45M(1)(b) substituted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(2)(c)**
- F326** Sch. 26 para. 45M(1)(d) and word inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(2)(d)**
- F327** Words in Sch. 26 para. 45M(2)(a) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(3)**
- F328** Sch. 26 para. 45M(3) omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(4)**
- F329** Sch. 26 para. 45M(5)(6) inserted (with effect in accordance with art. 1(4) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **22(5)**

#### *Contracts where part of underlying subject matter of excluded type*

- 46 (1) This paragraph applies to a relevant contract of a company—
- (a) which is an option or future,
  - (b) which satisfies the requirements of paragraph (accounting requirements etc), and
  - (c) whose underlying subject matter falls within sub-paragraph (2).
- (2) The underlying subject matter of a relevant contract falls within this sub-paragraph if it consists of—
- (a) any one or more of the excluded types of property falling within paragraphs <sup>F330</sup>(a) and (b)] of sub-paragraph (2) of paragraph 4, and
  - (b) underlying subject matter other than that referred to in paragraph (a).

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- (3) Where this paragraph applies to a relevant contract of a company, it shall be treated for the purposes of the Corporation Tax Acts as if it were two separate contracts, namely—
- (a) a relevant contract of the company whose underlying subject matter consists of the excluded types of property referred to in sub-paragraph (2)(a), and
  - (b) a relevant contract of the company whose underlying subject matter consists of the underlying subject matter referred to in sub-paragraph (2)(b).
- (4) For the purposes of giving effect to sub-paragraph (3) all such apportionments as are just and reasonable shall be made.
- (5) This paragraph does not apply to a relevant contract if it is determined in accordance with paragraph 9 that the underlying subject matter of the relevant contract in question is to be treated as consisting wholly of any one or more of the excluded types of property referred to in sub-paragraph (2)(a).

**Textual Amendments**

**F330** Words in Sch. 26 para. 46(2)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **19**

*Contracts where underlying subject matter of different excluded types*

**F331** 47 .....

**Textual Amendments**

**F331** Sch. 26 para. 47 omitted (with effect in accordance with art. 1(3)(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), **17**

*Election to treat contract as two assets*

**F332** 48 .....

**Textual Amendments**

**F332** Sch. 26 para. 48 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2005 \(S.I. 2005/646\)](#), arts. 1(1), **20**

*Embedded derivatives in connected party loans*

**F333** 48A .....

**Textual Amendments**

**F333** Sch. 26 para. 48A omitted (with effect in accordance with art. 1(4) of the amending S.I.) by virtue of [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment No. 2\) Order 2005 \(S.I. 2005/2082\)](#), arts. 1(2), **23**

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### *Partnerships involving companies*

- 49 (1) This paragraph applies where—
- (a) a trade, profession or business is carried on by persons in partnership (“the firm”);
  - (b) any of those persons is a company (a “company partner”); and
  - (c) the firm is party to a contract which is a derivative contract or would be a derivative contract if the firm were a company.
- (2) In any such case—
- (a) in computing the profits and losses of the trade, profession or business for the purposes of corporation tax in accordance with section 114(1) of the Taxes Act 1988 (computation as if the partnership were a company) no credits or debits shall be brought into account under this Schedule in respect of the contract; but
  - (b) credits and debits shall be brought into account under this Schedule in respect of the contract in accordance with the following provisions of this paragraph by each company partner for each of its accounting periods in which the conditions in sub-paragraph (1) are satisfied.
- (3) The credits and debits to be brought into account as mentioned in sub-paragraph (2) (b) shall be determined separately in the case of each company partner.
- (4) For the purpose of determining those credits and debits in the case of any particular company partner—
- (a) the contract entered into or acquired by the firm shall be treated as if it were instead entered into or acquired by that company partner, for the purposes of the trade, profession or business which that company partner carries on,
  - (b) anything done by or in relation to the firm in connection with the contract shall be treated as done by or in relation to the company partner, and
  - <sup>[F334]</sup>(c) to the extent that any exchange gains or losses arising from the contract are recognised in the firm’s statement of recognised gains and losses or statement of changes in equity, the exchange gains or losses shall to that extent be treated as if they had been recognised in the corresponding statement of the company partner.]
- and credits and debits (the “gross credits and debits”) shall be determined accordingly.
- (5) The credits and debits to be brought into account under this Schedule pursuant to sub-paragraph (2)(b) in the case of any particular company partner shall be that company partner’s appropriate share of the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner.
- (6) For the purposes of sub-paragraph (5), the “appropriate share”, in the case of a company partner, is the share that would be apportioned to that company partner if—
- (a) the gross credits and debits determined in accordance with sub-paragraph (4) in the case of that company partner fell to be apportioned between the partners; and
  - (b) the apportionment fell to be made in the shares in which any profit or loss computed in accordance with subsection (1) of section 114 of the Taxes Act 1988 would be apportioned between them under subsection (2) of that section.



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#### Textual Amendments

**F334** Sch. 26 para. 49(4)(c) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 65](#)

#### *Partnerships involving companies: use of fair value accounting*

<sup>F335</sup>50(1) Where the company partner uses fair value accounting in relation to its interest in the firm, the debits and credits to be brought into account under paragraph 49 by that company must be determined on the basis of fair value accounting.

(2) In this paragraph “company partner” and “firm” have the same meaning as in paragraph 49.]

#### Textual Amendments

**F335** Sch. 26 para. 50 substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 66](#)

#### *Adjustment on company changing to international accounting standards*

<sup>F336</sup>~~50~~<sup>F337</sup>(A) This paragraph applies where—

- (a) there is a change of accounting policy in drawing up a company’s accounts from one period of account (the “earlier period”) to the next (the “later period”), and
- (b) the approach in each of those periods accorded with the law and practice applicable in relation to that period.

(1A) This paragraph applies, in particular, where—

- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
- (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice. ]

(2) For the purposes of this paragraph the “carrying value” of a contract includes amounts recognised for accounting purposes in relation to the contract in respect of— If there is a difference between—

- (a) the accounting value of a derivative contract of the company at the end of the earlier period, and
  - (b) the accounting value of that contract at the beginning of the later period,
- a corresponding debit or credit (as the case may be) shall be brought into account for the purposes of this Schedule in the later period.

(3) In sub-paragraph (2) “accounting value” means <sup>F338</sup>subject to paragraph (3B),] the carrying value of the contract recognised for accounting purposes.

[ For the purposes of this paragraph the “carrying value” of a contract includes <sup>F339</sup>(3A) amounts recognised for accounting purposes in relation to the contract in respect of—

- (a) accrued amounts;

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- (b) amounts paid or received in advance;
- (c) impairment losses (including provisions for bad or doubtful debts).

(3B) In determining the profits, gains and losses to be recognised in determining the carrying value of the contract for the purposes of this paragraph, the following provisions—

- (a) section 94A(2) of the Finance Act 1996(2) (loan relationships with embedded derivatives), and
- (b) paragraphs 21 and 28 of this Schedule

apply as they apply for the purposes of determining the credits and debits to be brought into account under this Schedule.

(3C) Where—

- (a) a company has ceased to be a party to a derivative contract,
- (b) paragraph 53(3) of this Schedule (credits and debits to be brought into account in respect of profits and losses arising in the cessation period) applied to the cessation, and
- (c) there is a difference between—
  - (i) the amount outstanding in respect of the derivative contract at the end of the earlier period, and
  - (i) the amount outstanding in respect of the derivative contract at the beginning of the later period,

a debit or credit (as the case may be) corresponding to that difference shall be treated as a debit or credit falling within sub-paragraph (2).

(3D) In sub-paragraph (3C), “the amount outstanding”, in respect of a derivative contract, means so much of the amount recognised as deferred income or deferred loss in the company’s balance sheet, in accordance with generally accepted accounting practice, in respect of the profits, gains or losses that arose from that relationship or a related transaction in the cessation period (within the meaning of section 103(6)) as has not been represented by debits or credits brought into account under this Schedule.]

<sup>F340</sup>(4)] .....

[<sup>F341</sup>(5) This paragraph does not apply if or to the extent that such a debit or credit as is mentioned in sub-paragraph (2) falls to be brought into account apart from this paragraph]

#### Textual Amendments

**F336** Sch. 26 para. 50A inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 67](#)

**F337** Sch. 26 para. 50A(1)(1A) substituted for Sch. 26 para. 50A(1) (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(2)

**F338** Words in Sch. 26 para. 50A(3) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(3)

**F339** Sch. 26 para. 50A(3A)-(3D) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2004 ([S.I. 2004/3270](#)), art. 12(4)

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**F340** Sch. 26 para. 50A(4) omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2004 (S.I. 2004/3270), art. 12(5)

**F341** Sch. 26 para. 50A(5) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2002, Schedule 26, Parts 2 and 9 (Amendment No. 2) Order 2004 (S.I. 2004/3270), art. 12(6)

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

**C28** Sch. 26 para. 50A applied by 2005 c. 22, Sch. 6, para. 7(6)

*Prevention of deduction of tax*

51 Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, where the profits and losses arising from a derivative contract of a company are computed in accordance with this Schedule, the company shall not be required, on making a payment under the contract, to deduct out of it any sum representing an amount of income tax on it.

**PART 10**

INTERPRETATION

*Statutory accounts*

**F342** 52 .....

**Textual Amendments**

**F342** Sch. 26 para. 52 repealed (with effect in accordance with s. 52(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 10 para. 68, Sch. 42 Pt. 2(6)

*Derivative and relevant contracts of person*

53 (1) For the purposes of this Schedule references to a relevant contract of a person are references to a relevant contract entered into or acquired by a person; and references to a person's being party to a relevant contract shall be construed accordingly.

(2) For the purposes of sub-paragraph (1), a relevant contract is acquired by a person if that person becomes entitled to the rights, and subject to the liabilities, under the relevant contract whether by assignment or otherwise.

(3) Where—

- (a) a company ceases to be party to a derivative contract in an accounting period (the “cessation period”),
- (b) profits or losses arise to the company from the derivative contract or a related transaction in the cessation period, and
- (c) the credits or debits brought into account for the purposes of this Schedule for the cessation period do not include credits or debits which represent the whole of those profits or losses,

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credits or debits in respect of so much of those profits or losses as are not represented by credits or debits brought into account for the cessation period shall continue to be brought into account under this Schedule over one or more subsequent accounting periods (“post-cessation periods”) as in the case of a derivative contract to which the company is party in those periods and sub-paragraphs (4) and (5) shall apply.

- (4) In any case falling within sub-paragraph (3), any question—
- (a) whether, in a post-cessation period, the company is, or is to any extent, party to the contract for the purposes of a trade carried on by it, or
  - (b) whether, in a post-cessation period, the contract is to any extent referable to a particular business, or a particular class, category or description of business, carried on by the company,

shall be determined by reference to the circumstances immediately before the company ceased to be party to the contract instead of the circumstances in the post-cessation period.

- (5) In any case falling within sub-paragraph (3), any question—
- (a) whether the contract has to any extent a particular purpose in a post-cessation period, or
  - (b) whether there is a connection between the company and any other person for a post-cessation period,

shall be determined by reference to the circumstances in the cessation period instead of the circumstances in the post-cessation period.

- (6) For the purposes of the Corporation Tax Acts references to a person’s derivative contracts and to a person’s being party to a derivative contract shall be construed accordingly.

### *General interpretation*

- 54 (1) In this Schedule—

<sup>F343</sup>  
...

“bank” means any of the following—

- (a) the Bank of England;
- (b) any person falling within section 840A(1)(b) of the Taxes Act 1988; and
- (c) any firm falling within section 840A(1)(c) of that Act;

“contract for differences” shall be construed in accordance with paragraph 12;

“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

[<sup>F344</sup>“creditor relationship” has the meaning given by section 103(1) of the Finance Act 1996;

“debtor relationship” has the meaning given by section 103(1) of the Finance Act 1996;]

“derivative contract” shall be construed in accordance with paragraph 2;

[<sup>F345</sup>“embedded derivative contract” shall be construed in accordance with paragraph 2(5);]

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“exchange gain” and “exchange loss” shall be construed in accordance with sub-paragraphs (2) [F346, (2A)] and (3);

[F347 “fair value”, in relation to a derivative contract of a company, means the amount which, at the time as at which the value falls to be determined, is the amount that the company would obtain from or, as the case may be, would have to pay to an independent person for—

- (a) the transfer of all the company’s rights under the contract in respect of amounts which at that time are not yet due and payable, and
- (b) the release of all the company’s liabilities under the contract in respect of amounts which at that time are not yet due and payable;

“fair value accounting” means a basis of accounting under which assets and liabilities are shown in the company’s balance sheet at their fair value;]

“future” has the meaning given by paragraph 12;

“insurance company” means a company which effects or carries out contracts of insurance;

“intangible fixed assets” has the meaning given by paragraph 12;

“investment trust” is a company approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period;

“life assurance business” has the same meaning as in section 431 of the Taxes Act 1988;

“long-term insurance business” means business which consists of the effecting and carrying out of contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and “contract of long-term insurance” means any contract which falls within that Part of that Schedule;

“non-life mutual business” means any mutual trading, or any mutual insurance or other mutual business, which (in either case) is not life assurance business;

[F345 “open-ended investment company” has the meaning given by section 468A(2) of the Taxes Act 1988;]

“option” has the meaning given by paragraph 12;

“related transaction” has the meaning given by paragraph 15;

“relevant contract” has the meaning given by paragraph 2;

“shares”, in relation to a company, has (except in paragraphs 39 and 40) the meaning given by paragraph 2;

F348 ...

“UK company” means a company incorporated or formed under the law of a part of the United Kingdom;

“underlying subject matter” has the meaning given by paragraph 11;

“warrant” has the meaning given by paragraph 12.

(2) References in this Schedule to exchange gains or exchange losses, in the case of any company, are references respectively to—

- (a) profits or gains, or
- (b) losses,

which arise as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company.

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If the result of such a comparison is that neither an exchange gain nor an exchange loss arises, then for the purposes of this Schedule an exchange gain of nil shall be taken to arise in the case of that comparison.

[<sup>F349</sup>(2A) The Treasury may make provision by regulations as to the manner in which—

- (a) exchange gains or losses, and
- (b) any other profits or gains or losses,

are to be calculated for the purposes of sub-paragraph (2) in a case where fair value accounting is used by the company.

Any such regulations may be made so as to apply to periods of account beginning before the regulations are made, but not earlier than the beginning of the calendar year in which they are made.]

(3) A reference to an exchange gain or loss from a company's derivative contract is a reference to an exchange gain or loss arising to a company in relation to a derivative contract of the company.

(4) In this Schedule “financial trader” means—

- (a) any person who—
  - (i) falls within section 31(1)(a), (b) or (c) of the Financial Services and Markets Act 2000 (c. 8), and
  - (ii) has permission under that Act to carry on one or more of the activities specified in Article 14 and, in so far as it applies to that Article, Article 64 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544); or
- (b) any person not falling within paragraph (a) who is approved by the Board for the purposes of this paragraph.

#### Textual Amendments

**F343** Words in Sch. 26 para. 54(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 69\(a\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F344** Words in Sch. 26 para. 54(1) inserted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2002, Schedule 26, Parts 2 and 9 \(Amendment\) Order 2004 \(S.I. 2004/2201\)](#), arts. 1(1), [19\(2\)](#)

**F345** Words in Sch. 26 para. 54(1) inserted (with effect in accordance with art. 1 of the amending S.I.) by [The Finance Act 2002, Schedule 26 \(Parts 2 and 9\) \(Amendment No. 3\) Order 2005 \(S.I. 2005/3440\)](#), arts. 1, [15](#)

**F346** Word in Sch. 26 para. 54(1) inserted (retrospective to 7.4.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 6 para. 4\(5\)\(6\)](#)

**F347** Words in Sch. 26 para. 54(1) substituted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 69\(b\)](#)

**F348** Words in Sch. 26 para. 54(1) repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 69\(c\)](#), [Sch. 42 Pt. 2\(6\)](#)

**F349** Sch. 26 para. 54(2A) substituted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 6 para. 11](#)

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SCHEDULE 27

Section 83

DERIVATIVE CONTRACTS: MINOR AND CONSEQUENTIAL AMENDMENTS

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

**C29** Sch. 27 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(4\)\(8\)\(11\)](#)

*The Taxes Act 1988*

- 1 The Taxes Act 1988 is amended as follows.
- 2 In section 15(1) (Schedule A) in paragraph 2(3) of Schedule A (profits of Schedule A business computed without regard to certain items) for the third indent (which relates to qualifying payments within Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) substitute—
  - “—credits or debits within Schedule 26 to the Finance Act 2002 (derivative contracts).”.
- 3 <sup>F350</sup>(1) . . . . .
  - (2) At the end of the first sentence of that section (as amended by sub-paragraph (1)) insert—
    - “(2) For the purposes of corporation tax, any gain arising to any company in the course of dealing in financial futures or in qualifying options, which apart from this subsection would constitute profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, shall not be chargeable to tax under Case V or VI of Schedule D.”.
  - (3) At the beginning of the second sentence (and after subsection (2) as inserted by sub-paragraph (2)) insert “(3)”.

**Textual Amendments**

**F350** Sch. 27 para. 3(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

- 4 <sup>F351</sup>(1) . . . . .
  - (2) After subsection (1A) of that section insert—
    - “(1B) If, apart from section 143(1) of the 1992 Act or section 128(2) above, gains arising in the course of dealing in financial futures or in qualifying options would constitute, for the purposes of the Corporation Tax Acts, profits and gains chargeable to tax under Case V or VI of Schedule D, then any loss arising in the course of that dealing shall not be allowable against profits and gains which are chargeable to tax under Case V or VI of Schedule D.”.

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### Textual Amendments

**F351** Sch. 27 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](#))

- 5 In section 440 (transfers between categories of assets held by insurance companies) after subsection (2A) (treatment of deemed disposal and re-acquisition of loan relationships) insert—
- “(2B) Where under subsection (1) or (2) above there is a deemed disposal and re-acquisition of any derivative contract of a company, any authorised accounting method used as respects that contract for the purposes of Schedule 26 to the Finance Act 2002 shall be applied as respects that contract as if the contract that is deemed to be disposed of and the contract that is deemed to be re-acquired were different assets.”.
- 6 Omit section 468AA (authorised unit trusts: futures and options).
- 7 (1) Section 468L (interest distributions) is amended as follows.
- (2) In subsection (9) (meaning of “qualifying investments”) after paragraph (e) insert—
- “(f) derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in paragraphs (a) to (e) above;
- (g) contracts for differences whose underlying subject matter consists wholly of interest rates or creditworthiness or both of those matters.”.
- (3) In subsection (11) (assumption as to investments of other authorised unit trust which are to be regarded as qualifying investments) after “within paragraphs (a) to (c)” insert “, (f) and (g)”.
- (4) After subsection (12G) insert—
- “(12H) For the purposes of this section—
- “contract for differences” has the same meaning as in paragraph 12 of Schedule 26 to the Finance Act 2002;
- “derivative contract” means—
- (a) a contract which is a derivative contract within the meaning of that Schedule, or
- (b) a contract which is, in the accounting period in question, treated as if it were a derivative contract by virtue of paragraph 36 of that Schedule (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds);
- “underlying subject matter” has the same meaning as in paragraph 11 of that Schedule.”.
- 8 In section 501A (supplementary charge in respect of ring fence trades) in subsection (5) (computation of financing costs) for paragraph (c) (any trading profit or loss, under Chapter 2 of Part 4 of the Finance Act 1994 (c. 9) (interest rate and currency contracts), in relation to debt finance) substitute—



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- “(c) any credit or debit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts) in relation to debt finance;”.
- 9 In section 768B (change in ownership of investment company: deductions generally)—
- (a) in subsection (10) (restriction of debits brought into account in respect of loan relationships) at the end insert “(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)”, and
- (b) in subsection (13) (modified application of section 768) after “its loan relationships” insert “ (or its derivative contracts by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002) ”.
- 10 In section 768C (deductions: asset transferred within group) in subsection (9) (restriction of debits to be brought into account) at the end insert “(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)”.
- 11 In section 798B (restriction of relief on certain interest and dividends: meaning of “financial expenditure”) in subsection (5) (meaning of “qualifying losses”) for paragraph (b) (losses brought into account for purposes of Chapter 2 of Part 4 of the Finance Act 1994) substitute—
- “(b) the amount (if any) by which debits brought into account in respect of a derivative contract for the purposes of Schedule 26 to the Finance Act 2002 (derivative contracts) exceed credits so brought into account;”.
- 12 (1) Section 807A (disposals and acquisitions of company loan relationships with or without interest) is amended as follows.
- (2) In subsection (2)(b)(ii) (foreign tax to be disregarded so far as attributable to qualifying payment within Chapter 2 of Part 4 of the Finance Act 1994 relating to a time when a company is not party to a contract)—
- (a) for “relevant qualifying payment” substitute “ relevant payment ”, and
- (b) for “the interest rate or currency contract concerned” substitute “ the derivative contract concerned ”.
- (3) In subsection (7) (definitions) insert the following definition at the appropriate place—
- ““relevant payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified;”.
- (4) In that subsection, omit the definition of “relevant qualifying payment”.
- 13 In section 834(1) (interpretation of the Corporation Tax Acts) insert the following definition at the appropriate place—
- ““derivative contract” has the same meaning as it has for the purposes of Schedule 26 to the Finance Act 2002;”.

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**Textual Amendments**  
**F352** Sch. 27 para. 14 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

- 15 (1) Schedule 28AA (provision not at arm’s length) is amended as follows.
- (2) In paragraph 8 (foreign exchange gains and losses and financial instruments) in sub-paragraph (1) (exceptions)—
- (a) after “sub-paragraph (3)” insert “ and sub-paragraph (4) ”, and
  - (b) for paragraph (b) (which relates to Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) substitute—
    - “(b) Schedule 26 to the Finance Act 2002 (derivative contracts) in respect of exchange gains and losses (as defined in paragraph 54 of that Schedule),”.
- (3) In that paragraph, after sub-paragraph (3) (which is inserted by Schedule 23 to this Act) insert—
- “(4) Sub-paragraph (1) above shall not affect so much of paragraph 27 of Schedule 26 to the Finance Act 2002 (derivative contracts: exchange gains or losses where derivative contract not on arm’s length terms) as has effect by reference to whether profits or losses fall to be computed by virtue of this Schedule as if a company were not party to a derivative contract or as if the terms of the contract to which it is party were different.”.

*The Finance Act 1994*

- 16 In section 226 (provisions of the Finance Act 1993 (c. 34) and Finance Act 1994 which are not to apply in the case of Lloyd’s underwriters) for subsection (3) (contracts and options in premium trust fund of corporate member not to be qualifying contracts for purposes of Chapter 2 of Part 4 of the Finance Act 1994) substitute—
- “(3) No relevant contract (within the meaning of Schedule 26 to the Finance Act 2002) forming part of a premium trust fund of a corporate member shall be a derivative contract.”.

*The Finance Act 1996*

- 17 The Finance Act 1996 (c. 8) is amended as follows.

<sup>F353</sup>18 .....

**Textual Amendments**  
**F353** Sch. 27 para. 18 repealed (with effect in accordance with s. 52(3), Sch. 10 para. 11(2)(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

- 19 (1) Section 101 (financial instruments) is amended as follows.

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- (2) In subsection (1) (Chapter 2 of Part 4 of Finance Act 1994 not to apply to profit and loss on certain financial instruments brought into account under Chapter 2 of Part 4 of Finance Act 1996)—
- (a) for “Chapter II of Part IV of the Finance Act 1994 (provisions relating to certain financial instruments)” substitute “ Schedule 26 to the Finance Act 2002 (provisions relating to derivative contracts) ”,
  - (b) for “in accordance with that Chapter” substitute “ in accordance with that Schedule ”, and
  - (c) for “a qualifying contract” substitute “ a derivative contract ”.
- (3) Omit subsections (2) to (6).
- 20 (1) Schedule 10 (loan relationships: collective investment schemes) is amended as follows.
- (2) In paragraph 8 (non-qualifying investments test) in sub-paragraph (2) (meaning of “qualifying investments”) after paragraph (d) insert—
- “(e) derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in paragraphs (a) to (d) above;
  - (f) contracts for differences whose underlying subject matter consists wholly of interest rates or creditworthiness or both of those matters.”.
- (3) In that paragraph, in sub-paragraph (4) (relevant assumption in a case where a qualifying investment is a qualifying holding) after “within paragraphs (a) to (c)” insert “ , (e) and (f) ”.
- (4) In that paragraph, after sub-paragraph (7D) insert—
- “(7E) For the purposes of this paragraph—
    - “contract for differences” has the same meaning as in paragraph 12 of Schedule 26 to the Finance Act 2002;
    - “derivative contract” means—
      - (a) a contract which is a derivative contract within the meaning of that Schedule, or
      - (b) a contract which is, in the accounting period in question, treated as if it were a derivative contract by virtue of paragraph 36 of that Schedule (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds);
    - “underlying subject matter” has the same meaning as in paragraph 11 of that Schedule.”.
- 21 Omit Schedule 12(meaning of debt contract or option).

### *The Finance Act 2000*

- 22 The Finance Act 2000 (c. 17) is amended as follows.
- 23 (1) Schedule 22 (tonnage tax) is amended as follows.

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- (2) In paragraph 50 (income which, otherwise than under Schedule 22 to the Finance Act 2000, falls to be taken into account as trading income from trade consisting of tonnage tax activities) in sub-paragraph (2), for paragraph (c) substitute—
- “(c) any credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts).”.
- (3) In paragraph 63 (ring-fencing of accounting periods where company is tonnage tax company: meaning of “finance costs”) in sub-paragraph (2), for paragraph (b) substitute—
- “(b) any credit or debit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts) in relation to debt finance;”.

### *The Finance Act 2002*

- 24 The Finance Act 2002 is amended as follows.
- 25 Section 78 (which amends the provision made by Schedule 5AA to the Taxes Act 1988 as regards corporation tax in relation to guaranteed returns on transactions involving futures and options, provision as regards which is made in Schedule 26 in relation to accounting periods beginning on or after 1st October 2002) shall cease to have effect.
- 26 In Schedule 29 (taxation of intangible fixed assets) in paragraph 75 (which provides for the Schedule not to apply to financial assets) for sub-paragraph (3)(b) (financial assets to include qualifying contracts within Chapter 2 of Part 4 of the Finance Act 1994) substitute—
- “(b) derivative contracts (see Part 2 of Schedule 26 to this Act).”.

## SCHEDULE 28

Section 83

### DERIVATIVE CONTRACTS: TRANSITIONAL PROVISIONS ETC

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

**C30** Sch. 28 extended (retrospective to 30.9.2002) by [Finance Act 2003 \(c. 14\), s. 177\(6\)-\(8\)\(11\)](#)

#### *Anti-avoidance: change of accounting period*

- 1 (1) This paragraph applies where—
- (a) a company changes its accounting date in such a way that an accounting period of the company, which begins on or after 1st October 2001, ends before 30th September 2002; and
- (b) the change of accounting date is or was made for the purpose, or for purposes which include the purpose, specified in sub-paragraph 2.
- (2) The purpose is that of securing, in the case of any subsequent accounting period beginning before 1st October 2002,—
- (a) that where an amount, or a bigger amount, would have fallen to be brought into account as a credit under Schedule 26 if that Schedule had had effect in

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- relation to the period, no amount, or a smaller amount, falls to be brought into account in accordance with section 159 or 160 of the Finance Act 1994 (c. 9); or
- (b) that where no amount, or a smaller amount, would have fallen to be brought into account as a debit under Schedule 26 if that Schedule had had effect in relation to the period, an amount, or a bigger amount, falls to be brought into account in accordance with section 159 or 160 of the Finance Act 1994 (c. 9).
- (3) Where this paragraph applies, Schedule 26 shall have effect in relation to the subsequent accounting period mentioned in sub-paragraph 2 as if it were an accounting period beginning on or after 1st October 2002.
- (4) For the purposes of this paragraph, references to Schedule 26 include references to—
- (a) section 83(2), and
- (b) any repeal of any enactment which is consequential on any provision made by or under that Schedule.

*Qualifying contracts to which company ceases to be party before commencement day*

- 2
- (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company was a party to a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) before its commencement day, but is not a party to it on that commencement day.
- (3) The second condition is that, if the company had been a party to the contract on its commencement day, the contract would have been a derivative contract.
- (4) To the extent that amounts have been brought into account in computing, in accordance with Chapter 2 of Part 4 of the Finance Act 1994, the profits or losses accruing to the company from the contract in an old period of the company, they shall not be brought into account again by the company as credits or debits given in respect of that contract for the first new period or any subsequent accounting period of the company by Schedule 26.

*Qualifying contracts which become derivative contracts*

- 3
- (1) This paragraph applies if the conditions in sub-paragraphs (2) and (3) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) immediately before the company's commencement day, and
- (b) as from that day is a derivative contract.
- (4) If the sum of the amounts that would, on the assumptions in sub-paragraph (6)(a) and (b), have fallen to be brought into account as regards the contract in accordance with—
- (a) Chapter 2 of Part 2 of the Finance Act 1993 (c. 34), or

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- (b) Chapter 2 of Part 4 of the Finance Act 1994,  
for the purposes of computing corporation tax for an old period of the company is different from the sum of the amounts that would, on the assumption in sub-paragraph (6)(c), have fallen to be brought into account as regards the contract in accordance with Schedule 26 for those purposes (if that Schedule had had effect in relation to that period), sub-paragraph (5) shall apply as regards the amount of that difference.
- (5) Where this sub-paragraph applies, the amount of the difference shall be brought into account—
- (a) as a credit under Schedule 26 in the company's first new period, if a greater profit or smaller loss would have been brought into account for the old period under that Schedule, or
- (b) as a debit under that Schedule in the company's first new period, if a smaller profit or greater loss would have been brought into account for the old period under that Schedule.
- (6) The assumptions referred to in sub-paragraph (4) are that—
- (a) section 137 of the Finance Act 1993 (c. 34),
- (b) sections 165 to 168A of the Finance Act 1994 (c. 9), and
- (c) paragraphs 23 to 31 of Schedule 26,  
would not have had effect in the case of the contract.

*Contracts which become derivative contracts: chargeable assets*

- 4 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994) immediately before the company's commencement day, but
- (b) as from that day is a derivative contract.
- (4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.
- (5) Where this paragraph applies, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceases to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—
- (a) that it had made a disposal of the asset immediately before its commencement day, and
- (b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company's accounting period immediately before its first new period.
- (6) Sub-paragraph (5) has effect subject to sub-paragraph (7).

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- (7) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (5) is to be brought into account for the accounting period in which it ceases to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company.
- (8) An election under sub-paragraph (7) may only be made within the period of two years following the end of the accounting period in which the company ceases to be a party to the contract.
- (9) For the purposes of this paragraph an asset is a chargeable asset if any gain accruing on the disposal of the asset by the company would be a chargeable gain for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) (and includes any obligations under futures contracts which, by virtue of section 143 of that Act, are regarded as assets to the disposal of which that Act applies).
- (10) This paragraph has effect subject to paragraph 5.

*Contracts: election to treat as two assets*

- 5 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (4) are satisfied in relation to any contract of a company.
  - (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
  - (3) The second condition is that the contract—
    - (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company's commencement day, but
    - (b) as from that day would, but for an election under sub-paragraph (5) of this paragraph, be a derivative contract to which paragraph 7 of Schedule 26 (contracts designed to secure guaranteed amount) applies.
  - (4) The third condition is that the contract was, immediately before the company's commencement day, a chargeable asset.
  - (5) Where this paragraph applies the company may elect that its contract shall be treated for the purposes of the Corporation Tax Acts as if it were—
    - (a) a creditor relationship of the company which is a zero coupon bond (within the meaning of paragraph 48 of Schedule 26), and
    - (b) an option of the company whose underlying subject matter is the same as the underlying subject matter of the contract to which this paragraph applies;and sub-paragraphs (4) to (6) of that paragraph shall apply to a creditor relationship and an option arising under this sub-paragraph as they apply to a creditor relationship and an option arising under paragraph 48(2) of Schedule 26.
  - (6) An election under sub-paragraph (5) in relation to a contract—
    - (a) may only be made within the period of two years following the end of the company's first new period;
    - (b) has effect for the company's first new period and all subsequent accounting periods of the company; and

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- (c) is irrevocable.
- (7) Where an election under sub-paragraph (5) has been made by a company in relation to a contract, the company shall, when it ceases to be a party to the contract, bring into account, for the accounting period in which it ceases to be a party to the contract, the amount of any chargeable gain or allowable loss which would have been treated as accruing to the company on the assumption—
- (a) that it had made a disposal of the asset immediately before its commencement day, and
  - (b) that the disposal had been for a consideration equal to the value (if any) given to the contract in the accounts of the company at the end of the company’s accounting period immediately before its first new period.
- (8) Sub-paragraph (7) has effect subject to sub-paragraph (9).
- (9) The company may elect that a debit representing the amount of any allowable loss, which under sub-paragraph (7) is to be brought into account for the accounting period in which it ceases to be a party to the contract, shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) in respect of a loan relationship of the company.
- (10) An election under sub-paragraph (9) may only be made within the period of two years following the end of the accounting period in which the company ceases to be a party to the contract.
- (11) For the purposes of this paragraph references to an asset being a chargeable asset shall be construed in accordance with paragraph 4(9).
- (12) In this paragraph “option” and “underlying subject matter” have the same meaning as in Schedule 26.

*Contracts which become derivative contracts: contracts within Schedule 5AA to the Taxes Act 1988*

- 6 (1) This paragraph applies if the conditions in sub-paragraphs (2) to (5) are satisfied in relation to any contract of a company.
- (2) The first condition is that the company is a party to the contract immediately before and on its commencement day.
- (3) The second condition is that the contract—
- (a) was not a qualifying contract (within the meaning of Chapter 2 of Part 4 of the Finance Act 1994 (c. 9)) immediately before the company’s commencement day, but
  - (b) as from that day is a derivative contract.
- (4) The third condition is that the contract was, immediately before the company’s commencement day, a transaction to which Schedule 5AA to the Taxes Act 1988 applied.
- (5) The fourth condition is that, on or after the company’s commencement day, a relevant event occurs.
- (6) For the purposes of this paragraph a relevant event is an event which would, if Schedule 5AA to the Taxes Act 1988 had continued to apply to the contract for the



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purposes of corporation tax, have given rise to an amount of profits falling to be charged under that Schedule.

- (7) A credit representing that amount of profits (“a relevant credit”) shall be brought into account by virtue of paragraph 14(3) of Schedule 26 for the accounting period in which the relevant event occurs as if it were a non-trading credit falling to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of a loan relationship of the company.
- (8) The amount of the relevant credit is the sum of—
- (a) the amount of profits which would have been chargeable under Schedule 5AA to the Taxes Act 1988 if it had continued to apply to the contract, and
  - (b) the amount of any debits given by Schedule 26 in respect of the contract for the first new period and any subsequent accounting period ending with the accounting period in which the relevant event occurred,
- less the amount of any credits given by Schedule 26 in respect of the contract for those accounting periods.

#### *Interpretation*

- 7 For the purposes of this Schedule—
- (a) a company’s commencement day is the first day of its first accounting period to begin on or after 1st October 2002,
  - (b) a company’s first new period is its first accounting period to begin on or after that date, and
  - (c) an old period of the company is any accounting period of the company ending before the first day of its first new period.

## SCHEDULE 29

Section 84(1)

### GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

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

- C31** Sch. 29 applied (with modifications) (15.8.2002) by S.I. 2002/1967, **regs. 3-6**
- C32** Sch. 29 modified (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 28** (with s. 38(2)); S.I. 2004/2575, art. 2(1), Sch. 1
- C33** Sch. 29 modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 17**; S.I. 2005/1444, art. 2(1), Sch. 1
- C34** Sch. 29 modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 6**; S.I. 2005/1444, art. 2(1), Sch. 1
- C35** Sch. 29 modified (E.W.) (1.1.2006) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 93(3), 108(3)**; S.I. 2005/3439, art. 2

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## PART 1

### INTRODUCTION

#### *Gains and losses in respect of intangible fixed assets*

- 1 (1) A company's gains in respect of intangible fixed assets are chargeable to corporation tax as income in accordance with this Schedule.
- (2) This Schedule also has effect for determining how a company's losses in respect of intangible fixed assets are brought into account for the purposes of corporation tax.
- (3) Except where otherwise indicated, the amounts to be brought into account in accordance with this Schedule in respect of any matter are the only amounts to be brought into account for the purposes of corporation tax in respect of that matter.

#### *Intangible assets*

- 2 (1) In this Schedule "intangible asset" has the meaning it has for accounting purposes.
- (2) References in this Schedule to an intangible asset include, in particular, any intellectual property.
- For this purpose "intellectual property" means—
- (a) any patent, trade mark, registered design, copyright or design right, plant breeders' rights or rights under section 7 of the Plant Varieties Act 1997 (c. 66),
  - (b) any right under the law of a country or territory outside the United Kingdom corresponding to, or similar to, a right within paragraph (a),
  - (c) any information or technique not protected by a right within paragraph (a) or (b) but having industrial, commercial or other economic value, or
  - (d) any licence or other right in respect of anything within paragraph (a), (b) or (c).
- (3) This paragraph is subject to Part 10 (excluded assets).

#### *Intangible fixed assets*

- 3 (1) In this Schedule an "intangible fixed asset", in relation to a company, means an intangible asset acquired or created by the company for use on a continuing basis in the course of the company's activities.
- (2) References in this Schedule to an intangible fixed asset include an option or other right—
- (a) to acquire an intangible asset that if acquired would be a fixed asset, or
  - (b) to dispose of an intangible fixed asset.
- (3) Unless otherwise indicated, the provisions of this Schedule apply to an intangible fixed asset whether or not it is capitalised in the company's accounts.
- (4) This paragraph is subject to any such provision of regulations under paragraph 104 (finance leasing etc) as is mentioned in sub-paragraph (2)(a) of that paragraph (assets to be treated as intangible fixed assets of finance lessor).

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### *Goodwill*

- 4 (1) Except as otherwise indicated, the provisions of this Schedule apply to goodwill as to an intangible fixed asset.
- (2) In this Schedule “goodwill” has the meaning it has for accounting purposes.

### *Company not drawing up correct accounts*

- 5 (1) If a company does not draw up accounts in accordance with generally accepted accounting practice (“correct accounts”)—
- (a) the provisions of this Schedule apply as if correct accounts had been drawn up, and
  - (b) the amounts referred to in this Schedule as being recognised for accounting purposes are those that would have been recognised if correct accounts had been drawn up.
- (2) If a company draws up accounts that rely to any extent on amounts derived from an earlier period of account for which the company did not draw up correct accounts, the amounts referred to in this Schedule as being recognised for accounting purposes in the later period are those that would have been recognised if correct accounts had been drawn up for the earlier period.
- (3) The provisions of this paragraph apply where the company does not draw up accounts at all as well as where it draws up accounts that are not correct.

### *Reference to consolidated group accounts*

- 6 (1) In determining whether a company’s accounts are correct, reference may be made to any view as to—
- (a) the useful life of an asset, or
  - (b) the economic value of an asset,
- taken for the purposes of consolidated group accounts prepared for any group of companies of which the company is a member.

<sup>F354</sup>(2) .....

- [<sup>F355</sup>(2A) This paragraph does not apply if the consolidated group accounts—
- (a) are drawn up using a different accounting framework from that used for the company's individual accounts, and
  - (b) as a result, are prepared on a basis that, in relation to the matters mentioned in sub-paragraph (1), substantially diverges from the basis used in the company's individual accounts.]

(3) This paragraph does not apply if or to the extent that the consolidated group accounts are prepared—

    - (a) in accordance with the requirements of the law of a country outside the United Kingdom, and
    - (b) on a basis that, in relation to the matters mentioned in sub-paragraph (1), substantially diverges from generally accepted accounting practice.

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### Textual Amendments

**F354** Sch. 29 para. 6(2) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 38\(2\)](#), [Sch. 11 Pt. 2\(7\)](#)

**F355** Sch. 29 para. 6(2A) inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 38\(3\)](#)

## PART 2

### DEBITS IN RESPECT OF INTANGIBLE FIXED ASSETS

#### *Introduction*

- 7 (1) This Part provides for debits to be brought into account by a company for tax purposes in respect of—
- (a) expenditure on an intangible fixed asset that is written off for accounting purposes as it is incurred (see paragraph 8);
  - (b) writing down the capitalised cost of an intangible fixed asset—
    - (i) on an accounting basis (see paragraph 9), or
    - (ii) on a fixed-rate basis (see paragraphs 10 and 11); and
  - (c) the reversal of a previous accounting gain in respect of an intangible fixed asset (see paragraph 12).
- (2) This Part does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset (see Part 4).

#### *Expenditure written off as it is incurred*

- 8 (1) Where in a period of account expenditure on an intangible fixed asset is recognised in [<sup>F356</sup>determining a company's profit or loss], a corresponding debit shall be brought into account for tax purposes.
- (2) Subject to any adjustment required for tax purposes, the amount of the debit recognised for tax purposes is the same as the amount of the loss recognised by the company for accounting purposes.
- (3) Nothing in—
- section 74(1)(m) or (p) of the Taxes Act 1988 (annual payments and patent royalties not to be deducted in computing profits under Case I or II of Schedule D), or
  - section 817(1)(b) of that Act (annual payments not to be deducted in arriving at the amount of profits or gains for tax purposes),
- has effect to prevent a debit being brought into account for tax purposes by a company in accordance with this paragraph (and given effect accordingly under Part 6).
- (4) This paragraph does not apply to a loss that represents previously capitalised expenditure.

### Textual Amendments

**F356** Words in Sch. 29 para. 8(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 39](#)

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*Writing down on accounting basis*

- 9 (1) Where in a period of account a loss is recognised in [F357 determining the company's profit or loss] in respect of capitalised expenditure on an intangible fixed asset—
- (a) by way of amortisation, or
  - (b) as a result of an impairment review,
- a corresponding debit shall be brought into account for tax purposes.
- (2) The reference in sub-paragraph (1) to an “impairment review” does not include the valuation of an asset for the purpose of determining the amount of expenditure to be capitalised in the first place.
- (3) The amount of the debit for tax purposes in respect of expenditure on an asset is, in the period of account in which the expenditure is capitalised:

$$\text{Accounting Loss} \times \frac{\text{Tax Cost}}{\text{Accounting Cost}}$$

where—

Accounting Loss is the amount of the loss recognised for accounting purposes,

Tax Cost is the amount of expenditure on the asset that is recognised for tax purposes, and

Accounting Cost is the amount capitalised in respect of expenditure on the asset.

- (4) Subject to any adjustment required for tax purposes, the amount of the expenditure on the asset that is recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company.
- (5) The amount of the debit for tax purposes in respect of expenditure on an asset is, in a subsequent period of account:

$$\text{Accounting Loss} \times \frac{\text{Tax Value}}{\text{Accounting Value}}$$

where—

Accounting Loss is the amount of the loss recognised for accounting purposes,

Tax Value is the tax written down value of the asset immediately before the amortisation charge is made or, as the case may be, the impairment loss is recognised for accounting purposes, and

Accounting Value is the value of the asset recognised for accounting purposes immediately before the amortisation charge or, as the case may be, the impairment review.

- (6) In this paragraph “capitalised” means capitalised for accounting purposes.

**Textual Amendments**

**F357** Words in Sch. 29 para. 9(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

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*Writing down at fixed rate: election for fixed-rate basis*

- 10 (1) A company may elect to write down the cost of an intangible fixed asset for tax purposes at a fixed rate.
- (2) An election to that effect may be made whether or not the asset is written down for accounting purposes.
- (3) An election under this paragraph must be made—
- (a) in writing,
  - (b) to the Inland Revenue,
  - (c) no later than two years after the end of the accounting period in which the asset is created or acquired by the company making the election.
- (4) An election under this paragraph in relation to an asset has effect in relation to all expenditure on the asset that is capitalised for accounting purposes.
- (5) An election under this paragraph is irrevocable.
- (6) Paragraph 9 (writing down on accounting basis) does not apply to an asset in respect of which an election is made under this paragraph.

*Writing down at fixed rate: calculation*

- 11 (1) Where an election is made for writing down at a fixed rate, a debit equal to—
- (a) 4% of the cost of the asset, or
  - (b) if less, the balance of the tax written down value,
- shall be brought into account for tax purposes in each accounting period beginning with that in which the relevant expenditure is incurred.
- (2) If the accounting period is less than 12 months, the amount mentioned in sub-paragraph (1)(a) above shall be proportionately reduced.
- (3) The cost of the asset means the cost recognised for tax purposes.
- (4) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount capitalised for accounting purposes in respect of expenditure on the asset.
- (5) After a part realisation of the asset the reference in sub-paragraph (1)(a) to the cost of the asset shall be read as a reference to—
- (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
  - (b) the cost so recognised of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (6) On a further part realisation, sub-paragraph (5) applies again.

*Reversal of previous accounting gain*

- 12 (1) Where in a period of account a loss is recognised in [F358 determining the company's profit or loss] reversing (in whole or in part) a gain recognised in a previous period of account in respect of which a credit was brought into account for tax purposes under

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Part 3 (credits in respect of intangible fixed assets), a corresponding debit shall be brought into account for tax purposes.

- (2) The amount of the debit to be brought into account for tax purposes is:

$$\text{Accounting Loss} \times \frac{\text{Previous Credit}}{\text{Accounting Gain}}$$

where—

Accounting Loss is the amount of the loss recognised for accounting purposes,

Accounting Gain is the amount of the gain that is (in whole or in part) reversed, and

Previous Credit is the amount of the credit previously brought into account for tax purposes in respect of the gain.

- (3) References in this paragraph to the recognition of a loss reversing a gain recognised in a previous period of account do not include a loss recognised by way of amortisation, or as a result of an impairment review, of an asset that has previously been the subject of a revaluation within the meaning of paragraph 15.

#### Textual Amendments

**F358** Words in Sch. 29 para. 12(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

### PART 3

#### CREDITS IN RESPECT OF INTANGIBLE FIXED ASSETS

##### Introduction

- 13 (1) This Part provides for credits to be brought into account by a company for tax purposes in respect of—
- receipts in respect of intangible fixed assets that are recognised in [<sup>F359</sup>determining the company's profit or loss] as they accrue (see paragraph 14),
  - revaluation of an intangible fixed asset (see paragraph 15),
  - credits recognised for accounting purposes in respect of negative goodwill (see paragraph 16), and
  - the reversal of previous accounting debits in respect of an intangible fixed asset (see paragraph 17).
- (2) This Part does not apply in relation to amounts brought into account in connection with the realisation of an intangible fixed asset within the meaning of Part 4.

#### Textual Amendments

**F359** Words in Sch. 29 para. 13(1)(a) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 41](#)

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### Receipts recognised as they accrue

- 14 (1) Where in a period of account a gain representing a receipt in respect of an intangible fixed asset is recognised in [<sup>F360</sup>determining the company's profit or loss], a corresponding credit shall be brought into account for tax purposes.
- (2) Subject to any adjustment required for tax purposes, the amount of the credit recognised for tax purposes under this paragraph is the same as the amount of the gain recognised by the company for accounting purposes.

#### Textual Amendments

**F360** Words in Sch. 29 para. 14(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

### Revaluation

- 15 (1) Where in a period of account the accounting value of an intangible fixed asset is increased on a revaluation, a credit shall be brought into account for tax purposes.
- (2) The amount of the credit for tax purposes is—
- (a) the amount corresponding for tax purposes to the increase in value (see sub-paragraph (3)), or
  - (b) if less, the net aggregate amount of relevant tax debits previously brought into account (see sub-paragraph (4)).
- (3) The amount corresponding for tax purposes to the increase in value is:

$$\text{Accounting Adjustment} \times \frac{\text{Tax Value}}{\text{Accounting Value}}$$

where—

Accounting Adjustment is the amount of the increase in the accounting value of the asset,

Tax Value is the tax written down value of the asset immediately before the revaluation, and

Accounting Value is the accounting value of the asset by reference to which the revaluation is carried out.

- (4) The net aggregate amount of relevant tax debits previously brought into account is:

### Previous Debits - Previous Credits

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the asset <sup>F361</sup>... , and

Previous Credits is the total amount of any credits previously brought into account for tax purposes in respect of the asset <sup>F361</sup>... .

- (5) For the purposes of this paragraph a “revaluation” includes—



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- (a) the valuation of an asset for which a value is shown in the company's balance sheet but which has not previously been the subject of a valuation, and
  - (b) the restoration of past losses.
- (6) This paragraph does not apply to an asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed rate).

#### Textual Amendments

**F361** Words in Sch. 29 para. 15(4) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(7\)](#)

#### Negative goodwill

- 16 (1) Where in a period of account a gain is recognised in [<sup>F362</sup>determining the company's profit or loss] in respect of negative goodwill arising on an acquisition of a business, a corresponding credit shall be brought into account for tax purposes.
- (2) The amount of the credit is so much of the gain recognised for accounting purposes as, on a just and reasonable apportionment, is attributable to intangible fixed assets.

#### Textual Amendments

**F362** Words in Sch. 29 para. 16(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

#### Reversal of previous accounting loss

- 17 (1) Where in a period of account a gain is recognised in [<sup>F363</sup>determining the company's profit or loss] reversing (in whole or in part) a loss recognised in a previous period of account in respect of which a debit was brought into account for tax purposes under Part 2 (debits in respect of intangible fixed assets), a corresponding credit shall be brought into account for tax purposes.
- (2) The amount of the credit to be brought into account for tax purposes is:

$$\text{Accounting Gain} \times \frac{\text{Tax Debit}}{\text{Accounting Loss}}$$

where—

Accounting Gain is the amount of the gain recognised for accounting purposes,

Accounting Loss is the amount of the loss that is reversed (in whole or in part), and

Tax Debit is the amount of the tax debit brought into account in respect of the loss.

- (3) This paragraph does not apply to a gain on a revaluation within the meaning of paragraph 15.

#### Textual Amendments

**F363** Words in Sch. 29 para. 17(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

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## PART 4

### REALISATION OF INTANGIBLE FIXED ASSETS

#### *Introduction*

- 18 This Part provides for credits or debits to be brought into account for tax purposes on the realisation by a company of an intangible fixed asset.

#### *Meaning of “realisation”*

- 19 (1) References in this Schedule to the realisation of an intangible fixed asset are to a transaction resulting, in accordance with generally accepted accounting practice—
- (a) in the asset ceasing to be recognised in the company’s balance sheet, or
  - (b) in a reduction in the accounting value of the asset.

For this purpose a “transaction” includes any event giving rise to a gain recognised for accounting purposes.

- (2) In relation to an intangible fixed asset that has no balance sheet value (or no longer has a balance sheet value), sub-paragraph (1) applies as if it did have a balance sheet value.
- (3) References in this Schedule to a “part realisation” are to a realisation falling within sub-paragraph (1)(b).

#### *Realisation of asset written down for tax purposes*

- 20 (1) This paragraph applies where there is a realisation of an intangible fixed asset in respect of which debits have been brought into account for tax purposes—

- <sup>F364</sup>(a) .....
- <sup>F364</sup>(b) .....
- <sup>F364</sup>(c) .....

- (2) Where this paragraph applies—
  - (a) if the proceeds of realisation exceed the tax written down value of the asset, a credit equal to the excess shall be brought into account for tax purposes;
  - (b) if the proceeds of realisation are less than the tax written down value of the asset, a debit equal to the shortfall shall be brought into account for tax purposes; and
  - (c) if there are no proceeds of realisation, a debit equal to the tax written down value shall be brought into account for tax purposes.
- (3) References in this paragraph to the tax written down value of an asset are to its tax written down value immediately before the realisation.

#### **Textual Amendments**

**F364** Sch. 29 para. 20(1)(a)(b) (c) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(7\)](#)

*Status:* Point in time view as at 01/01/2006. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Finance Act 2002 is up to date with all changes known to be in force on or before 02 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

*Realisation of asset shown in balance sheet and not written down for tax purposes*

- 21 (1) This paragraph applies where there is a realisation of an intangible fixed asset for which a value is shown in the company's balance sheet but which is not within paragraph 20 (asset written down for tax purposes).
- (2) Where this paragraph applies—
- (a) if the proceeds of realisation exceed the cost of the asset, a credit equal to the excess shall be brought into account for tax purposes;
  - (b) if the proceeds of realisation are less than the cost of the asset, a debit equal to the shortfall shall be brought into account for tax purposes; and
  - (c) if there are no proceeds of realisation, a debit equal to the cost of the asset shall be brought into account for tax purposes.
- (3) The cost of the asset means the cost recognised for tax purposes.
- (4) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount of expenditure on the asset capitalised by the company for accounting purposes.
- (5) After a part realisation of the asset the references in sub-paragraph (2)(a), (b) and (c) to the cost of the asset shall be read as a reference to—
- (a) the cost recognised for tax purposes in respect of the value of the asset recognised for accounting purposes immediately after the part realisation, and
  - (b) the cost so recognised of any subsequent expenditure on the asset that is capitalised for accounting purposes.
- (6) On a further part realisation, sub-paragraph (5) applies again.

*Apportionment in case of part realisation*

- 22 (1) In the case of a part realisation the references in paragraph 20 to the tax written down value of the asset, or, as the case may be, the references in paragraph 21 to the cost of the asset, shall be read as references to the appropriate proportion of that amount.
- (2) That proportion is given by:

$$\frac{\text{Reduction in Accounting Value}}{\text{Previous Accounting Value}}$$

where—

Reduction in Accounting Value is the difference between the accounting value immediately before the realisation compared with that immediately after the realisation; and

Previous Accounting Value is the accounting value immediately before the realisation.

*Realisation of asset not shown in balance sheet*

- 23 (1) This paragraph applies where there is a realisation of an intangible fixed asset in relation to which neither paragraph 20 (asset written down for tax purposes) nor paragraph 21 (asset shown in balance sheet but not written down) applies.

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- (2) Where this paragraph applies, a credit equal to any proceeds of realisation shall be brought into account for tax purposes.

*Meaning of “proceeds of realisation”*

- 24 (1) In this Schedule the “proceeds of realisation” of an asset means the amount recognised for accounting purposes as the proceeds of realisation, reduced by the amount so recognised as incidental costs of realisation.
- (2) The amounts referred to in sub-paragraph (1) are subject to any adjustment required for tax purposes.

*Relief in case of reinvestment*

- 25 The preceding provisions of this Part have effect subject to Part 7 (relief in case of reinvestment).

*Abortive expenditure on realisation*

- 26 (1) Where in a period of account—
- (a) a loss is recognised in [F<sup>365</sup>determining the company's profit or loss] in respect of expenditure by the company for the purposes of a transaction that would constitute a realisation of an intangible fixed asset, but
  - (b) the transaction does not proceed to completion,
- a corresponding debit shall be brought into account for tax purposes.
- (2) Subject to any adjustment required for tax purposes, the amount of the debit recognised for tax purposes is the same as the amount of the loss recognised by the company for accounting purposes.

**Textual Amendments**

**F365** Words in Sch. 29 para. 26(1)(a) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

**PART 5**

CALCULATION OF TAX WRITTEN DOWN VALUE

*Asset written down on accounting basis*

- 27 (1) For the purposes of this Schedule the tax written down value of an intangible fixed asset to which paragraph 9 applies (writing down on accounting basis) is given by:

**Tax Cost - Debits + Credits**

where—

Tax Cost is the cost of the asset recognised for tax purposes;

Debits is the total amount of the debits previously brought into account for tax purposes in respect of the asset <sup>F<sup>366</sup></sup>... ; and

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Credits is the total amount of any credits previously brought into account for tax purposes in respect of the asset <sup>F366</sup> ... .

(2) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.

[<sup>F367</sup>(3) This paragraph has effect subject to—  
paragraph 29 in the case of an asset that has been the subject of a part realisation,  
and  
Part 13A of this Schedule in the case of an asset that has been subject to  
adjustment on a change of accounting policy.]

#### Textual Amendments

**F366** Words in Sch. 29 para. 27(1) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 2\(7\)](#)

**F367** Sch. 29 para. 27(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 42](#)

#### *Asset written down at fixed rate*

28 (1) For the purposes of this Schedule the tax written down value of an intangible fixed asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed rate) is given by:

### Tax Costs - Debits

where—

Tax Cost is the cost of the asset recognised for tax purposes; and

Debits is the total amount of the debits previously brought into account for tax purposes in respect of the asset under paragraph 11 (writing down on fixed-rate basis: calculation).

(2) Subject to any adjustment required for tax purposes, the cost of the asset recognised for tax purposes is the same as the amount of the expenditure on the asset that is capitalised for accounting purposes.

[<sup>F368</sup>(3) This paragraph has effect subject to—  
paragraph 29 in the case of an asset that has been the subject of a part realisation,  
and  
Part 13A of this Schedule in the case of an asset that has been subject to  
adjustment on a change of accounting policy.]

#### Textual Amendments

**F368** Sch. 29 para. 28(3) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 42](#)

#### *Effect of part realisation of asset*

29 (1) The tax written down value of an intangible asset that has been the subject of a part realisation is determined as follows.

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- (2) The tax written down value of the asset immediately after the part realisation is given by:

$$\text{Previous Tax Value} \times \frac{\text{New Accounting Value}}{\text{Previous Accounting Value}}$$

where—

Previous Tax Value is the tax written down value of the asset immediately before the part realisation;

New Accounting Value is the accounting value of the asset immediately after the part realisation; and

Previous Accounting Value is the accounting value immediately before the part realisation.

- (3) Subsequently, the tax written down value of the asset is determined in accordance with paragraph 27 or 28—
- (a) taking the cost of the asset recognised for tax purposes to be the tax written down value given by sub-paragraph (2) above together with the cost recognised for tax purposes of subsequent expenditure on the asset that is capitalised for accounting purposes; and
  - (b) taking account only of debits and credits brought into account for tax purposes after the part realisation.
- (4) On a further part realisation, the preceding provisions of this paragraph apply again.
- [<sup>F369</sup>(5) On a subsequent change of accounting policy affecting the asset, the provisions of Part 13A of this Schedule apply.]

#### Textual Amendments

**F369** Sch. 29 para. 29(5) inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 43](#)

## PART 6

### HOW CREDITS AND DEBITS ARE GIVEN EFFECT

#### *Introduction*

- 30 (1) Credits and debits to be brought into account for tax purposes under this Schedule are given effect in accordance with this Part.
- (2) Credits and debits in respect of assets held for the purposes mentioned in—
- (a) paragraph 31 (assets held for purposes of trade), or
  - (b) paragraph 32 (assets held for purposes of property business) or
  - (c) paragraph 33 (assets held for purposes of certain concerns taxed under Case I of Schedule D),
- are given effect in accordance with the paragraph in question.

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- (3) Other credits and debits (“non-trading credits and debits”) are given effect in accordance with paragraphs 34 and 35.
- (4) Any apportionment necessary where an asset is held for purposes falling within more than one of the provisions mentioned above shall be made on a just and reasonable basis.
- (5) The provisions mentioned in this paragraph have effect subject to paragraph 36 (special provisions relating to insurance companies).

*Asset held for purposes of trade*

- 31 Credits and debits to be brought into account in any accounting period in respect of an asset held by the company for the purposes of a trade carried on by it in that period are given effect by treating—
- (a) credits as receipts of the trade, and
  - (b) debits as expenses of the trade,
- in calculating the profits of the trade for tax purposes.

*Asset held for purposes of property business*

- 32 (1) Credits and debits to be brought into account in any accounting period in respect of an asset held by the company for the purposes of a property business carried on by it in that period are given effect by treating—
- (a) credits as receipts of the business, and
  - (b) debits as expenses of the business,
- in computing the profits of the business for tax purposes.
- (2) A “property business” means—
- (a) an ordinary Schedule A business,
  - (b) a furnished holiday lettings business, or
  - (c) an overseas property business.
- (3) In this paragraph—
- “ordinary Schedule A business” means a Schedule A business except in so far as it is a furnished holiday lettings business; and
- “furnished holiday lettings business” means a Schedule A business in so far as it consists of the commercial letting of furnished holiday accommodation (as defined in section 504 of the Taxes Act 1988) in the United Kingdom.
- (4) Section 503 of the Taxes Act 1988 (letting of furnished holiday accommodation treated as separate, single trade) applies for the purposes of this Schedule.

*Assets held for purposes of mines, transport undertakings, etc*

- 33 Credits and debits to be brought into account in any accounting period in respect of an asset held by the company for the purposes of a concern listed in section 55(2) of the Taxes Act 1988 (mines, transport undertakings, etc) that is carried on by the company in that period are given effect by treating—
- (a) credits as receipts of the concern, and
  - (b) debits as expenses of the concern,

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in computing the profits of the concern under Case I of Schedule D.

*Non-trading credits and debits*

- 34 (1) Where, or to the extent that, in an accounting period, there are—
- (a) credits in respect of intangible fixed assets that are not within any of paragraphs 31 to 33 (“non-trading credits”), or
  - (b) debits in respect of intangible fixed assets that are not within any of those paragraphs (“non-trading debits”),
- the company’s aggregate non-trading gain or loss on intangible fixed assets must be calculated.
- (2) There is a non-trading gain on intangible fixed assets if—
- (a) there are only non-trading credits, or
  - (b) there are both non-trading credits and non-trading debits and the aggregate of the former exceeds the aggregate of the latter.
- The amount of the non-trading gain is the aggregate amount of the credits or, as the case may be, the amount of the excess.
- (3) There is a non-trading loss on intangible fixed assets if—
- (a) there are only non-trading debits, or
  - (b) there are both non-trading credits and non-trading debits and the aggregate of the latter exceeds the aggregate of the former.
- The amount of the non-trading loss is the aggregate amount of the debits or, as the case may be, the amount of the excess.
- (4) A non-trading gain on intangible fixed assets is chargeable to tax under Case VI of Schedule D.
- (5) A non-trading loss on intangible fixed assets is given effect in accordance with the following paragraph.

*Claim to set non-trading loss against total profits*

- 35 (1) A company that has a non-trading loss on intangible fixed assets for an accounting period may claim to have the whole or part of the loss set off against the company’s total profits for that period.
- (2) Any such claim must be made not later than the end of the period of two years immediately following the end of the accounting period to which it relates, or within such further period as the Inland Revenue may allow.
- (3) To the extent that the loss is not—
- (a) set off against total profits on a claim under sub-paragraph (1), or
  - (b) surrendered by way of group relief (see section 403 of the Taxes Act 1988),
- it is carried forward to the next accounting period of the company and treated as if it were a non-trading debit of that period.



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

**C36** Sch. 29 para. 35 restricted (24.7.2002) by 1988 c. 1, s. 768E(4)(5) (as inserted (24.7.2002) by 2002 c. 23, s. 84(2), Sch. 30 para. 4(3))

*Special provisions relating to insurance companies*

- 36 (1) Nothing in this Schedule shall be read as preventing profits and gains arising from intangible fixed assets of an insurance company from being included, where—
- (a) the assets are referable to life assurance business carried on by the company, and
  - (b) the I minus E basis is applied in relation to that business,
- in profits and gains on which the company is chargeable to tax in accordance with that basis.
- (2) Where for any accounting period the I minus E basis is applied in relation to life assurance business carried on by an insurance company, the effect of applying that basis is that credits or debits falling to be brought into account under this Schedule in respect of intangible fixed assets of the company referable to that business—
- (a) are not brought into account as mentioned in paragraph 31 (assets held for purposes of trade), but
  - (b) subject to the following provisions of this paragraph, are instead brought into account under paragraph 34 as non-trading credits or, as the case may be, non-trading debits.
- (3) Where an insurance company carries on basic life assurance and general annuity business—
- (a) a separate computation of the credits and debits referable to that business shall be made under paragraph 34 (non-trading credits and debits),
  - (b) any resulting non-trading gain in respect of intangible assets is chargeable to tax as mentioned in sub-paragraph (4) of that paragraph, and
  - <sup>[F370]</sup>(c) any resulting non-trading loss in respect of intangible assets is treated as expenses payable falling to be brought into account at Step 3 in section 76(7) of the Taxes Act 1988.]
- (4) References in any enactment to the computation of any profits of an insurance company in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D have effect as if those provisions included the provisions of this Schedule, but only to the extent that they relate to the bringing into account of debits in respect of royalties.
- (5) Where an insurance company carries on life assurance business or any category of life assurance business—
- (a) the credits and debits under this Schedule referable to that business or category of business, other than debits in respect of royalties, shall be disregarded for the purposes of any computations falling to be made in relation to that business or category of business in accordance with the provisions applicable to Case I of Schedule D, and
  - (b) accordingly, the amounts to be brought into account in any such computations shall be determined under the provisions applicable apart from this Schedule.

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- (6) In this paragraph “the I minus E basis” means the basis commonly so called under which a company carrying on life assurance business is charged to tax on that business otherwise than under Case I of Schedule D.

#### Textual Amendments

**F370** Sch. 29 para. 36(3)(c) 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. 67(2)**

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

**C37** Sch. 29 para. 36 modified by SI 1997/473 reg. 53H (as inserted (30.1.2003) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2003 \(S.I. 2003/23\)](#), regs. 1(1), **10**

**C38** Sch. 29 para. 36 modified (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), regs. 1(1), **45**

## PART 7

### ROLL-OVER RELIEF IN CASE OF REALISATION AND REINVESTMENT

#### *The relief*

- 37 (1) This Part provides for relief where a company realises an intangible fixed asset (the “old asset”) and incurs expenditure on other intangible fixed assets (“other assets”).
- (2) A company is entitled to relief under this Part only if—
- the conditions in paragraph 38 are met in relation to the old asset and its realisation,
  - the conditions in paragraph 39 are met in relation to the expenditure on other assets, and
  - the company claims the relief in accordance with paragraph 40.

#### *Conditions to be met in relation to the old asset and its realisation*

- 38 (1) The following conditions must be met in relation to the old asset and its realisation—
- the asset must have been a chargeable intangible asset of the company throughout the period during which it was held by the company; and
  - the proceeds of realisation of the asset must exceed—
    - the cost of the asset, or
    - in the case of a part realisation, the appropriate proportion of the cost of the asset, or
    - in the case of the realisation of an asset that has been the subject of a part realisation, the adjusted cost of the asset.
- (2) If the asset was a chargeable intangible asset of the company—
- at the time of its realisation, and
  - for a substantial part of, but not throughout, the period during which it was held by the company,

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a part of the asset representing the time for which it was a chargeable intangible asset shall be treated for the purposes of this Part as if it were a separate asset in relation to which the condition in sub-paragraph (1)(a) was wholly met.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

- (3) In sub-paragraph (1)(b) “the cost of the asset” means the total of the capitalised expenditure on the asset recognised for tax purposes.

For the calculation of the appropriate proportion or adjusted cost, see paragraph 42.

- (4) The condition in sub-paragraph (1)(b) is necessarily met if the asset has no cost as defined above.

#### *Conditions to be met in relation to the expenditure on other assets*

- 39 (1) The following conditions must be met in relation to the expenditure on other assets—

- (a) the expenditure must be incurred in the period—
  - (i) beginning twelve months before the date of realisation of the old asset or at such earlier time as the Inland Revenue may by notice allow, and
  - (ii) ending three years after the date of realisation of the old asset or at such later time as the Inland Revenue may by notice allow;
- (b) the expenditure must be capitalised by the company for accounting purposes; and
- (c) the assets on which the expenditure is incurred must be chargeable intangible assets in relation to the company immediately after the expenditure is incurred.

- (2) For the purposes of this paragraph expenditure is regarded as incurred when it is recognised for accounting purposes.

#### *Claim for relief*

- 40 A claim by a company for relief under this Part must specify—

- (a) the old assets to which the claim relates, and
- (b) in relation to each old asset—
  - (i) the expenditure on other assets by reference to which relief is claimed, and
  - (ii) the amount of the relief claimed.

#### *How the relief is given: general*

- 41 (1) A company that is entitled to, and claims, relief under this Part is treated for the purposes of this Schedule as if—

- (a) the proceeds of realisation of the old asset, and
  - (b) the cost recognised for tax purposes of acquiring the other assets,
- were each reduced by the amount available for relief.

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- (2) If the amount of qualifying expenditure on other assets is equal to or greater than the proceeds of realisation of the old asset, the amount available for relief is the amount by which the proceeds of realisation exceed the cost of the old asset.
- (3) If the amount of qualifying expenditure on other assets is less than the proceeds of realisation of the old asset, the amount available for relief is the amount (if any) by which the qualifying expenditure on other assets exceeds the cost of the old asset.
- (4) In this paragraph—
  - (a) “qualifying expenditure” means expenditure in relation to which the conditions in paragraph 39 are met;
  - (b) “the cost of the old asset” means the total of the capitalised expenditure on the asset recognised for tax purposes;
  - (c) the references to the cost of the old asset shall be read—
    - (i) in the case of a part realisation, as references to the appropriate proportion of the cost, and
    - (ii) in the case of the realisation of an asset that has been the subject of a part realisation, as references to the adjusted cost.

For the calculation of the appropriate proportion and the adjusted cost, see paragraph 42.
- (5) The relief does not affect the treatment for any purpose of the Taxes Acts of any other party to any transaction involved in the realisation of the old asset or the expenditure on the other assets.

*Determination of appropriate proportion or adjusted cost*

- 42 (1) Any reference in paragraph 38 or 41 to the appropriate proportion of the cost of the old asset in the case of a part realisation is to the proportion given by:

$$\frac{\text{Reduction in Accounting Value}}{\text{Previous Accounting Value}}$$

where—

Reduction in Accounting Value is the difference between the accounting value immediately before the part realisation compared with that immediately after the part realisation; and

Previous Accounting Value is the accounting value immediately before the part realisation.

- (2) In the case of an asset that has previously been the subject of a part realisation the reference in sub-paragraph (1) to the cost of the old asset shall be read as a reference to the adjusted cost.
- (3) Any reference in paragraph 38 or 41, or sub-paragraph (2) above, to the adjusted cost in the case where the old asset has previously been the subject of a part realisation is to the amount given by deducting from the cost of the old asset the total of the amounts given by sub-paragraphs (1) and (2) above in relation to earlier part realisations.

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*References to cost of asset where asset affected by change of accounting policy*

[<sup>F371</sup>42(A)] In the case of an asset to which Part 13A of this Schedule has applied (adjustment on change of accounting policy) the references in this Part to the cost of the asset shall be read as follows.

- (2) Where paragraph 116B applied (change of accounting value) the references are unaffected.
- (3) Where paragraph 116C or 116D applied (changes involving disaggregation of asset) the references to the cost of the asset shall be read as references to the appropriate proportion of that cost.

The appropriate proportion is determined by applying to the cost of the asset the same fraction as is applied by paragraph 116C(5) or 116D(3), as the case may be, to determine the tax written down value of the asset after the change.

- (4) References in this paragraph to paragraphs 116B, 116C and 116D include references to those provisions as applied by paragraph 116E.]

**Textual Amendments**

**F371** Sch. 29 para. 42A inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 44](#)

*Declaration of provisional entitlement to relief*

- 43
- (1) A company realising an intangible fixed asset may make a declaration of provisional entitlement to relief under this Part.
  - (2) A declaration of provisional entitlement is a declaration by the company, in its company tax return for the accounting period in which the realisation takes place, that the company—
    - (a) has realised an intangible fixed asset,
    - (b) proposes to meet the conditions for relief under this Part, and
    - (c) is accordingly provisionally entitled to relief of a specified amount.
  - (3) While the declaration continues in force, this Part applies as if the conditions for relief under this Part were met.
  - (4) A declaration of provisional entitlement ceases to have effect if, or to the extent that—
    - (a) it is withdrawn, or
    - (b) it is superseded by a claim for relief under this Part.
  - (5) So far as not previously withdrawn or superseded, a declaration of provisional entitlement ceases to have effect four years after the end of the accounting period in which the realisation took place.
  - (6) On a declaration of provisional entitlement ceasing to have effect, in whole or in part, all necessary adjustments shall be made, by assessment or otherwise.

This applies notwithstanding any limitation on the time within which assessments or amendments may be made.

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### *Realisation and reacquisition*

- 44 This Part applies where a company realises an asset and subsequently reacquires it as if what is reacquired were a different asset from that previously realised.

### *Deemed realisations and deemed acquisitions to be disregarded*

- 45 (1) This Part does not apply in relation to a deemed realisation of an asset except as provided by—
- (a) paragraph 65 (application of roll-over relief in relation to deemed realisation as a result of degrouping), or
  - (b) paragraph 67 (application of roll-over relief in relation to reallocated degrouping charge).
- (2) No account shall be taken for the purposes of this Part of any deemed reacquisition.

## PART 8

### GROUPS OF COMPANIES

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

**C39** Sch. 29 Pt. 8 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 9 para. 35\(b\)](#) (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Introduction*

- 46 (1) This Part has effect for the purposes of this Schedule to determine whether companies form a group and, where they do, which is the principal company of the group.
- (2) In this Part references to a company apply only to—
- (a) a company within the meaning of the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/ 1032 (N.I. 6));
  - (b) a company (other than a limited liability partnership) constituted under any other Act or by a Royal Charter or letters patent;
  - (c) a company formed under the law of a country or territory outside the United Kingdom;
  - (d) a registered industrial and provident society within the meaning of section 486 of the Taxes Act 1988;
  - (e) an incorporated friendly society within the meaning of the Friendly Societies Act 1992 (c. 40); or
  - (f) a building society.
- (3) In this Schedule the expressions “group” and “subsidiary” shall be construed with any necessary modifications where applied to a company formed under the law of a country outside the United Kingdom.

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*General rule: a company and its 75% subsidiaries form a group*

- 47 (1) A company (“the principal company of the group”) and all its 75% subsidiaries form a group, and if any of those subsidiaries have 75% subsidiaries the group includes them and their 75% subsidiaries, and so on.
- (2) Sub-paragraph (1) has effect subject to the following provisions of this Part.

*Membership of group restricted to effective 51% subsidiaries of principal company*

- 48 A group of companies does not include any company (other than the principal company of the group) that is not an effective 51% subsidiary of the principal company of the group.

*Principal company cannot be 75% subsidiary of another company*

- 49 (1) A company cannot be the principal company of a group if it is itself a 75% subsidiary of another company.
- (2) Notwithstanding sub-paragraph (1), where—
- (a) a company (“the subsidiary”) is a 75% subsidiary of another company, and
  - (b) those companies are prevented from being members of the same group by paragraph 48 (the effective 51% subsidiary requirement),
- the subsidiary may, if the requirements of paragraphs 47 and 48 are met, itself be the principal company of another group, unless this enables a further company to be the principal company of a group of which the subsidiary would be a member.

*Company cannot be member of more than one group*

- 50 (1) A company cannot be a member of more than one group.
- (2) If a company would otherwise be a member of two or more groups, the group of which it is a member is determined by applying the following rules (applying the rules successively in the order shown until an answer is obtained).
- (3) In the following provisions the principal company of each group is referred to as the “head of a group”.
- (4) The first rule is that the company is a member of the group of which it would be a member if, in applying paragraph 48 (the effective 51% subsidiary requirement), there were left out of account—
- (a) any amount to which a head of a group is beneficially entitled of any profits available for distribution to equity holders of a head of another group, or
  - (b) any amount to which a head of a group would be beneficially entitled of any assets of a head of another group available for distribution to its equity holders on a winding up.
- (5) The second rule is that the company is a member of the group the head of which is beneficially entitled to a percentage of the profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled.
- (6) The third rule is that the company is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for

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distribution to its equity holders on a winding up that is greater than the percentage of those assets to which any other head of a group would be so entitled.

- (7) The fourth rule is that the company is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group.

The provisions of section 838(2) to (10) of the Taxes Act 1988 apply for the interpretation of this sub-paragraph as they apply for the interpretation of subsection (1)(a) of that section (definition of "51% subsidiary").

### *Continuity of identity of group*

- 51 (1) For the purposes of this Schedule—
- (a) a group of companies remains the same group of companies so long as the same company is the principal company of the group, and
  - (b) if the principal company of a group becomes a member of another group, the first group and the other group shall be regarded as the same (and the question whether a company has ceased to be a member of a group shall be determined accordingly).
- (2) For the purposes of this Schedule the passing of a resolution or the making of an order, or any other act, for the winding up of a member of a group is not regarded as the occasion of that or any other company ceasing to be a member of the group.
- [<sup>F372</sup>51A For the purposes of this Schedule where the principal company of a group (Group 1)—
- (a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2) (a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),
  - (b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or
  - (c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),

Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.]

#### **Textual Amendments**

**F372** Sch. 29 para. 51A inserted (with effect in accordance with s. 63(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 63\(1\)](#)

### *Meaning of "effective 51% subsidiar"y*

- 52 For the purposes of this Schedule a company ("the subsidiary") is an effective 51% subsidiary of another company ("the parent") if, and only if, the parent—
- (a) is beneficially entitled to more than 50% of any profits available for distribution to equity holders of the subsidiary, and



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- (b) would be beneficially entitled to more than 50% of any assets of the subsidiary available for distribution to its equity holders on a winding up.

*Meaning of equity holder and profits or assets available for distribution*

- 53 (1) Schedule 18 to the Taxes Act 1988 (meaning of equity holder and determination of profits or assets available for distribution) applies for the purposes of paragraphs 50 and 52.
- (2) In that Schedule as it applies for the purposes of those paragraphs—
- (a) for any reference to sections 403C and 413(7) of that Act, or either of those provisions, substitute a reference to those paragraphs;
  - (b) omit the words in paragraph 1(4) from “but” to the end;
  - (c) omit paragraph 5(3) and paragraphs 5B to 5F; and
  - (d) omit paragraph 7(1)(b).

*Supplementary provisions*

- 54 (1) In applying for the purposes of this Part the definition of “75% subsidiary” in section 838 of the Taxes Act 1988, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.
- (2) The provisions of section 170(12) to (14) of the Taxation of Chargeable Gains Act 1992 (c. 12) (application to certain statutory bodies of provisions relating to groups of companies) apply for the purposes of this Part as they apply for the purposes of sections 171 to 181 of that Act.

## PART 9

### APPLICATION OF PROVISIONS TO GROUPS OF COMPANIES

*Transfers within a group*

- 55 (1) Where—
- (a) an intangible fixed asset is transferred from one company (“the transferor”) to another company (“the transferee”) at a time when both companies are members of the same group, and
  - (b) the asset is a chargeable intangible asset in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer,
- the transfer of the asset is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- [<sup>F373</sup>(1A) Where this paragraph applies in relation to the transfer of an asset, Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length) does not apply in relation to the transfer.]
- (2) Sub-paragraph (1) does not apply—
- (a) if the transferor or transferee is a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or

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- (b) if the transferee is a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).

#### Textual Amendments

**F373** Sch. 29 para. 55(1A) inserted (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 5 para. 16\(2\)](#)

#### *Roll-over relief on reinvestment: application to group member*

- 56 (1) The following provisions have effect as regards the application of Part 7 (roll-over relief in case of realisation and reinvestment) in relation to a company that is a member of a group.
- (2) That Part applies where—
- (a) the realisation of the old asset is by a company that, at the time of the realisation, is a member of a group,
  - (b) the expenditure on other assets is by another company that, at the time the expenditure is incurred—
    - (i) is a member of the same group as the company mentioned in paragraph (a), and
    - (ii) is not a dual resident investing company,
  - (c) the other assets are chargeable intangible assets in relation to the company mentioned in paragraph (b) immediately after the expenditure is incurred, and
  - (d) the claim is made by both companies, as if both companies were the same person.
- (3) That Part does not apply if the expenditure on other assets is expenditure on the acquisition of assets acquired from another member of the same group by a tax-neutral transfer.
- (4) Expressions used in this paragraph that are defined for the purposes of Part 7 have the same meaning in this paragraph.

#### *Roll-over relief on reinvestment: acquisition of group company treated as equivalent to acquisition of underlying assets*

- 57 (1) Where a company (“company A”) acquires a controlling interest in another company (“company B”) and intangible fixed assets (“underlying assets”) are held—
- (a) by company B, or
  - (b) by one or more other companies that were not in the same group as company A before its acquisition of a controlling interest in company B but as a result of that acquisition are in the same group as company A immediately after the acquisition,
- Part 7 (roll-over relief in case of realisation and reinvestment) has effect in accordance with the following provisions.
- (2) The expenditure by company A on the acquisition of a controlling interest in company B is treated as expenditure on acquiring the underlying assets.

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- (3) The amount of expenditure that is treated as incurred by company A on acquiring the underlying assets is taken to be—
  - (a) the tax written down value of the underlying assets immediately before the acquisition, or
  - (b) if less, the amount or value of the consideration for the acquisition by company A of the controlling interest in company B.
- (4) The requirement that the assets be chargeable intangible assets in relation to company A immediately after the expenditure is incurred on acquiring them is treated as met in relation to the underlying assets if they are chargeable intangible assets in relation to the company by which they are held immediately after the acquisition by company A of a controlling interest in company B.
- (5) The tax written down value of the underlying assets in the hands of the company by which they are held shall be reduced by the amount available for relief, and if—
  - (a) there is more than one underlying asset, and
  - (b) the amount of expenditure on other assets that is treated as incurred exceeds the amount available for relief,the company by which the underlying assets are held may decide how the amount available for relief is to be allocated in reducing the tax written down values of the assets.

If there is more than one such company, they may agree between them how that amount is to be allocated.
- (6) A claim for relief under Part 7 made by virtue of this paragraph must be made jointly by company A and the company or companies holding the underlying assets concerned.
- (7) For the purposes of this paragraph company A acquires a controlling interest in company B if the two companies are not in the same group and there is an acquisition by company A of shares in company B such that those two companies are in the same group immediately after the acquisition.
- (8) Expressions used in this paragraph that are defined for the purposes of Part 7 have the same meaning in this paragraph.

#### *Company ceasing to be member of group (“degroupin”g)*

- 58 (1) This paragraph applies where—
- (a) a company (“the transferor”) that is a member of a group (“the group”) transfers an intangible fixed asset (“the relevant asset”) to another company (“the transferee”),
  - (b) the relevant asset is a chargeable intangible asset in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, and
  - (c) the transferee—
    - (i) having been a member of the group at the time of the transfer, or
    - (ii) having subsequently become a member of the group,ceases to be a member of the group after the transfer and before the end of the period of six years after the date of the transfer.

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- (2) If, when the transferee ceases to be a member of the group, the relevant asset is held by the transferee or an associated company also leaving the group, this Schedule has effect as if the transferee, immediately after the transfer of the relevant asset to it, had realised the asset for its market value at that time and immediately reacquired the asset at that value.
- (3) The adjustments required to be made in consequence of sub-paragraph (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the period between—
- (a) the transfer of the relevant asset to the transferee, and
  - (b) the transferee ceasing to be a member of the group,
- shall be made by bringing the aggregate net credit or debit into account as if it had arisen immediately before the transferee ceased to be a member of the group.
- (4) For the purposes of Part 6 (how credits and debits are given effect) credits or debits brought into account by virtue of this paragraph take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.

Provided that, in a case where—

- (a) the asset was then held by the transferee for the purposes of a trade, business or concern within paragraph 31, 32 or 33, and
- (b) the transferee ceased to carry on that trade, business or concern before it ceased to be a member of the group,

any credit or debit brought into account by virtue of this paragraph in respect of the asset shall be treated for the purposes of Part 6 as a non-trading credit or debit.

- (5) This paragraph has effect subject to—
- paragraph 59 (associated companies leaving group at the same time),
  - paragraph 60 (principal company becoming member of another group),
  - paragraph 61 (company ceasing to be member of group by reason of exempt distribution), and
  - paragraph 62 (merger carried out for bona fide commercial reasons).

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

- C40** Sch. 29 para. 58 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 9 para. 26](#) (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), Sch. 1
- C41** Sch. 29 para. 58 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 9 para. 14](#) (with s. 38(2)); [S.I. 2004/2575](#), art. 2(1), Sch. 1

*Degrouping: associated companies leaving group at the same time*

- 59 (1) Where two or more associated companies cease to be members of a group at the same time, paragraph 58 does not have effect in relation to a transfer from one to another of those companies.
- (2) But where—
- (a) a company (“the transferee”) that has ceased to be a member of a group of companies (“the first group”) acquired an asset from another company (“the transferor”) which was a member of that group at the time of the transfer,

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- (b) sub-paragraph (1) applies in relation to the transferee's ceasing to be a member of the first group so that paragraph 58 does not have effect,
  - (c) the transferee subsequently ceases to be a member of another group of companies ("the second group"), and
  - (d) there is a relevant connection between the two groups (see sub-paragraph (3)),
- paragraph 58 has effect in relation to the transferee's ceasing to be a member of the second group as if it were the second group of which both companies had been members at the time of the transfer.
- (3) For the purposes of sub-paragraph (2) there is a relevant connection between the first group and the second group if, at the time when the transferee ceases to be a member of the second group, the company which is the principal company of that group is under the control of—
- (a) the company that is the principal company of the first group or, if that group no longer exists, was the principal company of that group when the transferee ceased to be a member of it; or
  - (b) any person or persons who control the company mentioned in paragraph (a) or who have had it under their control at any time in the period since the transferee ceased to be a member of the first group; or
  - (c) any person or persons who have, at any time in that period, had under their control either—
    - (i) a company that would have been a person falling within paragraph (b) if it had continued to exist, or
    - (ii) a company that would have been a person falling within this paragraph (whether by reference to a company that would have been a person falling within paragraph (b) or by reference to a company or series of companies falling within this provision).
- (4) The provisions of section 416(2) to (6) of the Taxes Act 1988 (meaning of control) have effect for the purposes of sub-paragraph (3) as they have effect for the purposes of Part 11 of that Act.

But a person carrying on a business of banking shall not be regarded for those purposes as having control of a company by reason only of having, or of the consequences of having exercised, any rights in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business.

*Degrouping: principal company becoming member of another group*

- 60 (1) Paragraph 58 does not apply where a company ceases to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group ("the second group").
- (2) But if, in a case where paragraph 58 would have applied but for sub-paragraph (1) above, after the transfer and before the end of the period of six years after the date of the transfer—
- (a) the transferee ceases to satisfy the condition that it is both a 75% subsidiary and an effective 51% subsidiary of one or more members of the second group ("the qualifying condition"), and

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- (b) at the time at which the transferee ceases to satisfy that condition, the relevant asset is held by the transferee or another company in the same group, this Schedule has effect as if the transferee, immediately after the transfer to it of the relevant asset, had realised the asset for its market value at that time and immediately reacquired the asset at that value.
- (3) The adjustments required to be made in consequence of sub-paragraph (2), by the transferee or a company to which the relevant asset has been subsequently transferred, in relation to the period between—
- (a) the transfer of the relevant asset to the transferee, and
  - (b) the transferee ceasing to satisfy the qualifying condition,
- shall be made by bringing the aggregate net credit or debit into account as if it had arisen immediately before the transferee ceased to satisfy the qualifying condition.
- (4) For the purposes of Part 6 (how credits and debits are given effect) credits or debits brought into account by virtue of this paragraph take their character from the purposes for which the relevant asset was held by the transferee immediately after the transfer.

Provided that, in a case where—

- (a) the asset was then held by the transferee for the purposes of a trade, business or concern within paragraph 31, 32 or 33, and
- (b) the transferee ceased to carry on that trade, business or concern before it ceased to satisfy the qualifying condition,

any credit or debit brought into account by virtue of this paragraph in respect of the asset shall be treated for the purposes of Part 6 as a non-trading credit or debit.

- (5) This paragraph is subject to paragraph 62 (merger carried out for bona fide commercial reasons).

*Degrouping: company ceasing to be member of group by reason of exempt distribution*

- 61 (1) Paragraphs 58 and 60 do not apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution, unless there is a chargeable payment within five years after the making of the exempt distribution.
- (2) If within five years after the making of the exempt distribution there is a chargeable payment, all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made within the period of three years after the making of the chargeable payment.

This applies notwithstanding any time limit on the making of an assessment or the amendment of a return.

- (3) In this paragraph—
- “exempt distribution” means a distribution that is exempt by virtue of section 213(2) of the Taxes Act 1988; and
- “chargeable payment” has the meaning given in section 214(2) of that Act.
- (4) In determining for the purposes of this paragraph whether one company is a 75% subsidiary of another, the other company—

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- (a) shall be treated as not being the owner of any share capital that it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade, and
- (b) shall be treated as not being the owner of any share capital that it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

*Degrouping: merger carried out for bona fide commercial reasons*

- 62 (1) Paragraphs 58 to 61 do not apply where—
- (a) the transferee ceases to be a member of a group of companies (“the group”) as part of a merger, and
  - (b) the merger is carried out for bona fide commercial reasons and the avoidance of liability to tax is not the main or one of the main purposes of the merger.
- (2) For this purpose a “merger” means an arrangement (which in this paragraph includes a series of arrangements) whereby—
- (a) one or more companies (“the acquiring company” or, as the case may be, “the acquiring companies”) none of which is a member of the group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by the transferee, and
  - (b) one or more members of the group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90% of the ordinary share capital of which was then beneficially owned by two or more of the acquiring companies,
- and in respect of which the conditions in sub-paragraph (4) below are fulfilled.
- (3) For the purposes of sub-paragraph (2) a member of a group of companies shall be treated as carrying on as one business the activities of that group.
- (4) The conditions referred to in sub-paragraph (2) are—
- (a) that not less than 25% by value of each of the interests acquired as mentioned in sub-paragraph (2)(a) and (b) consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in sub-paragraph (2)(b) consists of a holding of share capital (of any description) or debentures or both; and
  - (b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in sub-paragraph (2)(a) is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in sub-paragraph (2)(b); and
  - (c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in sub-paragraph (2)(a), disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the group as mentioned in sub-paragraph (2)(b).

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- (5) For the purposes of sub-paragraph (4) the value of an interest shall be determined as at the date of its acquisition.

*Degrouping: group member ceasing to exist*

- 63 References in paragraphs 58 to 61 (degrouing) to a company ceasing to be a member of a group do not include cases where a company ceases to be a member of a group in consequence of another member of the group ceasing to exist.

*Degrouping: supplementary provisions*

- 64 For the purposes of paragraphs 58 to 61 (degrouing)—
- (a) two or more companies are associated if, by themselves, they would form a group of companies; and
  - (b) an asset acquired by a company is treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset.

*Degrouping: application of roll-over relief in relation to degrouing charge*

- 65 (1) Part 7 (roll-over relief in case of reinvestment) applies with the following modifications where a company is treated as having realised an asset by virtue of paragraph 58 or 60 (degrouing)—
- (a) in paragraph 38 (conditions to be met in relation to the old asset), for the references to the old asset being a chargeable intangible asset in relation to the company substitute references to its being a chargeable intangible asset in relation to the transferor;
  - (b) in paragraph 39(1) (conditions to be met in relation to expenditure on other assets), for the references to the date of realisation of the old asset substitute references to—
    - (i) in a case within paragraph 58, the date on which the transferee ceased to be a member of the group, and
    - (ii) in a case within paragraph 60, the date on which the transferee ceased to satisfy the qualifying condition;
  - (c) references to the proceeds of realisation shall be read as references to the amount for which the transferee is treated as having realised the asset.
- (2) A reduction of the deemed realisation proceeds as a result of a claim for relief under Part 7 does not affect the value at which the company is deemed to have reacquired the asset.
- (3) In this paragraph “the transferee” and “the transferor” have the same meaning as in paragraph 58.

*Reallocation of degrouing charge within group*

- 66 (1) This paragraph applies where a chargeable realisation gain accrues to a company (“company X”) under paragraph 58 or 60 in respect of an asset.
- (2) For the purposes of this paragraph—
- (a) “the relevant time” is—



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- (i) in a case within paragraph 58, immediately before company X ceases to be a member of the group;
    - (ii) in a case within paragraph 60, immediately before company X ceases to satisfy the qualifying condition;
  - (b) “the relevant group” is—
    - (i) in a case within paragraph 58, the group of which company X was a member at the relevant time;
    - (ii) in a case within paragraph 60, the second group (within the meaning of that paragraph).
- (3) Company X and a company that was a member of the relevant group at the relevant time (“company Y”) may jointly elect that the gain, or such part of it as may be specified in the election, shall be treated as accruing to company Y and not to company X.
- (4) An election to that effect may be made only if the following two conditions are met.
- (5) The first condition is that at the relevant time company Y—
  - (a) was resident in the United Kingdom, or
  - (b) carried on a trade in the United Kingdom through a [<sup>F374</sup>permanent establishment] and was not by virtue of arrangements under Part 18 of the Taxes Act 1988 (double taxation relief) exempt from corporation tax in respect of the profits or gains of that [<sup>F374</sup>permanent establishment].
- (6) The second condition is that company Y was not at the relevant time—
  - (a) a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or
  - (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).
- (7) An election under this paragraph must be made—
  - (a) by notice in writing to the Inland Revenue,
  - (b) not later than two years after the end of the accounting period of company X in which the relevant time falls.
- (8) The effect of the election is that the gain, or the part specified in the election, is treated—
  - (a) as if it had accrued to company Y at the relevant time as a non-trading credit for the purposes of Part 6 (how credits and debits are given effect), and
  - (b) where company Y is not resident in the United Kingdom at the relevant time, as if it had accrued in respect of an asset held for the purposes of a [<sup>F375</sup>permanent establishment] of the company in the United Kingdom.

#### Textual Amendments

**F374** Words in Sch. 29 para. 66(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

**F375** Words in Sch. 29 para. 66(8)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

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*Application of roll-over relief in relation to reallocated degrouping charge*

- 67 (1) Where an election has been made under paragraph 66, this paragraph applies for the purpose of enabling company Y to make a claim under Part 7 (roll-over relief on reinvestment).
- (2) For that purpose—
- (a) Part 7 applies as if the deemed realisation of the asset had been by company Y and not company X,
  - (b) the conditions in paragraph 38 (conditions to be met in relation to the old asset) are treated as met in relation to the asset if they would have been met if there had been no election and company X had made the claim, and
  - (c) the proceeds of realisation and the cost of the old asset recognised for tax purposes are what they would have been if there had been no election and company X had made the claim.
- (3) Where the election relates to part only of the gain on the deemed realisation of an asset, Part 7 and this paragraph apply as if the deemed realisation had been of a separate asset representing a corresponding part of the asset, and any necessary apportionments shall be made accordingly.

*Recovery of degrouping charge from another group company or controlling director*

- 68 (1) This paragraph applies where—
- (a) a company (“the taxpayer company”) is liable to a degrouping charge,
  - (b) an amount of corporation tax has been assessed on the company for the relevant accounting period, and
  - (c) the whole or part of that amount is unpaid at the end of the period of six months after the time when it became payable.
- (2) The following persons may be required, by notice under paragraph 69, to pay the amount of corporation tax referable to the degrouping charge or, if less, the amount of the unpaid tax—
- (a) if the taxpayer company was a member of a group at the relevant time—
    - (i) a company that was at that time the principal company of the group, and
    - (ii) any other company that at any time in the period of twelve months ending with the relevant time was a member of that group and owned the relevant asset or any part of it;
  - (b) if at the relevant time the taxpayer company is not resident in the United Kingdom but carries on a trade in the United Kingdom through a [<sup>F376</sup>permanent establishment], any person who is, or during the period of twelve months ending with that time was, a controlling director of the taxpayer company or of a company that has, or within that period had, control of the taxpayer company.
- (3) For the purposes of this paragraph—
- (a) the relevant accounting period is the accounting period in which the degrouping charge falls to be brought into account by the taxpayer company;
  - (b) the relevant time is—
    - (i) in a case within paragraph 58, when the taxpayer company ceased to be a member of the group;

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- (ii) in a case within paragraph 60, when the taxpayer company ceased to satisfy the qualifying condition;
    - (iii) where there has been an election under paragraph 66 (reallocation of degrouping charge within group), the time that would have been the relevant time under sub-paragraph (i) or (ii) if there had been no such election;
  - (c) the relevant asset is the asset in respect of which the degrouping charge arises.
- (4) The amount of corporation tax referable to a degrouping charge is the difference between—
  - (a) the tax in fact payable for the relevant accounting period, and
  - (b) the tax that would have been payable for that period in the absence of the degrouping charge.
- (5) References in this paragraph to a degrouping charge are to—
  - (a) a credit required to be brought into account under paragraph 58(3) or 60(3), or
  - (b) where there has been an election under paragraph 66 (reallocation of degrouping charge within group), a credit required to be brought into account as a result of the election.
- (6) In this paragraph—
  - “director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section);
  - “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988); and
  - “group” and “principal company” have the meaning that would be given by Part 8 of this Schedule if in that Part for references to 75% subsidiaries there were substituted references to 51% subsidiaries.

#### **Textual Amendments**

**F376** Words in Sch. 29 para. 68(2)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

#### *Recovery of degrouping charge from another group company or controlling director: procedure etc*

- 69
- (1) The Inland Revenue may serve a notice on a person within paragraph 68(2) requiring him, within 30 days of the service of the notice, to pay—
    - (a) the amount of the tax referable to the degrouping charge, or
    - (b) if less, the amount that remains unpaid of the corporation tax payable by the taxpayer company for the relevant accounting period.
  - (2) The notice must state—
    - (a) the amount of the tax referable to the degrouping charge,

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- (b) the amount of corporation tax assessed on the taxpayer company for the relevant accounting period that remains unpaid and the date when it first became payable, and
  - (c) the amount required to be paid by the person on whom the notice is served.
- (3) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (4) In section 87A(3) of the Taxes Management Act 1970 (c. 9) (date from which interest runs in the case of an assessment of a company's tax on another person), for "or Schedule 28 to the Finance Act 2000" substitute " , Schedule 28 to the Finance Act 2000 or paragraph 69 of Schedule 29 to the Finance Act 2002 ”.
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the taxpayer company.
- (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

*Recovery of degrouping charge from another group company or controlling director: time limit*

- 70
- (1) Any notice under paragraph 69 must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the relevant accounting period is finally determined.
  - (2) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (c. 36) (determination where no return delivered or return incomplete), the date mentioned in sub-paragraph (1) shall be taken to be the date on which the determination was made.
  - (3) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), the date mentioned in sub-paragraph (1) shall be taken to be the latest of—
    - (a) the last date on which notice of enquiry may be given into the return containing the self-assessment;
    - (b) if notice of enquiry is given, 30 days after the enquiry is completed;
    - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion;
    - (d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;
    - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.
  - (4) If the unpaid tax is charged in a discovery assessment (see paragraph 41 of Schedule 18 to the Finance Act 1998 (c. 36)), the date mentioned in sub-paragraph (1) shall be taken to be—
    - (a) where there is no appeal against the assessment, the date when the tax becomes due and payable;

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- (b) where there is such an appeal, the date on which the appeal is finally determined.

#### *Payments between group members in respect of reliefs*

- 71 (1) This paragraph applies to payments—
- (a) for group roll-over relief, or
  - (b) for the reallocation of a degrouping charge.
- (2) A payment for group roll-over relief means a payment made—
- (a) in connection with a claim for relief under Part 7 (roll-over relief in case of realisation and reinvestment) made by virtue of—
    - (i) paragraph 56 (realisation by one group company and reinvestment by another), or
    - (ii) paragraph 57 (acquisition of group company treated as equivalent to acquisition of underlying assets),
  - (b) by the company whose proceeds of realisation are reduced as a result of the claim,
  - (c) to a company whose acquisition costs are reduced (in a case within paragraph 56) or the tax written-down value of whose assets is reduced (in a case within paragraph 57) as a result of the claim,
  - (d) in pursuance of an agreement between those companies in connection with the claim.
- (3) A payment for the reallocation of a degrouping charge means a payment made—
- (a) in connection with an election under paragraph 66 (reallocation of degrouping charge within group),
  - (b) by the company to which the chargeable realisation gain accrues to the company to which as a result of the election the whole or part of that gain is treated as accruing,
  - (c) in pursuance of an agreement between those companies in connection with the election.
- (4) A payment to which this paragraph applies—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution<sup>F377</sup> ...,
- provided it does not exceed the amount of the relief.
- (5) For this purpose the amount of the relief is—
- (a) in the case of a payment in connection with a claim for relief under paragraph 56, the amount of the reduction as a result of the claim in the acquisition costs of the company to which the payment is made;
  - (b) in the case of a payment in connection with a claim for relief under paragraph 57, the amount of the reduction as a result of the claim in the tax-written down value of the assets of the company to which the payment is made;
  - (c) in the case of a payment in connection with an election under paragraph 66, the amount treated as a result of the election as accruing to the company to which the payment is made.

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### Textual Amendments

**F377** Words in Sch. 29 para. 71(4)(b) repealed (with effect in accordance with Sch. 11 Pt. 2(7) Note of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 11 Pt. 2\(7\)](#)

## PART 10

### EXCLUDED ASSETS

#### *Introduction*

72 (1) This Part provides for the exclusion from this Schedule of certain assets.

Where or to the extent that an asset of any description is so excluded, an option or other right to acquire or dispose of an asset of that description is similarly excluded.

(2) This Part provides for three kinds of exclusion—

- (a) assets within paragraphs 73 to 77 are entirely excluded from this Schedule;
- (b) assets within paragraphs 78 to 81 are excluded from the provisions of this Schedule except as regards royalties;
- (c) assets within paragraph 82 or 83 are excluded from the provisions of this Schedule to the extent specified in the paragraph concerned.

(3) Where by virtue of any of those paragraphs an asset is excluded to the extent that—

- (a) it represents certain rights, or
- (b) it is an asset of a certain description, or
- (c) it is held for certain purposes, or
- (d) it represents expenditure of a certain kind,

the provisions of this Schedule apply as if there were a separate asset representing so much of the asset as is not so excluded.

(4) The other provisions of the Corporation Tax Acts have effect as if there were a separate asset representing so much of the asset as is excluded.

(5) Any apportionment necessary for the purposes of sub-paragraphs (3) and (4) shall be made on a just and reasonable basis.

#### *Assets entirely excluded: rights over tangible assets*

73 This Schedule does not apply to an intangible fixed asset to the extent that it represents—

- (a) rights enjoyed by virtue of an estate, interest or right in or over land, or
- (b) rights in relation to tangible movable property.

#### *Assets entirely excluded: assets in respect of which capital allowance previously made*

<sup>F378</sup>73(A) This Schedule does not apply to an intangible asset of a company in the following circumstances.

(2) The circumstances are that—

- (a) the asset falls to be treated as an intangible asset in accounts of the company,

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- (b) in a previous period of account the asset fell to be treated as a tangible asset in accounts of the company, and
- (c) an allowance under Part 2 of the Capital Allowances Act (plant and machinery allowances) was made to the company in respect of the asset on the latter basis.]

#### Textual Amendments

**F378** Sch. 29 para. 73A inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 10 para. 71](#)

#### *Assets entirely excluded: oil licences*

- 74 (1) This Schedule does not apply to an oil licence or an interest in an oil licence.
- (2) In sub-paragraph (1) an “oil licence” means a UK oil licence or a foreign oil concession.
- (3) In this paragraph—  
“UK oil licence” means a licence under—  
(a) Part 1 of the Petroleum Act 1998 (c. 17) (“the 1998 Act”), or  
(b) the Petroleum Production (Northern Ireland) Act 1964 (c. 28 (N.I.)) (“the 1964 Act”),  
authorising the winning of oil; and  
“foreign oil concession” means any right that—  
(a) is a right to search for or win oil that exists in its natural condition in a place to which neither the 1998 Act nor the 1964 Act applies, and  
(b) is conferred or exercisable (whether or not under a licence) in relation to a particular area.
- (4) In sub-paragraph (1) “interest in an oil licence” includes, if there is an agreement that—  
(a) relates to oil from the whole or a part of the licensed area, and  
(b) was made before the extraction of the oil to which it relates,  
any entitlement under the agreement to, or to a share of, that oil or the proceeds of its sale.
- (5) In sub-paragraph (4)(a) “licensed area” means—  
(a) in relation to a UK oil licence, the area to which the licence applies, and  
(b) in relation to a foreign oil concession, the area in relation to which the right to search for or win oil is conferred or exercisable under the concession.
- (6) In this paragraph “oil”—  
(a) in relation to a UK oil licence, means any substance won or capable of being won under the authority of a licence granted under Part 1 of the 1998 Act or the 1964 Act, other than methane gas won in the course of making and keeping mines safe, and  
(b) in relation to a foreign oil concession, means any petroleum (as defined by section 1 of the 1998 Act).

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*Assets entirely excluded: financial assets*

- 75 (1) This Schedule does not apply to financial assets.
- (2) “Financial asset” here has the meaning it has for accounting purposes.
- (3) The expression includes—
- [<sup>F379</sup>(a) loan relationships]
  - [<sup>F380</sup>(b) derivative contracts (see Part 2 of Schedule 26 to this Act),]
  - (c) contracts or policies of insurance or capital redemption policies, and
  - (d) rights under a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 (c. 8) (see section 235 of that Act).

**Textual Amendments**

**F379** Sch. 29 para. 75(3)(a) substituted (with effect as mentioned in s. 79(3) of the amending Act) by 2002 c. 23, s. 79, **Sch. 23 Pt. 2 para. 24(2)**

**F380** Sch. 29 para. 75(3)(b) substituted (with effect as mentioned in s. 83(3)(4) of the amending Act) by 2002 c. 23, s. 83, **Sch. 27 para. 26**

*Assets entirely excluded: rights in companies, trusts, etc*

- 76 (1) This Schedule does not apply to an asset to the extent that it represents—
- (a) shares or other rights in relation to the profits, governance or winding up of a company,
  - (b) rights under a trust, or
  - (c) the interest of a partner in a partnership.
- (2) Sub-paragraph (1)(b) does not apply to rights that for accounting purposes fall to be treated as representing an interest in trust property that is an intangible fixed asset to which this Schedule applies.
- (3) Sub-paragraph (1)(c) does not apply to an interest that for accounting purposes falls to be treated as representing an interest in partnership property that is an intangible fixed asset to which this Schedule applies.

*Assets entirely excluded: non-commercial purposes etc*

- 77 This Schedule does not apply to an intangible fixed asset to the extent that it is held—
- (a) for a purpose that is not a business or other commercial purpose of the company, or
  - (b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.

*Assets excluded except as regards royalties: life assurance business*

- 78 (1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset to the extent that it is held by an insurance company for the purposes of its life assurance business.
- (2) Sub-paragraph (1) does not apply to computer software.



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*Assets excluded except as regards royalties: mutual trade or business*

- 79 (1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset to the extent that it is held for the purposes of any mutual trade or business.
- (2) Sub-paragraph (1) does not apply to life assurance business.

*Assets excluded except as regards royalties: films and sound recordings*

- 80 (1) Except as regards royalties, this Schedule does not apply to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on the production or acquisition of a master version of a film or sound recording.
- (2) For this purpose “master version”—
- (a) in relation to a film [F381 means an original master version of the film (within the meaning given by section 43 of the Finance (No.2) Act 1992)]; and
  - (b) in relation to a sound recording means a master tape or master audio disc of the recording.

**Textual Amendments**

**F381** Words in Sch. 29 para. 80(2)(a) substituted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [Sch. 3 paras. 29, 31\(3\)](#)

*Assets excluded except as regards royalties: computer software treated as part of cost of related hardware*

- 81 Except as regards royalties, this Schedule does not apply to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on computer software that falls to be treated for accounting purposes as part of the costs of the related hardware.

*Assets excluded to extent specified: research and development*

- 82 (1) This paragraph applies to an intangible fixed asset held by a company to the extent that it represents expenditure by the company on research and development.
- (2) The following provisions of this Schedule do not apply to such an asset—
- (a) Part 2 (debits in respect of intangible fixed assets) does not apply, except for paragraph 12 (debit on reversal of previous accounting gain) so far as it relates to credits previously brought into account under paragraph 14 (receipts recognised as they accrue);
  - (b) Part 3 (credits in respect of intangible fixed assets) does not apply, except for paragraph 14.
- (3) Part 4 (debits and credits on realisation of intangible fixed asset) applies as if the cost of the asset did not include any expenditure on research and development.
- (4) In this paragraph “research and development” has the meaning given by section 837A of the Taxes Act 1988 and includes oil and gas exploration and appraisal.

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*Assets excluded to extent specified: election to exclude capital expenditure on computer software*

- 83 (1) This paragraph applies to an intangible fixed asset held by a company to the extent that it represents capital expenditure by the company on computer software in respect of which the company has made an election under this paragraph.
- (2) An insurance company that carries on life assurance business may also make an election under this paragraph in respect of so much of any capital expenditure on computer software as is not referable to its basic life assurance and general annuity business.
- (3) The effect of an election under this paragraph is as follows—
- (a) Part 2 does not apply to the asset, except for paragraph 12 (debit on reversal of previous accounting gain) so far as it relates to credits previously brought into account under paragraph 14 (receipts recognised as they accrue);
  - (b) Part 3 does not apply to the asset, except for paragraph 14;
  - (c) Part 4 (debits and credits on realisation of intangible fixed asset) applies as if the cost of the asset did not include any expenditure in respect of which an election under this paragraph has been made;
  - (d) a credit shall be brought into account under this Schedule in respect of the asset only to the extent that the receipts to which the credit relates do not fall to be taken into account in computing disposal values under section 72 of the Capital Allowances Act 2001 (c. 2).
- (4) Any election under this paragraph must specify the expenditure to which it relates, and must be made—
- (a) in writing,
  - (b) to the Inland Revenue,
  - (c) not more than two years after the end of the accounting period in which the expenditure was incurred.
- (5) An election under this paragraph is irrevocable.
- (6) The references in this paragraph—
- (a) to capital expenditure, and
  - (b) to the time when such expenditure is incurred,
- have the same meaning as if this paragraph were contained in the Capital Allowances Act 2001 (c. 2).

## PART 11

### TRANSFER OF BUSINESS OR TRADE

*Company reconstruction involving transfer of business*

- 84 (1) This paragraph applies where—
- (a) a scheme of reconstruction involves the transfer of the whole or part of the business of one company (“the transferor”) to another company (“the transferee”), and

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- (b) the transferor receives no part of the consideration for the transfer (otherwise than by the transferee taking over the whole or part of the liabilities of the business).

For this purpose “scheme of reconstruction” has the same meaning as in section 136 of the Taxation of Chargeable Gains Act 1992 (c. 12).

- (2) If the assets included in the transfer include intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (3) If a transfer falls within sub-paragraph (1) and also within paragraph 55 (transfers within a group), that paragraph applies and this paragraph does not.
- (4) This paragraph does not apply if the transferor or the transferee is—
- (a) a qualifying society within the meaning of section 461A of the Taxes Act 1988 (incorporated friendly societies entitled to exemption from tax), or
  - (b) a dual resident investing company within the meaning of section 404 of that Act (limitation of group relief).
- (5) This paragraph applies only if the reconstruction—
- (a) is effected for bona fide commercial reasons, and
  - (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax.
- (6) The requirements of sub-paragraph (5) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferee, notified that company that they are satisfied that the requirements of that sub-paragraph will be met.

For the procedure on such an application, see paragraph 88.

#### *Transfer of UK trade between companies resident in different EU member States*

- 85 (1) This paragraph applies where—
- (a) an EU company resident in one member State (“the transferor”) transfers the whole or part of a trade carried on by it in the United Kingdom to an EU company resident in another member State (“the transferee”),
  - (b) the transfer is wholly in exchange for securities issued by the transferee to the transferor, and
  - (c) a claim is made under this paragraph by the transferor and the transferee.
- (2) If the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer, the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (3) For the purposes of this paragraph a company is regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

For this purpose a company is treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation

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relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

- (4) This paragraph applies only if the transfer of the trade or part—
- (a) is effected for bona fide commercial reasons, and
  - (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax.
- (5) The requirements of sub-paragraph (4) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor and the transferee, notified those companies that they are satisfied that the requirements of that sub-paragraph will be met.

For the procedure on such an application, see paragraph 88.

- (6) In this paragraph—
- (a) “EU company” means a body incorporated under the law of a member State; and
  - (b) “securities” includes shares.

#### *Formation of SE by merger*

<sup>F382</sup>(1) This paragraph applies where—

- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
  - (b) each merging company is resident in a member State,
  - (c) the merging companies are not all resident in the same State, and
  - (d) paragraph 84 above does not apply to any qualifying transferred assets.
- (2) Where this paragraph applies a transfer of qualifying transferred assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (3) For the purposes of sub-paragraphs (1) and (2) an asset is a qualifying transferred asset if—
- (a) it is transferred as part of the process of the merger,
  - (b) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and
  - (c) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.
- (4) Sub-paragraph (2) shall apply in relation to the formation of an SE by merger only if—
- (a) it is effected for bona fide commercial reasons, and
  - (b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (5) Paragraph 84(6) (and therefore paragraph 88) shall apply, with any necessary modifications, in relation to sub-paragraph (4) above as in relation to paragraph 84(5).
- (6) For the purposes of this paragraph a company is resident in a member State if—

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- (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
- (b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.]

#### Textual Amendments

**F382** Sch. 29 para. 85A inserted (with effect in accordance with s. 52(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 52\(1\)](#)

#### *Postponement of charge on transfer of assets to non-resident company.*

- 86 (1) This paragraph applies where—
- (a) a company resident in the United Kingdom and carrying on a trade outside the United Kingdom through a [<sup>F383</sup>permanent establishment] (“the transferor”) transfers that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) to a company not resident in the United Kingdom (“the transferee”),
  - (b) the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee to the transferor, and
  - (c) the shares so issued, either alone or taken together with any other shares in the transferee already held by the transferor, amount in all to not less than one quarter of the ordinary share capital of the transferee.
- (2) If the transfer includes intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer (“relevant assets”), the transferor may claim that this Schedule shall have effect in accordance with the following provisions.
- (3) If the proceeds of realisation of a relevant asset exceed the cost of the asset recognised for tax purposes, the proceeds of realisation are treated as reduced—
- (a) if the securities are the whole consideration for the transfer, by the amount of the excess, and
  - (b) if the securities are not the whole of that consideration, by the appropriate proportion of the excess.
- For this purpose “the appropriate proportion” means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.
- (4) If at any time after the transfer the transferor realises the whole or part of the securities held by it immediately before that time, the transferor shall bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the aggregate deferred gain.

For this purpose—

“the appropriate proportion” means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal; and

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“the aggregate deferred gain” means the aggregate of the amounts by which the proceeds of realisation of relevant assets were reduced under sub-paragraph (3), so far as not already taken into account under this sub-paragraph or sub-paragraph (5).

- (5) If at any time within six years after the transfer the transferee realises any of the relevant assets held by it immediately before that time, the transferor shall bring into account for tax purposes a credit equal to the whole or the appropriate proportion of the aggregate deferred gain.

For this purpose—

“the appropriate proportion” means the proportion that the deferred gain attributable to the relevant assets realised bears to the deferred gain attributable to the relevant assets held immediately before the time of the realisation;

“the aggregate deferred gain” means the aggregate of the amounts by which the proceeds of realisation of relevant assets were reduced under sub-paragraph (3), so far as not already taken into account under this sub-paragraph or sub-paragraph (4); and

“the deferred gain attributable to” any relevant assets means the aggregate of the amounts by which the proceeds of realisation of those assets were reduced under sub-paragraph (3).

- (6) There shall be disregarded—
- (a) for the purposes of sub-paragraph (4), any disposal within section 171 of the Taxation of Chargeable Gains Act 1992 (c. 12) (transfers within a group); and
  - (b) for the purposes of sub-paragraph (5), any transfer by one member of a group (within the meaning of Part 8 of this Schedule) to another.
- (7) Where a person acquires securities or an asset on a disposal disregarded under sub-paragraph (6) (and without there having been a previous disposal not so disregarded), a subsequent disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, the transferee.
- (8) This paragraph applies only if the transfer of the trade or part—
- (a) is effected for bona fide commercial reasons, and
  - (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax.
- (9) The requirements of sub-paragraph (8) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor, notified that company that they are satisfied that the requirements of that sub-paragraph will be met.

For the procedure on such an application, see paragraph 88.

- (10) No claim may be made under this paragraph as regards a transfer in relation to which a claim is made under paragraph 87 (transfer of non-UK trade).

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### Textual Amendments

**F383** Words in Sch. 29 para. 86(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

### *Transfer of non-UK trade*

- 87 (1) This paragraph applies where—
- (a) an EU company resident in the United Kingdom (“the transferor”) transfers to an EU company resident in another member State (“the transferee”) the whole or part of a trade that, immediately before the time of the transfer, the transferor carried on in a member State other than the United Kingdom (“the other member State”) through a [<sup>F384</sup>permanent establishment],
  - (b) the transfer—
    - (i) includes the whole of the assets of the transferor used for the purposes of the trade or part (or the whole of those assets other than cash), and
    - (ii) is wholly or partly in exchange for securities issued by the transferee to the transferor,
  - (c) the transfer includes intangible fixed assets—
    - (i) that are chargeable intangible assets in relation to the transferor immediately before the transfer, and
    - (ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes, and
  - (d) the transferor makes a claim under this paragraph.
- (2) Where tax would have been chargeable under the law of the other member State in respect of the transfer of those assets but for the Mergers Directive, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of section 788 of that Act (bilateral relief), shall apply as if the amount of tax, calculated on the required basis, that would have been payable under that law in respect of the transfer of those assets but for that Directive, were tax payable under that law.
- (3) For this purpose “the required basis” is that—
- (a) so far as permitted under the law of the other member State, any losses arising on the transfer are set against any gains so arising, and
  - (b) any relief available to the transferor under that law has been duly claimed.
- (4) In this paragraph—
- “EU company” means a body incorporated under the law of a member State;
  - “the Mergers Directive” means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (No. 90/434/EEC);
  - “securities” includes shares.
- (5) For the purposes of this paragraph a company is regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

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For this purpose a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

- (6) No claim may be made under this paragraph as regards a transfer in relation to which a claim is made under paragraph 86 (postponement of charge on transfer of assets to non-resident company).
- (7) This paragraph applies only if the transfer of the trade or part—
- (a) is effected for bona fide commercial reasons, and
  - (b) does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax.
- (8) The requirements of sub-paragraph (7) are treated as met where, before the transfer, the Inland Revenue have, on the application of the transferor, notified that company that they are satisfied that the requirements of that sub-paragraph will be met.

For the procedure on such an application, see paragraph 88.

#### Textual Amendments

**F384** Words in Sch. 29 para. 87(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

#### *Formation of SE by merger: transfer of non-UK trade*

<sup>F385</sup>87(1) This paragraph applies where—

- (a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),
  - (b) each merging company is resident in a member State,
  - (c) the merging companies are not all resident in the same State,
  - (d) in the course of the merger a company resident in the United Kingdom (“the transferor”) transfers to a company resident in another member State (“the transferee”) the whole or part of a trade that, immediately before the transfer, the transferor carried on in a member State other than the United Kingdom through a permanent establishment,
  - (e) the transfer includes the whole of the assets of the transferor used for the purposes of the trade or part,
  - (f) the transfer includes intangible fixed assets—
    - (i) that are chargeable intangible assets in relation to the transferor immediately before the transfer, and
    - (ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes, and
  - (g) no claim is made under paragraph 86 above in relation to those assets.
- (2) Where tax would, but for the Mergers Directive, have been chargeable in the member State in which the permanent establishment is located, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of



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section 788 (double taxation agreements), shall have effect as if the amount of tax that would, but for the Mergers Directive, have been charged in respect of the transfer of the chargeable intangible assets, had actually been charged.

- (3) In this paragraph “the Mergers Directive” has the same meaning as in paragraph 87.
- (4) For the purposes of this paragraph a company is resident in a member State if—
  - (a) it is within a charge to tax under the law of the State as being resident for that purpose, and
  - (b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.
- (5) This paragraph does not apply to the formation of an SE by merger if—
  - (a) it is not effected for bona fide commercial reasons, or
  - (b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.
- (6) Sub-paragraph (5) shall not affect the operation of this paragraph in any case where, before the transfer, Her Majesty's Revenue and Customs have, on the application of the transferor, notified the transferor that they are satisfied that the merger will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in sub-paragraph (5)(b).
- (7) An application under sub-paragraph (6) must be made in accordance with paragraph 88.]

#### Textual Amendments

**F385** Sch. 29 para. 87A inserted (with effect in accordance with s. 53(2) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 53\(1\)](#)

#### *Procedure on application for clearance*

- 88
- (1) This paragraph applies in relation to an application under paragraph 84(6), 85(5), [F<sup>386</sup>85A(5), 87A(6),] 86(9) or 87(8).
  - (2) The application must be in writing and must contain particulars of the operations that are to be effected.
  - (3) The Inland Revenue may, within 30 days of the receipt of the application or of any further particulars previously required under this sub-paragraph, by notice require the applicant to furnish further particulars for the purpose of enabling the Inland Revenue to make their decision.  
  
If any such notice is not complied with within 30 days or such longer period as the Inland Revenue may allow, the Inland Revenue need not proceed further on the application.
  - (4) The Inland Revenue shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under sub-paragraph (3), within 30 days of the notice being complied with.

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- (5) If the Inland Revenue notify the applicant that they are not satisfied as mentioned in paragraph 84(6), 85(5), 86(9) or 87(8) or do not notify their decision to the applicant within the time required by sub-paragraph (4), the applicant may within 30 days of the notification or of that time require the Inland Revenue to transmit the application, together with any notice given and further particulars furnished under sub-paragraph (3), to the Special Commissioners.

In that event any notification by the Special Commissioners shall have effect for the purposes of paragraph 84(6), 85(5), [<sup>F387</sup>85A(5), 87A(6),] 86(9) or 87(8) as if it were a notification by the Inland Revenue.

- (6) If any particulars furnished under this paragraph do not fully and accurately disclose all facts and considerations material for the decision of the Inland Revenue or the Special Commissioners, any resulting notification by the Inland Revenue or the Commissioners is void.

#### Textual Amendments

**F386** Words in Sch. 29 para. 88(1) inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 59\(5\)](#)

**F387** Words in Sch. 29 para. 88(5) inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 59\(5\)](#)

#### *Transfer of life assurance business*

- 89 (1) This paragraph applies where there is—
- (a) a transfer between two companies of business consisting of the effecting or carrying out of contracts of long-term insurance which has effect under an insurance business transfer scheme, or
  - (b) a transfer between two companies that is a qualifying overseas transfer within the meaning [<sup>F388</sup>given by the definition treated as inserted into section 431(2) of the Taxes Act 1988 by paragraph 6(9) of Schedule 19AC to that Act] (transfer of business of overseas life insurance company),
- and the assets included in the transfer include intangible fixed assets that are chargeable intangible assets in relation to the transferor company immediately before the transfer and in relation to the successor company immediately after the transfer.
- (2) Where this paragraph applies the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (3) In this paragraph—
- “contracts of long-term insurance” means contracts that fall within Part II of Schedule 1 to the Finance Services and Markets Act (Regulated Activities) Order 2001 (S.I. 2001/544); and
- “insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000 (c. 8) or an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section.

#### Textual Amendments

**F388** Words in Sch. 29 para. 89(1)(b) substituted (with effect in accordance with reg. 1 of the amending S.I.) by [The Overseas Life Insurance Companies Regulations 2004 \(S.I. 2004/2200\), regs. 1\(1\), 11\(5\)](#)

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

**C42** Sch. 29 para. 89 modified by SI 1997/473 reg. 53J (as inserted (30.1.2003) by [The Friendly Societies \(Modification of the Corporation Tax Acts\) \(Amendment\) Regulations 2003 \(S.I. 2003/23\)](#), regs. 1(1), **10**

*Transfer of business of building society to company*

- 90 (1) Where—
- (a) there is a transfer of the whole of a building society's business to a company ("the successor company") in accordance with section 97 and the other applicable provisions of the Building Societies Act 1986 (c. 53), and
  - (b) the assets included in the transfer include intangible fixed assets that are chargeable intangible assets in relation to the society immediately before the transfer and in relation to the successor company immediately after the transfer,
- the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (2) If because of the transfer a company ceases to be a member of the same group as the society, that event shall not cause paragraph 58 or 60 (deemed realisation and reacquisition) to have effect as respects any asset acquired by the company from the society or any other member of the same group.
- (3) Where the society and the successor company are members of the same group at the time of the transfer but later cease to be so, that later event shall not cause paragraph 58 or 60 to have effect as respects—
- (a) any asset acquired by the successor company on or before the transfer from the society or any other member of the same group, or
  - (b) any asset acquired from the society or any other member of the same group by a company other than the successor company that is a member of the same group at the time of the transfer.
- (4) Where a company which is a member of the same group as the society at the time of the transfer—
- (a) ceases to be a member of that group and becomes a member of the same group as the successor company, and
  - (b) subsequently ceases to be a member of that group,
- paragraph 58 has effect on that later event as respects any asset to which this sub-paragraph applies that is acquired by the company other than from the successor company as if it had been acquired from the successor company.
- (5) Sub-paragraph (4) applies to any asset acquired by the company from the society, or from another company which is a member of the same group at the time of the transfer, when the company and the society, or the company, the society and the other company, were members of the same group.
- (6) Sub-paragraph (4) does not apply where—
- (a) the company which acquired the asset is a 75% subsidiary of the company from which it was acquired, or vice versa, and
  - (b) those companies cease simultaneously to be members of the same group as the successor company but continue to be members of the same group as one another.

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*Amalgamation of or transfer of engagements by certain societies*

- 91 (1) Where—
- (a) there is an amalgamation of two or more societies to which this paragraph applies or a transfer of engagements from one such society to another, and
  - (b) in the course of or as part of the amalgamation or transfer of engagements, there are transferred from one society (“the transferor”) to another (“the transferee”) intangible fixed assets that are chargeable intangible assets in relation to the transferor immediately before the transfer and in relation to the transferee immediately after the transfer,
- the transfer of those assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).
- (2) The societies to which this paragraph applies are—
- (a) a building society,
  - (b) a registered industrial and provident society within the meaning of section 486 of the Taxes Act 1988, and
  - (c) a co-operative association in relation to which subsections (1) and (8) of that section have effect as they have effect in relation to a registered industrial and provident society.

**PART 12**

TRANSACTIONS BETWEEN RELATED PARTIES

*Transfer between company and related party treated as being at market value*

- 92 (1) Where there is a transfer of an intangible asset from a company to a related party or to a company from a related party and, in either case, the asset is a chargeable intangible asset—
- (a) in relation to the transferor immediately before the transfer, or
  - (b) in relation to the transferee immediately after the transfer,
- the transfer is treated for all purposes of the Taxes Acts (as regards both the transferor and the transferee) as being at market value.
- This is subject to [<sup>F389</sup>the following four exceptions].
- (2) The first exception is where the consideration for the transfer—
- (a) falls to be adjusted for tax purposes under Schedule 28AA to the Taxes Act 1988 (provision not at arm’s length), or
  - (b) falls within that Schedule without falling to be so adjusted.
- (3) For the purposes of sub-paragraph (2)(b) the consideration for a transfer falls within Schedule 28AA to the Taxes Act 1988 without falling to be adjusted under that Schedule in a case where—
- (a) the conditions in paragraph 1(1) of that Schedule are met [<sup>F390</sup>, but]
  - (b) the actual provision does not differ from the arm’s length provision<sup>F391</sup> ...
  - <sup>F392</sup>(c) .....
- (4) The second exception is where any provision of this Schedule applies so as to make the transfer tax-neutral.

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- [<sup>F393</sup>(4A) The third exception is where—
- (a) the asset is transferred from the company at less than its market value, or to the company at more than its market value,
  - (b) the related party—
    - (i) is not a company, or
    - (ii) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or (as the case may be) immediately before the transfer from it,
- and
- (c) by virtue of any provision of—
    - (i) section 209 of the Taxes Act 1988 (meaning of “distribution”), or
    - (ii) Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: earnings and benefits etc treated as earnings),the transfer gives rise (or would give rise but for sub-paragraph (1)) to an amount to be taken into account in computing any person’s income, profits or losses for tax purposes.
- (4B) Where the third exception applies, sub-paragraph (1) does not apply, in relation to the computation mentioned in sub-paragraph (4A)(c), for the purposes of any such provision as is mentioned there.
- (4C) The fourth exception is where—
- (a) the asset is transferred to the company, and
  - (b) on a claim for relief under section 165 of the Taxation of Chargeable Gains Act 1992 (relief for gifts of business assets) in respect of the transfer, a reduction is made under subsection (4)(a) of that section.
- (4D) Where the fourth exception applies—
- (a) the transfer is treated for the purposes of this Schedule as being at market value less the amount of the reduction;
  - (b) all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made (notwithstanding any time limit on the making of an assessment or the amendment of a return).]

(5) In sub-paragraph (1) “market value” means the price the asset might reasonably be expected to fetch on a sale in the open market.

#### Textual Amendments

- F389** Words in Sch. 29 para. 92(1) substituted (with effect in accordance with s. 41(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 41\(2\)\(a\)](#)
- F390** Word in Sch. 29 para. 92(3)(a) inserted (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 5 para. 16\(3\)\(a\)](#)
- F391** Word in Sch. 29 para. 92(3)(b) repealed (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 5 para. 16\(3\)\(b\)](#), [Sch. 42 Pt. 2\(1\)](#)
- F392** Sch. 29 para. 92(3)(c) repealed (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 5 para. 16\(3\)\(c\)](#), [Sch. 42 Pt. 2\(1\)](#)
- F393** Sch. 29 para. 92(4A)-(4D) inserted (with effect in accordance with s. 41(6) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 41\(2\)\(b\)](#)

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*Exclusion of roll-over relief in case of part realisation involving related party*

- 93 Part 7 (roll-over relief in case of reinvestment) does not apply in relation to the part realisation by a company of an intangible fixed asset if a person who is a related party in relation to the company acquires an interest of any description—
- (a) in that asset, or
  - (b) in an asset whose value is derived in whole or in part from that asset, as a result of, or in connection with, the part realisation.

*Delayed payment of royalty payable by company to related party*

- 94 (1) This paragraph applies where a royalty is payable by a company to or for the benefit of a related party.
- (2) If—
- (a) the royalty is not paid in full within the period of twelve months after the end of the period of account in which a debit in respect of it is recognised by the company for accounting purposes, and
  - (b) credits representing the full amount of the royalty are not brought into account under this Schedule in any accounting period by the person to whom it is payable,
- the royalty shall be brought into account for the purposes of this Schedule only when it is paid.

*Meaning of “related part”y*

- 95 (1) For the purposes of this Schedule a person (“P”) is a “related party” in relation to a company (“C”) in the following cases:

*Case One*

P is a company and either—

- (a) P has control of, or holds a major interest in, C, or
- (b) C has control of, or holds a major interest in, P.

*Case Two*

P is a company and P and C are both under the control of the same person (but see sub-paragraph (2)).

*[<sup>F394</sup>Case Three*

C is a close company and P is, or is an associate of—

- (a) a participator in C, or
- (b) a participator in a company that has control of, or holds a major interest in, C.]

*[<sup>F395</sup>Case Four*

P is a company and C is another company in the same group.]

- (2) Case Two does not apply if the person controlling both P and C is—
- the Crown,
  - a Minister of the Crown or a government department,
  - the Scottish Ministers,
  - the National Assembly for Wales,

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a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or a Northern Ireland department,  
a foreign sovereign power, or  
an international organisation.

#### Textual Amendments

**F394** Words in Sch. 29 para. 95 substituted (with effect in accordance with s. 41(7)-(9) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 41\(3\)](#)

**F395** Words in Sch. 29 para. 95(1) added (with effect in accordance with s. 184(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 184\(3\)](#)

#### *Meaning of “control” and “major interest”*

96 (1) For the purposes of this Part “control”, in relation to a company, is the power of a person to secure—

- (a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or
- (b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) For the purposes of this Part, a person has a “major interest” in a company if—

- (a) he and one other person together have control of that company, and
- (b) the rights and powers by means of which they have such control represent, in the case of each of them, at least 40% of the total.

The reference in paragraph (a) to two persons together having control of a company is to two persons who, taken together, have the power mentioned in sub-paragraph (1).

(3) Paragraphs 97 to 99 (rights and powers to be taken into account) apply in relation to the determination for the purposes of this Part whether a person has control of, or a major interest in, a company.

#### *Rights and powers to be taken into account: general*

97 (1) There shall be attributed to each relevant person—

- (a) rights and powers that he is entitled to acquire at a future date or will, at a future date, become entitled to acquire;
- (b) rights and powers of other persons, to the extent that they are required, or may be required, to be exercised in any one or more of the following ways—
  - (i) on his behalf;
  - (ii) under his direction;
  - (iii) for his benefit;
- (c) rights and powers of a person connected with him;
- (d) rights and powers that would be attributed to a person connected with him if that person were a relevant person.

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- (2) Sub-paragraph (1)(b) does not apply, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.
- (3) In sub-paragraph (1)(b) to (d), the references to a person's rights and powers include rights or powers that he is entitled to acquire at a future date or will, at a future date, become entitled to acquire.
- (4) In this paragraph a "relevant person" means a person whose rights or powers are relevant to the determination of the question whether a person has control of or a major interest in a company.

*Rights and powers to be taken into account: rights and powers held jointly*

- 98 (1) References in this Part of this Schedule—
- (a) to rights and powers of a person, or
  - (b) to rights and powers that a person is or will become entitled to acquire,
- include rights or powers that are exercisable by that person, or when acquired will be exercisable by him, only jointly with one or more other persons.
- (2) Sub-paragraph (1) has effect subject to paragraph 99 (partnerships).

*Rights and powers to be taken into account: partnerships*

- 99 (1) The rights and powers of a person as a member of a partnership shall be disregarded unless he has control of or a major interest in the partnership.
- (2) Whether a person has control of or a major interest in a partnership shall be determined in accordance with paragraphs 96 to 98 as in relation to a company.
- For this purpose references in those paragraphs to any other company shall be read as including any other partnership.

*Meaning of "participator" and "associate"*

- 100 (1) In this Part "participator", in relation to a close company, has the meaning it has for the purposes of Part 11 of the Taxes Act 1988 (close companies) (see section 417(1) of that Act), except that it does not include a person by reason only of his being a loan creditor of the company within the meaning of that Part (see section 417(7) to (9) of that Act).
- (2) In this Part "associate", in relation to a participator in a close company, has the meaning given by section 417(3) of that Act.

*Connected persons*

- 101 (1) This paragraph explains what is meant in this Part when a person is referred to as being connected with another person.
- Any provision that one person is connected with another means that they are connected with one another.



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- (2) A person is connected with an individual if that person is the individual's [<sup>F396</sup>spouse or civil partner], or is a relative, or the wife or husband of a relative, of the individual or of the individual's [<sup>F396</sup>spouse or civil partner].

For the purposes of this sub-paragraph "relative" means brother, sister, ancestor or lineal descendant.

- (3) A person in his capacity as trustee of a settlement is connected with—
- any individual who in relation to the settlement is a settlor,
  - any person who is connected with such an individual, and
  - any body corporate that is connected with that settlement.

For the purposes of this sub-paragraph "settlement" and "settlor" have the same meaning as in [<sup>F397</sup>Chapter 5 of Part 5 of the Income Tax (Trading and Other Income) Act 2005 (see section 620 of that Act)].

- (4) For the purposes of sub-paragraph (3) above a body corporate is connected with a settlement if—
- it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement, or
  - it is controlled by a company falling within paragraph (a) above.
- (5) A person is connected with a company if they are related parties within Case One or Case Two in paragraph 95(1) above.
- (6) For the purposes of sub-paragraph (5) above and for the purposes of paragraph 95 as it applies for the purposes of that sub-paragraph—
- "company" includes any body corporate or unincorporated association, but does not include a partnership; and
  - a unit trust scheme shall be treated as if it were a company and as if the rights of the unit holders were shares in the company.

#### Textual Amendments

**F396** Words in Sch. 29 para. 101(2) substituted (5.12.2005) by [The Tax and Civil Partnership Regulations 2005 \(S.I. 2005/3229\)](#), regs. 1(1), **136**

**F397** Words in Sch. 29 para. 101(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 580](#) (with Sch. 2)

## PART 13

### SUPPLEMENTARY PROVISIONS

#### *Treatment of grants and other contributions to expenditure*

- 102 (1) This paragraph applies where a grant or other payment is intended by the payer to meet, directly or indirectly, expenditure of a company on an intangible fixed asset.

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- (2) A gain recognised in the company's profit and loss account in respect of the grant or other payment is treated for the purposes of paragraph 14 (receipts recognised as they accrue) as a gain representing a receipt in respect of the intangible fixed asset.
- (3) This paragraph does not apply to a grant within paragraph 103 (grants to be left out of account for tax purposes).

*Grants to be left out of account for tax purposes*

- 103 (1) This paragraph applies to—
- (a) grants under Part 2 of the Industrial Development Act 1982 (c. 52) (regional development grants); and
  - (b) grants made under Northern Ireland legislation and declared by the Treasury by order to correspond to a grant under that Part.

These are referred to below in this paragraph as “exempt grants”.

- (2) Any gain recognised in [<sup>F398</sup>determining the company's profit or loss] in respect of an exempt grant shall be disregarded for the purposes of this Schedule.
- (3) Where as a result of an exempt grant being brought into account by a company there is a reduction—
  - (a) in the amount of a loss recognised in [<sup>F399</sup>determining the company's profit or loss], or
  - (b) in the amount of expenditure on an intangible fixed asset that is capitalised for accounting purposes,
 the amount of the reduction shall be added back for the purposes of this Schedule.

**Textual Amendments**

**F398** Words in Sch. 29 para. 103(2) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

**F399** Words in Sch. 29 para. 103(3)(a) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 40](#)

*Finance leasing etc*

- 104 (1) The Treasury may make provision by regulations as to the application of this Schedule in relation to a company that is the finance lessor of an intangible asset that is the subject of a finance lease.
- (2) The regulations may provide—
- (a) that, notwithstanding that the asset is accounted for by the finance lessor as a financial asset, this Schedule shall apply as if the asset were an intangible fixed asset of the lessor and not a financial asset;
  - (b) that this Schedule shall apply as if the amount at which the asset is recognised in the finance lessor's balance sheet were capitalised expenditure on an intangible fixed asset, but that—
    - (i) no election may be made under paragraph 10 (election for writing down on fixed rate basis) in respect of that amount; and
    - (ii) that amount is not to be treated as capitalised expenditure for the purposes of paragraph 39(1)(b) (roll-over relief in case of realisation)

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- and reinvestment: conditions to be met in relation to expenditure on other assets);
- (c) that where an asset formerly recognised by the lessor for accounting purposes as an intangible fixed asset becomes subject to a finance lease (and accordingly comes to be accounted for as a financial asset) the value of the asset so created is recognised as realisation proceeds of the intangible fixed asset on the change of accounting treatment;
  - (d) that assets partially excluded from this Schedule by paragraph 78 to 81 (assets excluded except as regards royalties) are entirely excluded from this Schedule as regards the finance lessor if they are subject to a finance lease and are accounted for by the lessor as financial assets;
  - (e) for excluding from the regulations assets used by the finance lessee for the purposes of a trade or business in respect of which he is within the charge to income tax;
  - (f) that an intangible asset counts as an existing asset in the hands of the finance lessor if the finance lessee is—
    - (i) a company for whom the asset was the whole or part of an existing asset, or
    - (ii) a person who is a related party in relation to such a company.
- (3) The regulations may contain such consequential, supplementary, incidental and transitional provision, including provision modifying the operation of other provisions of the Corporation Tax Acts, as appears to the Treasury to be appropriate.
- (4) References in this paragraph to a finance lease—
  - (a) have the meaning they have for accounting purposes, and
  - (b) include hire-purchase, conditional sale or other arrangements if they are of a similar character to a finance lease.
- (5) References to the finance lessor or finance lessee have a corresponding meaning.
- (6) Regulations under this paragraph may be made so as to have effect from 1st April 2002.

#### *Assets acquired or realised together*

- 105 (1) Any reference in this Schedule to the acquisition or realisation of an asset includes the acquisition or realisation of that asset together with other assets.
- (2) For the purposes of this Schedule assets acquired or realised as a result of one bargain are treated as acquired or realised together even though—
  - (a) separate prices are, or purport to be, agreed for separate assets, or
  - (b) there are, or purport to be, separate acquisitions or realisations of separate assets.
- (3) Where assets are acquired together—
  - (a) any values allocated to particular assets by the company in accordance with generally accepted accounting practice shall be accepted for the purposes of this Schedule;
  - (b) if no such values are allocated by the company, so much of the expenditure as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this Schedule as referable to that asset.

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- (4) Where assets are realised together, so much of the proceeds of realisation as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this Schedule as proceeds of the realisation of that asset.

*Deemed market value acquisition: adjustment of amounts in case of nil accounting value*

- 106 (1) This paragraph applies where a company is treated for the purposes of this Schedule as acquiring an asset at market value but the accounting value of the asset transferred, in the hands of the transferee, is nil.
- (2) Where this paragraph applies—
- (a) any reference in this Schedule to—
- (i) the cost of the asset recognised for accounting purposes,
- (ii) the accounting value of the asset, or
- (iii) the amount of any loss recognised for accounting purposes in respect of capitalised expenditure on the asset,
- shall be read as references to the cost, value or loss that would have been recognised if the asset had been acquired at market value; and
- (b) any revaluation of the asset (as defined in paragraph 15) shall be disregarded.

*Treatment of fungible assets*

- 107 (1) For the purposes of this Schedule fungible assets of the same kind held by the same person in the same capacity shall be treated as indistinguishable parts of a single asset, growing or diminishing as additional assets of the same kind are created or acquired or some of the assets are realised.
- (2) In this Schedule “fungible assets” here means assets of a nature to be dealt in without identifying the particular assets involved.

*Asset ceasing to be chargeable intangible asset: deemed realisation at market value*

- 108 (1) Where an asset ceases to be a chargeable intangible asset in relation to a company—
- (a) on the company ceasing to be resident in the United Kingdom, or
- (b) in the case of a company that is not resident in the United Kingdom, in any circumstances not involving the realisation of the asset by the company, or
- (c) on the asset beginning to be held for the purposes of a mutual trade or business,
- this Schedule has effect as if the company had, immediately before the asset ceased to be a chargeable intangible asset in relation to it, realised the asset for its market value at that time and immediately reacquired it at that value.
- (2) Sub-paragraph (1) has effect subject to paragraph 109 (postponement of gain in certain cases).

*Asset ceasing to be chargeable intangible asset: postponement of gain in certain cases*

- 109 (1) Where—
- (a) paragraph 108 (asset ceasing to be chargeable asset: deemed realisation at market value) applies by reason of a company (“company A”) ceasing to be resident in the United Kingdom,

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- (b) immediately before company A ceases to be resident in the United Kingdom the asset is held by it for the purposes of a trade carried on by it outside the United Kingdom through a [<sup>F400</sup>permanent establishment] ,
- (c) the proceeds of the deemed realisation of the asset exceed the original cost of the asset recognised for tax purposes,
- (d) immediately after company A ceases to be resident in the United Kingdom it is a 75% subsidiary of another company (“company B”) that is resident in the United Kingdom, and
- (e) company A and company B so elect by notice given to the Inland Revenue not later than two years after the date when company A ceased to be resident in the United Kingdom,

this Schedule has effect as if the proceeds of the deemed realisation of the asset were reduced by the amount of the excess referred to in paragraph (c).

The amount of the reduction is referred to below in this paragraph as “the postponed gain”.

- (2) If company A subsequently realises the asset before the end of the period of six years after the date on which the company ceased to be resident in the United Kingdom, company B shall bring into account for tax purposes a credit equal to the postponed gain or, in the case of a part realisation, the appropriate proportion of the postponed gain.

The appropriate proportion is given by:

$$\frac{\text{Old Value} - \text{New Value}}{\text{Old Value}}$$

where—

Old Value is the market value of the asset immediately before the part realisation, and

New Value is the market value of the asset immediately after the part realisation.

- (3) Sub-paragraph (2) does not apply—
  - (a) to the extent that the postponed gain has already been brought into account on a previous part realisation, or
  - (b) if the postponed gain has already been brought into account under sub-paragraph (4).
- (4) If at any time after company A ceases to be resident in the United Kingdom—
  - (a) it ceases to be a 75% subsidiary of company B on the disposal by that company of ordinary shares of company A, or
  - (b) after it has ceased to be such a subsidiary otherwise than on such a disposal, company B disposes of such shares, or
  - (c) company B ceases to be resident in the United Kingdom,company B shall bring into account for tax purposes a credit equal to the postponed gain.

This sub-paragraph does not apply if, or to the extent that, the postponed gain has already been brought into account under sub-paragraph (2).

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- (5) Any credit falling to be brought into account under sub-paragraph (4)(c) shall be brought into account immediately before company B ceases to be resident in the United Kingdom.
- (6) A credit brought into account by company B under this paragraph is treated as a non-trading credit for the purposes of Part 6 (how debits and credits are given effect).

#### Textual Amendments

**F400** Words in Sch. 29 para. 109(1)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

#### *Asset becoming chargeable intangible asset*

- 110 (1) This paragraph applies where an asset becomes a chargeable intangible asset in relation to a company—
- on the company becoming resident in the United Kingdom, or
  - in the case of a company that is not resident in the United Kingdom, on beginning to be held for the purposes of a trade carried on by it in the United Kingdom through a [<sup>F401</sup>permanent establishment], or
  - on the asset ceasing to be held for the purposes of a mutual trade or business.
- (2) Where this paragraph applies this Schedule has effect as if the company had acquired the asset, immediately after it became a chargeable intangible asset in relation to the company, for its accounting value at that time.

#### Textual Amendments

**F401** Words in Sch. 29 para. 110(1)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 153\(1\)\(e\)](#)

#### *Tax avoidance arrangements to be disregarded*

- 111 (1) Tax avoidance arrangements shall be disregarded in determining [<sup>F402</sup>whether a debit or credit is to be brought into account under this Schedule or the amount of any such debit or credit].
- (2) Arrangements are “tax avoidance arrangements” if their main object or one of their main objects is to enable a company—
- to obtain a debit [<sup>F403</sup>under this Schedule] to which it would not otherwise be entitled or of a greater amount than that to which it would otherwise be entitled, or
  - to avoid having to bring a credit into account [<sup>F404</sup>under this Schedule] or to reduce the amount of any such credit.
- (3) In this paragraph—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable; and
- “brought into account” means brought into account for tax purposes.

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### Textual Amendments

- F402** Words in Sch. 29 para. 111(1) substituted (with effect in accordance with s. 184(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 184\(2\)\(a\)](#)
- F403** Words in Sch. 29 para. 111(2)(a) substituted (with effect in accordance with s. 184(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 184\(2\)\(b\)\(i\)](#)
- F404** Words in Sch. 29 para. 111(2)(b) substituted (with effect in accordance with s. 184(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 184\(2\)\(b\)\(ii\)](#)

### *Debits not allowed in respect of expenditure not generally deductible for tax purposes*

- 112 (1) No debit may be brought into account for tax purposes under this Schedule in respect of expenditure that is not generally deductible for tax purposes.
- (2) Expenditure is “not generally deductible for tax purposes” if, or to the extent that, revenue expenditure of that description incurred for the purposes of a trade would be non-deductible by virtue of—
- section 577 of the Taxes Act 1988 (expenditure on business entertainment or gifts),
  - section 577A of that Act (crime-related expenditure),
  - section 578A of that Act (expenditure on expensive hired cars), or
  - section 76(1) to (3) of the Finance Act 1989 (c. 26) (expenditure on providing non-approved non-taxable retirement benefits).

### *Delayed payment of [<sup>F405</sup>employees' remuneration]*

- 113 (1) Where—
- a debit in respect of [<sup>F406</sup>employees' remuneration] is recognised by a company for accounting purposes, and
  - the [<sup>F407</sup>remuneration is] not paid until after the end of the period of nine months beginning with the end of the period of account in which the debit is recognised,
- the [<sup>F408</sup>remuneration shall] be brought into account for the purposes of this Schedule only when they are paid.
- [<sup>F409</sup>(2) Sub-paragraph (1) applies whether the amount is in respect of particular employments or in respect of employments generally.]
- [<sup>F410</sup>(3) This paragraph applies to potential employees' remuneration as it applies to employees' remuneration.
- For this purpose—
- potential employees' remuneration is an amount reserved in the accounts of an employer, with a view to it becoming employees' remuneration, and
  - potential employees' remuneration is regarded as paid when it becomes employees' remuneration that is paid.]
- (4) Any adjustment required by this paragraph of an accounting debit that is partly referable to an amount to which this paragraph applies and partly to other matters shall be made on a just and reasonable basis.

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- (5) If a calculation for tax purposes has to be made before the end of the period of nine months mentioned in sub-paragraph (1)(b) and [<sup>F411</sup>employees' remuneration has not] been paid—
- (a) it shall be assumed for the purpose of making the calculation that [<sup>F412</sup>it] will not be paid before the end of that period, but
  - (b) the calculation shall be adjusted if the [<sup>F413</sup>remuneration is] subsequently paid before the end of that period and a claim is made.

Any such claim to adjust a calculation must be made to the Inland Revenue before the end of the period of two years beginning with the end of the period of account concerned.

- [<sup>F414</sup>(6) For the purposes of this section remuneration is paid when it—
- (a) is treated as received by an employee for the purposes of the Income Tax (Earnings and Pensions) Act 2003 by section 18, 19, 31 or 32 of that Act (receipt of money and non-money earnings), or
  - (b) would be so treated if it were not exempt income.

- (7) In this paragraph—
- “employee” includes an office-holder and “employment” correspondingly includes an office, and
- “remuneration” means an amount which is or is treated as earnings for the purposes of the Income Tax (Earnings and Pensions) Act 2003.]

#### Textual Amendments

- F405** Words in Sch. 29 para. 113 heading substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(2\)](#)
- F406** Words in Sch. 29 para. 113(1)(a) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(3\)\(a\)](#)
- F407** Words in Sch. 29 para. 113(1)(b) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(3\)\(b\)](#)
- F408** Words in Sch. 29 para. 113(1) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(3\)\(c\)](#)
- F409** Sch. 29 para. 113(2) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(4\)](#)
- F410** Sch. 29 para. 113(3) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(5\)](#)
- F411** Words in Sch. 29 para. 113(5) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(6\)\(a\)](#)
- F412** Word in Sch. 29 para. 113(5)(a) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(6\)\(b\)](#)
- F413** Words in Sch. 29 para. 113(5)(b) substituted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(6\)\(c\)](#)
- F414** Sch. 29 para. 113(6)(7) inserted (with effect in accordance with Sch. 17 para. 8(8) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 17 para. 8\(7\)](#)

#### *Delayed payment of pension contributions*

- 114 (1) This paragraph applies where—



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- (a) a debit in respect of pension contributions is recognised by a company for accounting purposes, and
  - (b) the contributions are not paid until after the end of the period of account in which the debit is recognised.
- (2) Where this paragraph applies, the contributions shall be brought into account for the purposes of this Schedule only when they are paid.
- (3) For the purposes of this paragraph “pension contributions” means—
- (a) sums paid by an employer by way of contributions under a scheme to which section 592 of the Taxes Act 1988 applies (exempt approved schemes),
  - (b) sums paid to the trustees of such a scheme that are treated for the purposes of that section as employer’s contributions (see subsection (6A) of that section), or
  - (c) expenses within section 76(5) or (6) of the Finance Act 1989 (c. 26) (expenses of providing benefits under non-approved retirement benefit scheme).
- (4) Any adjustment required by this paragraph of an accounting debit that is partly referable to an amount to which this paragraph applies and partly to other matters shall be made on a just and reasonable basis.

*Bad debts etc*

- 11<sup>F415</sup>(1) No debit may be brought into account for the purposes of this Schedule in respect of a debt owed to the company, except—
- (a) by way of impairment loss, or
  - (b) to the extent that the debt is released as part of a statutory insolvency arrangement.]

<sup>F416</sup>(2) .....

- (3) Where a debt is released as mentioned in [<sup>F417</sup>sub-paragraph (1)(b)] any gain in respect of the release brought into account for accounting purposes by the debtor shall be disregarded for the purposes of this Schedule.
- (4) Any other gain in respect of an unpaid debt in respect of an intangible fixed asset that is brought into account by the debtor for accounting purposes is treated for the purposes of paragraph 14 (receipts recognised as they accrue) as a gain in respect of an intangible fixed asset.
- (5) Any adjustment required by this paragraph of an accounting gain or loss that is partly referable to an amount affected by this paragraph and partly to other matters shall be made on a just and reasonable basis.

[<sup>F418</sup>(6) In this paragraph “debt” includes an obligation or liability that falls to be discharged otherwise than by the payment of money.]

**Textual Amendments**

**F415** Sch. 29 para. 115(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), Sch. 4 para. 20(2)

**F416** Sch. 29 para. 115(2) repealed (7.4.2005) by Finance Act 2005 (c. 7), Sch. 4 para. 20(3), Sch. 11 Pt. 2(5)

**F417** Words in Sch. 29 para. 115(3) substituted (7.4.2005) by Finance Act 2005 (c. 7), Sch. 4 para. 20(4)

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**F418** Sch. 29 para. 115(6) inserted (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 20\(5\)](#)

### *Assumptions for computing chargeable profits of controlled foreign companies*

- 116 (1) In computing the amount mentioned in section 747(6) of the Taxes Act 1988 (chargeable profits of controlled foreign company) the following assumptions shall be made for the purpose of applying the provisions of this Schedule.
- (2) It shall be assumed that any intangible fixed asset acquired or created by the company before the beginning of the first accounting period—
- (a) in respect of which an apportionment under section 747(3) falls to be made, or
  - (b) which is an ADP exempt period,
- was acquired or created by the company at the beginning of that accounting period at a cost equal to its value recognised for accounting purposes at that time.
- (3) Notwithstanding paragraph 4(1) of Schedule 24 of the Taxes Act 1988 (assumption that all available reliefs have been claimed), it shall be assumed that the company has not claimed any relief under Part 7 (roll-over relief in case of reinvestment) or made any provisional declaration of entitlement to such relief.
- But this assumption does not apply, if notice is given in accordance with paragraph 4(2) of that Schedule requesting that it should not apply, to such claims, and to such extent, as may be specified in the notice.
- (4) Expressions used in this paragraph that are defined for the purposes of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies) have the same meaning in this paragraph.
- (5) The assumption in sub-paragraph (2) above does not affect the determination of the question whether this Schedule applies to an asset in accordance with paragraph 118 (application of Schedule to assets created or acquired after commencement).

## [<sup>F419</sup>PART 13A

### ADJUSTMENT ON CHANGE OF ACCOUNTING POLICY

#### **Textual Amendments**

**F419** Sch. 29 Pt. 13A substituted for Sch. 29 para. 116A (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 4 para. 45](#)

### *Introduction*

- 116A (1) This Part of this Schedule applies where—
- (a) there is a change of accounting policy in drawing up a company's accounts from one period of account (“the earlier period”) to the next (“the later period”), and
  - (b) the approach in each of those periods accords with the law and practice applicable in relation to that period.
- (2) It applies, in particular, where—

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- (a) the company prepares accounts for the earlier period in accordance with UK generally accepted accounting practice and for the later period in accordance with international accounting standards, or
- (b) the company prepares accounts for the earlier period in accordance with international accounting standards and for the later period in accordance with UK generally accepted accounting practice.

*Change of accounting policy involving change of value*

116B (1) If as a result of the change of accounting policy there is a difference between—

- (a) the accounting value of an intangible fixed asset of the company at the end of the earlier period, and
  - (b) the accounting value of that asset at the beginning of the later period,
- a corresponding debit or credit (as the case may be) shall be brought into account for tax purposes in the later period.

(2) Any such debit or credit is treated as arising at the beginning of the later period.

(3) The amount of the debit or credit to be brought into account for tax purposes is:

Accounting Difference x (Tax Value / Accounting Value)

AccountingDifference×TaxValueAccountingValue

where—

Accounting Difference is the amount of the difference specified in sub-paragraph (1);  
Tax Value is the tax written down value of the asset at the end of the earlier period;  
and

Accounting Value is the accounting value of the asset at the end of that period.

(4) The tax written down value of the asset at the beginning of the later period shall be taken to be the tax written down value of the asset at the end of the earlier period, reduced by the amount of the debit or (as the case may be) increased by the amount of the credit brought into account for tax purposes under sub-paragraph (3).

(5) Subsequently—

- (a) the cost recognised for tax purposes shall be taken to be the tax written down value given by sub-paragraph (4), together with the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes; and
- (b) the tax written down value shall be determined taking account only of subsequent debits and credits.

(6) This paragraph does not apply to an asset in respect of which an election has been made under paragraph 10 (election for writing down at fixed-rate).

(7) This paragraph has effect subject to—

paragraph 116F (cap on credit to be brought into account on change of accounting policy), and

paragraph 116G (debits or credits brought into account under other provisions).

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### *Change of accounting policy involving disaggregation*

116C (1) This paragraph applies where the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period.

(2) If there is a difference between—

- (a) the accounting value of the original asset at the end of the earlier period, and
- (b) the aggregate accounting value of the resulting assets at the beginning of the later period,

a corresponding debit or credit (as the case may be) shall be brought into account for tax purposes in the later period.

(3) Any such debit or credit is treated as arising at the beginning of the later period.

(4) The amount of the debit or credit to be brought into account for tax purposes is:

Accounting Difference x (Old Tax Value / Old Accounting Value)

$\text{AccountingDifference} \times \frac{\text{OldTaxValue}}{\text{OldAccountingValue}}$

where—

Accounting Difference is the amount of the difference specified in sub-paragraph (2), Old Tax Value is the tax written-down value of the original asset at the end of the earlier period, and

Old Accounting Value is the accounting value of that asset at the end of that period.

(5) The tax written down value of each resulting asset at the beginning of the later period is given by:

Adjusted Old Tax Value x (New Accounting Value / Aggregate New Accounting Value)

$\text{AdjustedOldTaxValue} \times \frac{\text{NewAccountingValue}}{\text{AggregateNewAccountingValue}}$

where—

Adjusted Old Tax Value is the tax written down value of the original asset at the end of the earlier period, reduced by the amount of the debit or (as the case may be) increased by the amount of the credit brought into account for tax purposes under sub-paragraph (4),

New Accounting Value is the accounting value of the asset in question at the beginning of the later period, and

Aggregate New Accounting Value is the aggregate of the accounting values of all the resulting assets at the beginning of that period.

(6) Subsequently for each resulting asset—

- (a) the cost recognised for tax purposes shall be taken to be the tax written down value given by sub-paragraph (5) above, together with the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes; and
- (b) the tax written down value shall be determined taking account only of subsequent debits and credits.

(7) This paragraph does not apply if an election under paragraph 10 (election for writing down at fixed-rate)—

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- (a) has been or is subsequently made in respect of the original asset (see paragraph 116D), or
- (b) is subsequently made in respect of any of the resulting assets (see paragraph 116E).

- (8) This paragraph has effect subject to—
- paragraph 116F (cap on credit to be brought into account on change of accounting policy), and
  - paragraph 116G (debits or credits brought into account under other provisions).

*Change of accounting policy involving disaggregation: original asset subject to fixed rate writing down*

116D (1) This paragraph applies where—

- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
- (b) an election under paragraph 10 (election for writing down at fixed-rate) has been or is subsequently made in respect of the original asset.

(2) That election has effect—

- (a) in relation to the original asset, for periods up to and including the earlier period, and
- (b) in relation to each of the resulting assets, for the later period and subsequent periods.

(3) The tax written down value of each resulting asset at the beginning of the later period is given by:

$$\text{Old Tax Value} \times (\text{New Accounting Value} / \text{Aggregate New Accounting Value})$$
$$\text{Old Tax Value} \times \text{New Accounting Value} / \text{Aggregate New Accounting Value}$$

where—

Old Tax Value is the tax written down value of the original asset at the end of the earlier period,

New Accounting Value is the accounting value of the asset in question at the beginning of the later period, and

Aggregate New Accounting Value is the aggregate of the accounting values of all the resulting assets at the beginning of that period.

(4) Subsequently for each resulting asset—

- (a) the cost recognised for tax purposes shall be taken to be the tax written down value given by sub-paragraph (3) above, together with the cost recognised for tax purposes of any subsequent expenditure on the asset that is capitalised for accounting purposes; and
- (b) the tax written down value shall be determined taking account only of subsequent debits and credits.

*Change of accounting policy involving disaggregation: election for fixed rate writing down in relation to resulting asset*

116E (1) This paragraph applies where—

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- (a) the change of accounting policy results in an intangible fixed asset of the company that was treated as one asset (“the original asset”) in the earlier period being treated as two or more assets (“the resulting assets”) in the later period, and
  - (b) no election under paragraph 10 (election for writing down at fixed-rate) has been or is subsequently made in respect of the original asset.
- (2) An election under that paragraph may be made in respect of any of the resulting assets, provided it is made within the period during which such an election could have been made in relation to the original asset.
- (3) The effect of the election is that—
- (a) the original asset is treated as if it had at all material times consisted of as many assets (“notional original assets”) as there are resulting assets,
  - (b) each notional original asset is taken to be the same asset as one of the resulting assets (its “corresponding resulting asset”),
  - (c) there is attributed to each notional original asset the appropriate proportion, ascertained by reference to its corresponding resulting asset (see subparagraph (4)), of every amount falling to be taken into account in relation to the original asset, and
  - (d) the provisions of this Schedule apply in relation to each of the notional original assets and its corresponding resulting asset accordingly.
- (4) The appropriate proportion in relation to each resulting asset is:

$$\frac{\text{New Accounting Value}}{\text{Aggregate New Accounting Value}}$$

$$\frac{\text{New Accounting Value}}{\text{Aggregate New Accounting Value}}$$

where—

New Accounting Value is the accounting value of the asset at the beginning of the later period, and

Aggregate New Accounting Value is the aggregate of the accounting values of all the resulting assets at the beginning of that period.

*Cap on credit to be brought into account on change of accounting policy*

- 116F (1) The amount of any credit to be brought into account for tax purposes under paragraph 116B or 116C (assets subject to writing down on accounting basis) is limited to the net aggregate amount of relevant tax debits previously brought into account.
- (2) Where the credit is to be brought into account under paragraph 116B (change of value), the net aggregate amount of relevant tax debits previously brought into account is:

$$\text{Previous Debits} - \text{Previous Credits}$$

$$\frac{\text{Previous Debits}}{\text{Previous Credits}}$$

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the asset, and

Previous Credits is the total amount of credits previously brought into account for tax purposes in respect of the asset.

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- (3) Where the credit is to be brought into account under paragraph 116C (disaggregation), the net aggregate amount of relevant tax debits previously brought into account is:

Previous Debits - Previous Credits

PreviousDebitsPreviousCredits

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the original asset at the end of the earlier period, and  
Previous Credits is the total amount of credits previously brought into account for tax purposes in respect of that asset.

*Exclusion of debits or credits brought into account under other provisions*

- 116G A debit or credit is not required to be brought into account under this Part of this Schedule to the extent that a debit or credit representing the accounting difference in question is brought into account for tax purposes under—
- (a) paragraph 12 (reversal of accounting gain),
  - (b) paragraph 15 (gain on revaluation), or
  - (c) paragraph 17 (reversal of accounting loss).

*Subsequent events affecting asset subject to adjustment under this Part*

- 116H (1) On a further change of accounting policy affecting an intangible fixed asset in relation to which this Part of this Schedule has applied, the preceding provisions of this Part apply again.
- (2) On a subsequent part realisation affecting the asset in question, paragraph 29 applies.]

## PART 14

### COMMENCEMENT AND TRANSITIONAL PROVISIONS

*Commencement date*

- 117 (1) The commencement date for the purposes of this Schedule is 1st April 2002.
- (2) In this Part—
- “after commencement” means on or after that date and “before commencement” means before that date; and
  - “the existing law” means the law as it was before commencement.

*Application of Schedule to assets created or acquired after commencement*

- 118 (1) Except as otherwise expressly provided, the provisions of this Schedule apply only to intangible fixed assets of a company (“the company”) that—
- (a) are created by the company after commencement, or
  - (b) are acquired by the company after commencement from a person who at the time of the acquisition is not a related party in relation to the company, or

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- (c) are acquired by the company after commencement from a person who at the time of the acquisition is a related party in relation to the company in the cases specified in sub-paragraph (2).

As to when assets are regarded as created or acquired, see paragraphs 120 to 125.

- (2) The cases mentioned in sub-paragraph (1)(c) in which this Schedule applies to assets acquired by the company after commencement from a related party are—
  - (a) where the asset is acquired from a company in relation to which the asset was a chargeable intangible asset immediately before the acquisition;
  - (b) where the asset is acquired from a person (“the intermediary”) who acquired the asset after commencement from a third person—
    - (i) who was not at the time of that acquisition a related party in relation to the intermediary or, where the intermediary was not a company, a company in relation to which the intermediary was a related party, and
    - (ii) who is not, at the time of the acquisition by the company, a related party in relation to the company;
  - (c) where the asset was created, whether by the person from whom it is acquired or any other person, after commencement.
- (3) Intangible fixed assets to which, by virtue of sub-paragraph (1), this Schedule does not apply in the absence of express provision to that effect are referred to in this Schedule as “existing assets”.
- (4) Sub-paragraph (1) has effect subject to—
  - (a) paragraph 126 (application of Schedule to fungible assets), and
  - (b) paragraph 127 (certain assets acquired on transfer of a business treated as existing assets).
- (5) The following paragraphs contain provision for the application of this Schedule in relation to certain existing assets—
  - paragraphs 128 and 129 (application of Schedule to certain existing assets);
  - paragraphs 130 to 132 (application of roll-over relief in relation to certain existing assets).
- (6) Nothing in this paragraph shall be read as restricting the application of this Schedule in accordance with paragraph 119 (application of Schedule to royalties).

#### *Application of Schedule to royalties*

- 119 (1) This Schedule—
- (a) applies to royalties recognised for accounting purposes after commencement, and
  - (b) does not apply to royalties recognised for accounting purposes before commencement,
- subject to the following provisions.
- (2) To the extent that royalties have been brought into account before commencement, they shall not be brought into account again under this Schedule after commencement.



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- (3) To the extent that royalties would have been brought into account before commencement if the provisions of this Schedule had been in force, and were not so brought into account, they shall be brought into account immediately after commencement.
- (4) For the purposes of this paragraph an amount is “brought into account” if—
  - (a) it is brought into account for tax purposes, or
  - (b) it would have been so brought into account if the person concerned had been within the charge to corporation tax.

*Assets regarded as created or acquired when expenditure incurred*

- 120 (1) This paragraph has effect for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) and applies to all intangible assets except those to which paragraph 121 or 122 applies (certain internally-generated assets).
- (2) An intangible asset to which this paragraph applies is regarded as created or acquired after commencement to the extent that expenditure on its creation or acquisition is incurred after commencement.

As to whether expenditure on the creation or acquisition of the asset was incurred after commencement, see paragraphs 123 to 125.

- (3) If only part of the expenditure on the creation or acquisition of the asset is incurred after commencement—
- (a) this Schedule has effect as if there were a separate asset representing the expenditure so incurred, and
  - (b) the enactments that apply where this Schedule does not apply have effect as if there were a separate asset representing the expenditure not so incurred.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

*Internally-generated goodwill: whether created before or after commencement*

- 121 For the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) internally-generated goodwill is regarded as created before (and not after) commencement if the business in question was carried on at any time before commencement by the company or a related party.

*Certain other internally-generated assets: whether created before or after commencement*

- 122 (1) This paragraph has effect for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement) and applies to an internally-generated asset representing expenditure that under the existing law is not qualifying expenditure for the purposes of any allowance under the Capital Allowances Act 2001 (c. 2) (“non-qualifying expenditure”).
- (2) If only part of the expenditure on the creation or acquisition of the asset is non-qualifying expenditure—
- (a) this Schedule has effect as if there were separate assets representing the non-qualifying expenditure and the other expenditure, and

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- (b) if this Schedule does not apply to the former, the enactments that apply where this Schedule does not apply also have effect as if there were a separate asset representing the non-qualifying expenditure.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

- (3) An asset to which this paragraph applies is regarded for the purposes of paragraph 118 as created before (and not after) commencement if the asset in question was held at any time before commencement by the company or a related party.

*Expenditure on acquisition treated as incurred when recognised for accounting purposes*

- 123 (1) For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) the general rule is that expenditure on the acquisition of an asset is treated as incurred when it is recognised for accounting purposes.

- (2) This is subject to—

paragraph 124 (chargeable gains rules to be followed in certain cases), and  
 paragraph 125 (capital allowances rule to be followed in certain cases).

*When expenditure treated as incurred: chargeable gains rule to be followed in certain cases*

- 124 For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) expenditure on the acquisition of the asset that—

- (a) does not qualify for any form of tax relief against income under the existing law, and  
 (b) would be treated as incurred after commencement under the general rule in paragraph 123,

shall be treated as incurred before commencement if the asset is (or would be) treated as disposed of (and thus acquired) before commencement for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12).

*When expenditure treated as incurred: capital allowances general rule to be followed in certain cases*

- 125 (1) For the purposes of paragraph 120 (assets regarded as created or acquired when expenditure incurred) expenditure on the creation or acquisition of an asset that under the existing law is qualifying expenditure for the purposes of any allowance under the Capital Allowances Act 2001 (c. 2) is treated as incurred when an unconditional obligation to pay it comes into being.

- (2) For this purpose there may be an unconditional obligation to pay although the whole or part of the expenditure is not required to be paid until a later date.

*Application of Schedule to fungible assets*

- 126 (1) The provisions of this paragraph have effect for the purposes of this Part in relation to assets to which paragraph 107 applies (treatment of fungible assets as single asset)

- (2) Paragraph 107 applies as if—

- (a) existing assets, and  
 (b) intangible fixed assets that are not existing assets,

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were assets of different kinds.

- (3) Where paragraph 107 applies (by virtue of sub-paragraph (2) or otherwise)—
  - (a) a single asset comprising existing assets is treated as itself being an existing asset, and
  - (b) a single asset comprising intangible fixed assets that are not existing assets is treated as itself being an asset to which this Schedule applies.
- (4) The realisation by a company of an intangible fixed asset that apart from sub-paragraph (2) would be regarded as part of a single asset comprising both existing assets and assets that are not existing assets shall be regarded as diminishing the single asset of the company comprising existing assets in priority to diminishing the single asset of the company comprising assets that are not existing assets.
- (5) Intangible fixed assets acquired by a company that would not otherwise be regarded as existing assets shall be treated as existing assets to the extent that they are to be identified, in accordance with the following rules, with existing assets realised by the company.
- (6) The rules are—
  - (a) that assets acquired are to be identified with existing assets of the same kind realised by the company within the period beginning 30 days before and ending 30 days after the date of the acquisition;
  - (b) that assets realised earlier are to be identified before assets realised later;
  - (c) that assets acquired earlier are to be identified before assets acquired later.

The reference in paragraph (a) to assets “of the same kind” are to assets that are, or but for sub-paragraph (2) would be, treated by virtue of paragraph 107 as part of a single asset.

*Certain assets acquired on transfer of business treated as existing assets*

- 127 (1) This paragraph applies where—
- (a) an asset that is an existing asset in the hands of a company (“the transferor company”) is transferred to another company (“the transferee company”), and
  - (b) the transfer is one in relation to which—
    - (i) section 139 of the Taxation of Chargeable Gains Act 1992 (c. 12) (reconstruction involving transfer of business), or
    - (ii) section 140A of that Act (transfer of UK trade to company resident in another member State)<sup>F420</sup>, or
    - (iii) section 140E of that Act (transfer on formation of SE by merger),]applies with the effect that the transferor company is treated for the purposes of that Act as disposing of the asset for a consideration that secures that neither a gain nor a loss accrues to that company.
- (2) Where this paragraph applies the asset shall be treated for the purposes of this Schedule as an existing asset in the hands of the transferee company.
  - (3) This paragraph does not apply where the transfer mentioned in sub-paragraph (1) occurred before 28th June 2002.

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### Textual Amendments

**F420** Sch. 29 para. 127(1)(b)(iii) and preceding word inserted (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), s. 59(6)

### *Application of Schedule to certain existing telecommunication rights*

- 128 (1) This Schedule applies to an existing asset consisting of a licence or other right within Schedule 23 to the Finance Act 2000 (c. 17) (certain telecommunication rights).
- (2) This Schedule has effect in relation to the asset—
- (a) as regards amounts to be brought into account for tax purposes in accounting periods ending after commencement, and
  - (b) as if amounts brought into account for tax purposes in earlier accounting periods under Schedule 23 to the Finance Act 2000 (c. 17) had been so brought into account under this Schedule.
- (3) If the asset—
- (a) was acquired before the beginning of the first accounting period to which this Schedule applies in relation to it, and
  - (b) is a chargeable intangible asset immediately after the beginning of that period,
- it shall be treated for the purposes of Part 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of that period.
- (4) Schedule 23 to the Finance Act 2000 shall cease to have effect for the purposes of corporation tax as regards accounting periods ending after commencement.

### *Application of Schedule to existing Lloyd's syndicate capacity*

- 129 (1) This Schedule applies to an existing asset consisting of the rights of a member of Lloyd's under a syndicate within the meaning of Chapter 5 of Part 4 of the Finance Act 1994 (c. 9) (taxation of corporate members of Lloyd's).
- (2) This Schedule has effect in relation to the asset as regards amounts to be brought into account for tax purposes in accounting periods ending after commencement.
- (3) For the purposes of paragraph 9(5) (writing down on accounting basis: calculation of amount of debit for tax purposes) as it applies to the first accounting period to which this Schedule applies in relation to such an asset, the tax written down value of the asset shall be computed under paragraph 27 as if the debits to be deducted under that paragraph included all accounting losses previously recognised in respect of the asset, whether or not they gave rise to a deduction for tax purposes.
- (4) If the asset—
- (a) was acquired before the beginning of the first accounting period to which this Schedule applies in relation to it, and
  - (b) is a chargeable intangible asset immediately after the beginning of that period,

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it shall be treated for the purposes of Part 7 (roll-over relief on realisation and reinvestment) as if it had been a chargeable intangible asset at all material times between its acquisition and the beginning of that period.

*Roll-over relief: application in relation to disposal of existing asset after commencement*

- 130 (1) This paragraph provides for the application of Part 7 (roll-over relief in case of reinvestment) where a company disposes of an existing asset after commencement.

References in this paragraph to the disposal of an asset have the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12).

- (2) Part 7 applies in accordance with this paragraph with the following adaptations—
- (a) for references to the realisation of the old asset substitute references to its disposal;
  - (b) for references to its being a chargeable intangible asset substitute references to its being a chargeable asset within the Taxation of Chargeable Gains Act 1992 (c. 12);
  - (c) for references to the proceeds of its realisation substitute references to the net proceeds of disposal under that Act; and
  - (d) for references to its cost recognised for tax purposes substitute references to the cost under that Act.
- (3) For the purposes of sub-paragraph (2)(b) an asset is a chargeable asset within the Taxation of Chargeable Gains Act 1992 in relation to a company at any time if, were the asset to be disposed of at that time, any gain accruing to the company on the disposal would be a chargeable gain within the meaning of that Act, and either—
- (a) at that time the company is resident or ordinarily resident in the United Kingdom, or
  - (b) the gain would form part of the company's chargeable profits for corporation tax purposes by virtue of section 10(3) of that Act,
- unless the company (were it to dispose of the asset at that time) would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gain accruing to it on the disposal.
- (4) For the purposes of sub-paragraph (2)(c) the net proceeds of disposal under the Taxation of Chargeable Gains Act 1992 shall be taken to be the amount or value of the consideration for the disposal reduced by any incidental costs of making the disposal that would be allowable as a deduction under section 38(1)(c) of that Act.
- (5) For the purposes of sub-paragraph (2)(d) the cost under the Taxation of Chargeable Gains Act 1992 shall be taken to be an amount equal to the difference between the net proceeds of disposal as defined in sub-paragraph (4) and the amount of the chargeable gain on the disposal.
- (6) Paragraph 93 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Part 7 applies by virtue of this paragraph.
- (7) Where a company is entitled to relief under Part 7 by virtue of this paragraph, it is treated for the purposes of the Taxation of Chargeable Gains Act 1992 as if the consideration for the disposal of the old asset were reduced by the amount available for relief.

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This does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets.

*Roll-over relief: application in relation to degrouping charge on existing asset arising after commencement*

- 131 (1) This paragraph provides for the application of Part 7 (roll-over relief in case of reinvestment) where—
- (a) a company is treated by virtue of subsection (3) or (6) of section 179 of the Taxation of Chargeable Gains Act 1992 (degrouping charge) as having sold and reacquired an existing asset, and
  - (b) the time at which by virtue of subsection (4) or (8) of that section the gain is treated as accruing is after commencement.
- (2) Part 7 applies in accordance with this paragraph with the adaptations specified in paragraph 130(2) and the following further adaptations (which correspond to those in paragraph 65)—
- (a) in paragraph 38 (conditions to be met in relation to the old asset), for the references to the old asset being a chargeable intangible asset throughout the period during which it was held by the company substitute a reference to its being a chargeable asset within the Taxation of Chargeable Gains Act 1992 (c. 12) throughout the period during which it was held by the company referred to in section 179 of that Act as company B;
  - (b) in paragraph 39(1) (conditions to be met in relation to expenditure on other assets), for the references to the date of realisation of the old asset substitute references to—
    - (i) in a case within subsection (3) of section 179 of that Act, the time at which the gain is treated as accruing under subsection (4) of that section, and
    - (ii) in a case within subsection (6) of that section, the time at which the gain is treated as accruing under subsection (8) of that section;
  - (c) references to the proceeds of realisation shall be read as references to the amount of the consideration for which the company is treated under that Act as having sold and reacquired the asset.
- (3) Paragraph 130(3) (meaning of “chargeable asset”) applies for the purposes of subparagraph (2)(a) of this paragraph.
- (4) Paragraph 93 (exclusion of roll-over relief in case of part realisation involving related party) does not apply in a case where Part 7 applies by virtue of this paragraph.
- (5) A company entitled to relief under Part 7 by virtue of this paragraph is treated for the purposes of the Taxation of Chargeable Gains Act 1992 as if the consideration for the disposal of the old asset were reduced by the amount available for relief.

This does not affect the treatment for any purpose of the Taxes Acts of the other party to any transaction involved in the disposal of the old asset or the expenditure on other assets.

*Roll-over relief: transitory interaction with relief on replacement of business asset*

- 132 (1) In relation to the disposal after commencement of an asset that is both—

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- (a) an asset of a class specified in section 155 of the Taxation of Chargeable Gains Act 1992 (assets qualifying for roll-over relief on replacement of business asset), and
  - (b) an intangible fixed asset,
- the period specified in section 152(3) of that Act (period within which new assets must be acquired) does not include, and may not be extended so as to include, any period after commencement.
- (2) Subject to that, relief may be claimed in such a case either under Part 7 of this Schedule (roll-over relief on realisation and reinvestment) or under section 152 or 153 of the Taxation of Chargeable Gains Act 1992, or partly under Part 7 and partly under section 152 or 153.
  - (3) For the purposes of any such claim under section 152 or 153 any expenditure on other assets within the meaning of Part 7 shall be treated as if it were an amount applied as mentioned in section 152(1).
  - (4) For the purposes of any such claim under Part 7 any amount applied as mentioned in section 152(1) shall be treated as if it were expenditure incurred on other assets.
  - (5) Classes [<sup>F421</sup>4 to 7A] in section 155 of the Taxation of Chargeable Gains Act 1992 (c. 12) [<sup>F422</sup>(goodwill and certain other intangible assets)] shall cease to have effect for the purposes of corporation tax as regards the acquisition of new assets that are chargeable intangible assets.
  - (6) References in this paragraph to the disposal of an asset have the same meaning as in that Act.

#### Textual Amendments

- F421** Words in Sch. 29 para. 132(5) substituted (with effect in accordance with s. 41(10) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 41\(4\)\(a\)](#)
- F422** Words in Sch. 29 para. 132(5) substituted (with effect in accordance with s. 41(10) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\), s. 41\(4\)\(b\)](#)

## PART 15

### INTERPRETATION

#### *References to expenditure on an asset*

- 133 (1) References in this Schedule to expenditure on an asset are to any expenditure (including abortive expenditure)—
- (a) for the purpose of acquiring or creating, or establishing title to, the asset, or
  - (b) by way of royalty in respect of the use of the asset, or
  - (c) for the purpose of maintaining, preserving or enhancing, or defending title to, the asset.
- (2) No account shall be taken of capital expenditure on tangible assets in determining for the purposes of this Schedule the amount of expenditure on an intangible asset.

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“Capital expenditure” here has the same meaning as in the Capital Allowances Act 2001 (c. 2).

- (3) Any necessary apportionment shall be made on a just and reasonable basis in a case where expenditure is incurred partly as mentioned in sub-paragraph (1) or (2) and partly otherwise.

*References to amounts recognised in [F423 determining profit or loss]*

13[F424(1)] References in this Schedule to an amount recognised in [F425 determining a company's profit or loss] for a period include—

- (a) an amount recognised in [F426 the company's profit and loss account or income statement,] a statement of total recognised gains and losses [F427, statement of changes in equity] or other statement of items brought into account in computing the company's profits and losses for that period; and
- (b) an amount that would have been so recognised if a profit and loss account or other such statement as is mentioned in paragraph (a) had been drawn up for that period in accordance with generally accepted accounting practice.

F428  
 .....

[F429(2)] An amount that in accordance with generally accepted accounting practice is shown as a prior period adjustment in any such statement as is mentioned in sub-paragraph (1) shall be brought into account for the purposes of this Schedule in computing the company's profits and losses for the period to which the statement relates.

This does not apply to an amount recognised for accounting purposes by way of correction of a fundamental error.]

**Textual Amendments**

**F423** Words in Sch. 29 para. 134 heading substituted (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 46\(2\)](#)

**F424** Sch. 29 para. 134 renumbered as Sch. 29 para. 134(1) (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 46\(3\)](#)

**F425** Words in Sch. 29 para. 134(1) substituted (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 46\(4\)\(a\)](#)

**F426** Words in Sch. 29 para. 134(1)(a) inserted (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 46\(4\)\(b\)](#)

**F427** Words in Sch. 29 para. 134(a) inserted (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 10 para. 73\(2\)](#)

**F428** Words in Sch. 29 para. 134(1) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 46\(4\)\(c\), Sch. 11 Pt. 2\(7\)](#)

**F429** Sch. 29 para. 134(2) inserted (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 46\(5\)](#)

*Meaning of “accounting value”*

135 References in this Schedule to the “accounting value” of an asset are to the net book value (or carrying amount) of the asset recognised for accounting purposes.

*Meaning of “adjustments required for tax purpose”s*

136 References in this Schedule to “adjustments required for tax purposes” are to any adjustment required—



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- (a) by Schedule 28AA to the Taxes Act 1988 (provision not at arm's length), or
- (b) by any provision of this Schedule.

*Meaning of “chargeable intangible asset” and “chargeable realisation gain”*

- 137 (1) For the purposes of this Schedule—
- (a) an asset is a “chargeable intangible asset” in relation to a company at any time if, were it to be realised by the company at that time, any gain on its realisation would be a chargeable realisation gain;
  - (b) there is a “chargeable realisation gain” if a gain on the realisation of an asset gives rise to a credit required to be brought into account for tax purposes under Part 4 (realisation of intangible fixed asset).
- (2) For the purposes of sub-paragraph (1)—
- (a) there is a gain on the realisation of an asset in any case if the circumstances are such that paragraph 20(2)(a), 21(2)(a) or 23(2) applies, and
  - (b) there shall be disregarded in determining whether there is such a gain—
    - (i) the availability of relief under Part 7 (roll-over relief on realisation and reinvestment), and
    - (ii) any provision of this Schedule under which a transfer of an asset is to be treated as tax-neutral.

*Interpretation provisions relating to insurance companies*

- 138 (1) In this Schedule “insurance company”, “life assurance business”, “long-term business”, “long-term insurance fund” and “basic life assurance and general annuity business” have the same meaning as in Chapter 1 of Part 12 to the Taxes Act 1988 (see section 431(2) of that Act).
- (2) Any question arising in the case of an intangible fixed asset held by an insurance company as to the extent to which—
- (a) the asset is to be treated for the purposes of this Schedule as held for the purposes of any category of business carried on by the company, or
  - (b) credits or debits under this Schedule in respect of the asset are to be treated as referable to any such category of business,
- shall be determined in accordance with section 432A of the Taxes Act 1988 as that section would apply (apart from this Schedule) in relation to income or gains from the asset.
- (3) Any question arising as to the extent to which royalties payable by an insurance company are referable to any [<sup>F430</sup>category] of business carried on by the company shall be determined in accordance with section 432A of the Taxes Act 1988 as that section would apply if—
- (a) the right in respect of the enjoyment or exercise of which the royalties are payable was an asset held by the company, and
  - (b) the royalties payable were income from that asset.

**Textual Amendments**

**F430** Word in Sch. 29 para. 138(3) substituted (with effect in accordance with Sch. 9 para. 19(5) of the amending Act) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [Sch. 9 para. 19\(4\)](#)

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*Meaning of “royalty”*

- 139 In this Schedule “royalty” means a royalty in respect of the enjoyment or exercise of rights that constitute an intangible fixed asset.

*Meaning of “tax-neutral transferee”*

- 140 (1) This paragraph applies to a transfer of an asset that is, by virtue of any provision of this Schedule, to be treated as a “tax-neutral” transfer.

- (2) Where this paragraph applies—

- (a) the transfer is regarded for the purposes of this Schedule as not involving any realisation of the asset by the transferor or any acquisition of that asset by the transferee, and
- (b) the transferee is treated for the purposes of this Schedule as having held the asset at all times when it was held by the transferor and as having done all such things in relation to the asset as were done by the transferor.

- (3) This means, in particular—

- (a) that the original cost of the asset in the hands of the transferor is treated as the original cost in the hands of the transferee, and
- (b) that all such debits and credits in relation to the asset as have been brought into account for tax purposes by the transferor under this Schedule are treated as if they had been so brought into account by the transferee.

The reference in paragraph (a) to the cost of the asset is to the cost recognised for tax purposes.

*Meaning of “the Inland Revenue”*

- 141 (1) Functions under these provisions are functions of the Board—  
 paragraph 35(2) (relief against total profits: power to allow longer period for claim),  
 paragraph 39(1)(a) (roll-over relief: power to allow longer reinvestment period),  
 paragraphs 84(6), 85(5), 86(9), 87(8) and 88 (transfers treated as tax-neutral, etc: clearance procedure).

These functions are within section 4A of the Inland Revenue Regulation Act 1890 (c. 21) (functions of Board exercisable by officer acting with their authority).

- (2) Subject to sub-paragraph (1), references in this Schedule to “the Inland Revenue” are to any officer of the Board.
- (3) In this paragraph “the Board” means the Commissioners of Inland Revenue.

*Meaning of “the Taxes Act”s*

- 142 In this Schedule “the Taxes Acts” means the enactments relating to income tax, corporation tax or chargeable gains.

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### *Index of defined expressions*

143 The expressions listed below are defined or otherwise explained by the provisions indicated:

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|  |  |
|--|--|
| accounting value   | paragraph 135                            |
| adjustments required for tax purposes                                  | paragraph 136                            |
| basic life assurance and general annuity business                      | paragraph 138(1)                         |
| chargeable intangible asset  | paragraph 137(1)(a)                      |
| chargeable realisation gain  | paragraph 137(1)(b)                      |
| company (in Part 8)  | paragraph 46(2)                          |
| effective 51% subsidiary   | paragraph 52                             |
| existing asset   | paragraph 118(3) (and see paragraph 127) |
| expenditure on an asset  | paragraph 133                            |
| goodwill   | paragraph 4(2)                           |
| group (of companies)   | paragraph 47 and Part 8 generally        |
| Inland Revenue   | paragraph 141                            |
| insurance company  | paragraph 138(1)                         |
| intangible asset   | paragraph 2                              |
| intangible fixed asset   | paragraphs 3 and 4(1)                    |
| life assurance business  | paragraph 138(1)                         |
| long-term business and long-term insurance fund                        | paragraph 138(1)                         |
| major interest (in Part 12)  | paragraphs 96(2) and (3) and 97 to 99    |
| non-trading credits or debits  | paragraph 34(1)                          |
| non-trading gain (or loss) on intangible fixed assets                  | paragraph 34(2) or (3)                   |
| old asset (in Part 7)  | paragraph 37(1)                          |
| other assets (in Part 7)   | paragraph 37(1)                          |
| part realisation (of asset)  | paragraph 19(3)                          |
| principal company (of group)   | paragraph 47(1) and Part 8 generally     |
| proceeds of realisation  | paragraph 24                             |
| [ <sup>F431</sup> profit and loss (amounts recognised in determining)] | paragraph 134                            |
| realisation (of asset)   | paragraph 19                             |
| related party  | paragraph 95 to 101                      |
| royalty  | paragraph 139                            |

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|  |                 |
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| subsidiary (in relation to company<br>formed outside UK) | paragraph 46(3) |
| the Taxes Acts   | paragraph 142   |
| tax-neutral transfer                                     | paragraph 140   |
| tax written down value                                   | Part 5          |

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#### Textual Amendments

**F431** Words in Sch. 29 para. 143 substituted (7.4.2005) by [Finance Act 2005 \(c. 7\), Sch. 4 para. 47](#)

## SCHEDULE 30

Section 84(2)

### GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS: CONSEQUENTIAL AMENDMENTS

#### *General provisions about deductions*

- 1 (1) For sections 337 and 337A of the Taxes Act 1988 (corporation tax: general provisions about taxation of income) substitute—

#### **“337 Company beginning or ceasing to carry on trade**

- (1) Where a company begins or ceases—
- (a) to carry on a trade, or
  - (b) to be within the charge to corporation tax in respect of a trade,
- the company’s income shall be computed as if that were the commencement or, as the case may be, the discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.
- (2) Subsection (1) applies to a Schedule A business or overseas property business as it applies to a trade.

#### **337A Computation of company’s profits or income: exclusion of general deductions**

- (1) For the purposes of corporation tax, subject to any provision of the Corporation Tax Acts expressly authorising a deduction—
- (a) a company’s profits shall be computed without any deduction in respect of dividends or other distributions, and
  - (b) a company’s income from any source shall be computed without any deduction in respect of charges on income.
- (2) In computing a company’s income from any source for the purposes of corporation tax—
- (a) no deduction shall be made in respect of interest except in accordance with Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships); and

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- (b) no deduction shall be made in respect of losses from intangible fixed assets within Schedule 29 to the Finance Act 2002 except in accordance with that Schedule.”.
- (2) For section 338 of the Taxes Act 1988 (corporation tax: charges on income) substitute—

**“338 Charges on income deducted from total profits**

- (1) Charges on income are allowed as deductions from a company’s total profits in computing the corporation tax chargeable for an accounting period.
- (2) They are deducted from the company’s total profits for the period as reduced by any other relief from tax other than group relief.
- (3) The amount of the deduction is limited to the amount that reduces the company’s total profits for the period to nil.
- (4) Except as otherwise provided, a deduction is allowed only in respect of payments made by the company in the accounting period concerned.
- (5) The above provisions are subject to any express exceptions in the Corporation Tax Acts.

**338A Meaning of “charges on income”**

- (1) This section defines what payments or other amounts are “charges on income” for the purposes of corporation tax.

This section has effect subject to any express exceptions in the Corporation Tax Acts.

- (2) Subject to the following provisions of this section, the following (and only the following) are charges on income—
- (a) annuities or other annual payments that meet the conditions specified in section 338B;
  - (b) qualifying donations within the meaning of section 339 (qualifying donations to charity);
  - (c) amounts allowed as charges on income under section 587B(2)(a)(ii) (gifts of shares etc to charity).
- (3) No payment that is deductible in computing profits or any description of profits for the purposes of corporation tax shall be treated as a charge on income.
- (4) No payment shall be treated as a charge on income if (without being so deductible) it is—
- (a) an annuity payable by an insurance company, or
  - (b) an annuity or other annual payment payable by a company wholly or partly in satisfaction of any claim under an insurance policy in relation to which the company is the insurer.

In paragraph (a) “insurance company” has the same meaning as in Chapter 1 of Part 12.

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### **338B Charges on income: annuities or other annual payments**

- (1) An annuity or other annual payment is a charge on income if—
    - (a) the requirements specified in subsection (2) are met, and
    - (b) it is not excluded from being a charge on income for the purposes of corporation tax—
      - (i) by any of the following provisions of this section, or
      - (ii) by any other provision of the Corporation Tax Acts.
  - (2) The requirements are that the payment—
    - (a) is made under a liability incurred for a valuable and sufficient consideration,
    - (b) is not charged to capital,
    - (c) is ultimately borne by the company, and
    - (d) in the case of a company not resident in the United Kingdom, is incurred wholly and exclusively for the purposes of a trade which is or is to be carried on by it in the United Kingdom through a branch or agency.
  - (3) An annuity or other annual payment made to a person not resident in the United Kingdom shall be treated as a charge on income only if the following conditions are met.
  - (4) The conditions are that the company making the payment is resident in the United Kingdom and that either—
    - (a) the company deducts tax from the payment in accordance with section 349, and accounts under Schedule 16 for the tax so deducted, or
    - (b) the person beneficially entitled to the income in respect of which the payment is made is a company that is not resident in the United Kingdom but which carries on a trade in the United Kingdom through a branch or agency and the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2) of that company, or
    - (c) the payment is one payable out of income brought into charge to tax under Case V of Schedule D.
  - (5) An annuity or other annual payment is not a charge on income if—
    - (a) it is payable in respect of the company's loan relationships, or
    - (b) it is a royalty to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets).
  - (6) Nothing in this section prevents an annuity or other annual payment from being a charge on income if it is a qualifying donation (within the meaning of section 339).”.
- (3) In section 214(1) of the Taxes Act 1988 (chargeable payments connected with exempt distributions), in paragraph (c) (payments not to be treated as distributions for purposes of certain provisions) for “sections 337(2) and 338(2)(a)” substitute “section 337A(1)”.

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- (4) In section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), in the definition of “charges on income” for “338” substitute “ 338A ”.
- (5) In Schedule 23A to the Taxes Act 1988 (manufactured dividends), in paragraph 4(2)(b) for “338(4)(a)” substitute “ 338B(4)(a) ”.

#### *Surrender of non-trading loss by way of group relief*

- 2 (1) In section 403 of the Taxes Act 1988 (amounts that may be surrendered by way of group relief)—
  - (a) in subsection (1)(b) (amounts that may be surrendered if available for group relief) for “or management expenses which are” substitute “ , management expenses or a non-trading loss on intangible fixed assets ”;
  - (b) in subsection (3), in the first sentence (meaning of availability for group relief), for “and management expenses” substitute “ management expenses and a non-trading loss on intangible fixed assets ”;
  - (c) in subsection (3), in the second sentence (order in which amounts treated as used), for “and finally management expenses” substitute “ , management expenses and finally a non-trading loss on intangible fixed assets ”.

- (2) In section 403ZD of the Taxes Act 1988 (further provisions as to amounts available for group relief), after subsection (5) insert—

“(6) A non-trading loss on intangible fixed assets means a non-trading loss on intangible fixed assets, within the meaning of Schedule 29 to the Finance Act 2002, for the surrender period.

It does not include so much of any such loss as is attributable to an amount being carried forward under paragraph 35(3) of that Schedule (amounts carried forward from earlier periods).”.

#### *Extension of charitable exemption to non-trading gains*

- 3 In section 505(1) of the Taxes Act 1988 (charities: exemptions), in paragraph (c) (income charged under Schedule D) after sub-paragraph (iib) insert—
  - “(iic) from tax under Case VI of Schedule D in respect of non-trading gains on intangible fixed assets under Schedule 29 to the Finance Act 2002, and”.

#### *Change in ownership of company with unused non-trading loss*

- 4 (1) Chapter 6 of Part 17 of the Taxes Act 1988 (tax avoidance: miscellaneous) is amended as follows.
  - (2) In section 768C, after subsection (12) add—
    - “(13) This section applies in relation to an asset to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets), with the following adaptations—
      - (a) for the reference to section 171(1) of the 1992 Act substitute a reference to paragraph 55 of that Schedule;
      - (b) for any reference to a chargeable gain under that Act substitute a reference to a chargeable realisation gain within the meaning of that

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Schedule that is a credit within paragraph 34(1)(a) of that Schedule (non-trading credits);

- (c) for any reference to a disposal of the asset substitute a reference to its realisation within the meaning of that Schedule;
- (d) for the reference to the relevant provisions of the 1992 Act substitute a reference to Part 6 of that Schedule.”.

(3) After section 768D insert—

**“768E Change in ownership of company with unused non-trading loss on intangible fixed assets**

(1) Where there is a change in the ownership of an investment company and either—

- (a) paragraph (a), (b) or (c) of section 768B(1) applies, or
- (b) section 768C applies,

the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change.

(2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.

(3) The profits or losses of the period in which the change occurs are apportioned to those two periods—

- (a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or
- (b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule,

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.

(4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.

(5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—

- (a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;
- (b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.

(6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.

(7) In this section “investment company” has the same meaning as in Part 4.”.



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- (4) In paragraph 6 of Schedule 28A to the Taxes Act 1988 (amounts in issue for purposes of section 768B), after paragraph (dd) insert—
- “(de) the amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for that period under paragraph 34 of Schedule 29 to the Finance Act 2002;
  - (df) the amount of any non-trading loss on intangible fixed assets carried forward to that accounting period under paragraph 35(3) of that Schedule;”.
- (5) In paragraph 7(1) of that Schedule (apportionment for purposes of section 768B), after paragraph (f) insert—
- “(g) in the case of any such credit or debit as is mentioned in paragraph 6(de), by apportioning to each accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;
  - (h) in the case of any such loss as is mentioned in paragraph 6(df) above, by apportioning the whole amount of the loss to the first part of the accounting period being divided.”.
- (6) In paragraph 13(1) of that Schedule (amounts in issue for purposes of section 768C), after paragraph (ed) insert—
- “(ee) the amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for that period under paragraph 34 of Schedule 29 to the Finance Act 2002;
  - (ef) the amount of any non-trading loss on intangible fixed assets carried forward to that accounting period under paragraph 35(3) of that Schedule;”.
- (7) In paragraph 16(1) of that Schedule (apportionment for purposes of section 768C), after paragraph (f) insert—
- “(g) in the case of any such credit or debit as is mentioned in paragraph 13(ee), by apportioning to each accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;
  - (h) in the case of any such loss as is mentioned in paragraph 13(ef), by apportioning the whole amount of the loss to the first part of the accounting period being divided.”.

### *Double taxation relief*

- 5 (1) Part 18 of the Taxes Act 1988 (double taxation relief) is amended as follows.
- (2) In section 795 (computation of income subject to foreign tax), in subsection (4) (application of that section notwithstanding certain other provisions) after “notwithstanding anything in” insert “—(a) ” and at the end insert—
- “, or
- (b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).”.

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(3) In the heading to section 797A (foreign tax on items giving rise to a non-trading credit), at the end add “: loan relationships”.

(4) After that section insert—

**“797B Foreign tax on items giving rise to a non-trading credit: intangible fixed assets**

(1) This section applies for the purposes of any arrangements where, in the case of a company—

- (a) a non-trading credit relating to an item is brought into account for the purposes of Schedule 29 to the Finance Act 2002 (intangible fixed assets) for an accounting period (“the applicable accounting period”), and
- (b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that item.

(2) It shall be assumed that tax chargeable under Case VI of Schedule D on the profits and gains arising for the applicable accounting period from the company’s intangible fixed assets falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect as if—

- (a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description, and
- (b) different parts of that amount might be set against different profits.

(4) For this purpose the adjusted amount of a company’s non-trading debits for an accounting period is given by:

**TotalDebits-AmountCarriedForward**

where—

Total Debits is the aggregate amount of the company’s non-trading debits for that accounting period under Schedule 29 to the Finance Act 2002 (intangible fixed assets), and

Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under paragraph 35(3) of that Schedule (carry-forward of non-trading loss in respect of which no claim is made for it to be set against total profits of current period).”.

(5) In section 811 (deduction for foreign tax where no credit available), in subsection (3) (application of that section notwithstanding certain other provisions) after “notwithstanding anything in” insert “ —(a) ” and at the end insert—

“, or

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- (b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).”.

#### *Value-shifting provisions*

- 6 After section 33 of the Taxation of Chargeable Gains Act 1992 (provisions supplementary to sections 30 to 32) insert—

**“33A Modification of sections 30 to 33 in relation to chargeable intangible asset**

- (1) Sections 30 to 33 have effect in relation to a chargeable intangible asset subject to the following modifications.

In this section “chargeable intangible asset” has the same meaning as in Schedule 29 to the Finance Act 2002.

- (2) Any reference in those sections—
- (a) to a disposal or part disposal of the asset shall be read as a reference to its realisation or part realisation within the meaning of that Schedule (see paragraph 19 of that Schedule);
  - (b) to an disposal of the asset under section 171(1) shall be read as a reference to its transfer under paragraph 55 of that Schedule (transfers within a group);
  - (c) to a disposal of the asset under section 179 shall be read as a reference to its realisation under paragraph 58 or 60 of that Schedule (degrouing).
- (3) In section 31(6), paragraph (c) shall not apply to a revaluation where the profit on the revaluation is wholly taken into account as a credit under that Schedule (see paragraph 15 of that Schedule).
- (4) None of the conditions in section 31(9) shall be treated as satisfied if the asset with enhanced value is a chargeable intangible asset within the meaning of that Schedule.
- (5) The reference in section 32(2)(b) to the cost of the underlying asset shall be read, in the case of a chargeable intangible asset, as a reference to the capitalised value of the asset recognised for accounting purposes.”.

## SCHEDULE 31

Section 85

### GAINS OF INSURANCE COMPANY FROM VENTURE CAPITAL INVESTMENT PARTNERSHIP

The following Schedule is inserted after Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (c. 12)—

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## “SCHEDULE 7AD

### GAINS OF INSURANCE COMPANY FROM VENTURE CAPITAL INVESTMENT PARTNERSHIP

#### **Introduction**

- 1 This Schedule applies where the assets of the long-term insurance fund of an insurance company (“the company”) include assets held by the company as a limited partner in a venture capital investment partnership (“the partnership”).

#### **Meaning of “venture capital investment partnership”**

- 2 (1) A “venture capital investment partnership” means a partnership in relation to which the following conditions are met.

- (2) The first condition is that the sole or main purpose of the partnership is to invest in unquoted shares or securities.

This condition shall not be regarded as met unless it appears from—

- (a) the agreement constituting the partnership, or  
 (b) any prospectus issued to prospective partners,

that that is the sole or main purpose of the partnership.

- (3) The second condition is that the partnership does not carry on a trade.

- (4) The third condition is that not less than 90% of the book value of the partnership’s investments is attributable to investments that are either—

- (a) shares or securities that were unquoted at the time of their acquisition by the partnership, or  
 (b) shares that were quoted at the time of their acquisition by the partnership but which it was reasonable to believe would cease to be quoted within the next twelve months.

- (5) For the purposes of the third condition—

- (a) the following shall be disregarded—  
 (i) any holding of cash, including cash deposited in a bank account or similar account but not cash acquired wholly or partly for the purpose of realising a gain on its disposal;  
 (ii) any holding of quoted shares or securities acquired by the partnership in exchange for unquoted shares or securities;

- (b) whether the 90% test is met shall be determined by reference to the values shown in the partnership’s accounts at the end of a period of account of the partnership.

- (6) Where a partnership ceases to meet the above conditions, the company shall be treated as if the partnership had continued to be a venture capital investment partnership until the end of the period of account of the partnership during which it ceased to meet the conditions.

- (7) A partnership that ceases to meet those conditions cannot qualify again as a venture capital investment partnership.

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For this purpose a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member.

***Interest in relevant assets of partnership treated as single asset***

- 3 (1) Where this Schedule applies section 59 (partnerships) does not have effect to make the company chargeable on its share of gains accruing on each disposal of relevant assets of the partnership.
- (2) Instead—
- (a) the company’s interest in relevant assets of the partnership is treated as a single asset (“the single asset”) acquired by the company when it became a member of the partnership, and
  - (b) the following provisions of this Schedule have effect.
- (3) For the purposes of this Schedule the “relevant assets” of the partnership are the shares and securities held by the partnership, other than qualifying corporate bonds.
- (4) Nothing in this Schedule shall be read—
- (a) as affecting the operation of section 59 in relation to partners who are not insurance companies carrying on long-term business or are not limited partners, or
  - (b) as imposing any liability on the partnership as such.

***The cost of the single asset***

- 4 (1) The company is treated as having given, wholly and exclusively for the acquisition of the single asset, consideration equal to the amount of capital contributed by it on becoming a member of the partnership.
- (2) Any further amounts of capital contributed by it to the partnership are treated on a disposal of the single asset as expenditure incurred wholly and exclusively on the asset for the purpose of enhancing its value and reflected in its state or nature at the time of the disposal.
- (3) Where the investments of the partnership include qualifying corporate bonds, the amount to be taken into account under sub-paragraph (1) or (2) is proportionately reduced.
- (4) The reduction is made by applying to that amount the fraction:

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

where—

A is the book value of all shares and securities held by the partnership at the end of the period of account of the partnership in which the amount of capital in question is fully invested by the partnership, and

B is the book value of all qualifying corporate bonds held by the partnership at the end of that period of account.

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- (5) For the purposes of sub-paragraph (4) the “book value” means the value shown in the partnership’s accounts at the end of the period of account.

***Deemed disposal of single asset in case of distribution***

- 5 (1) There is a disposal of the single asset on each occasion on which the company receives a distribution from the partnership that does not consist entirely of income or the proceeds of sale or redemption of assets that are not relevant assets.
- (2) The disposal is taken to be for a consideration equal to the amount of the distribution or of so much of it as does not consist of income or the proceeds of sale or redemption of assets that are not relevant assets.
- (3) Where—
- (a) the partnership disposes of relevant assets on which a chargeable gain or allowable loss would accrue if they were held by the company alone, and
  - (b) no distribution of the proceeds of the disposal is made within twelve months of the disposal,
- the company is treated as having received its share of the proceeds as a distribution at the end of the period of account of the partnership following that in which the disposal took place, or at the end of the period of six months after the date of the disposal, whichever is the later.
- (4) The operation of sub-paragraph (3) is not affected by the partnership having ceased to be a venture capital investment partnership before the time at which the distribution is treated as received by the company.
- (5) Where sub-paragraph (3) applies, any subsequent actual distribution of the proceeds is disregarded.

***Apportionment in case of part disposal***

- 6 (1) For the purposes of section 42 (apportionment of cost etc in case of part disposal) the market value of the property remaining undisposed of on a part disposal of the single asset shall be determined as follows.
- (2) If there is no further disposal of that asset in the period of account in which the part disposal in question takes place, the market value of the property remaining undisposed of shall be taken to be equal to the company’s share of the book value of the relevant assets of the partnership as shown in the partnership’s accounts at the end of that period of account.
- (3) If there is a further disposal of that asset in the period of account in which the part disposal in question takes place, or more than one, the market value of the property remaining undisposed of shall be taken to be equal to the sum of—
- (a) the amount or value of the consideration on the further disposal or, as the case may be, the total amount or value of the consideration on the further disposals, and
  - (b) the amount (if any) of the company’s share of the book value of the relevant assets of the partnership as shown in the partnership’s accounts at the end of that period of account.

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### ***Disposal of partnership asset giving rise to offshore income gain***

- 7 (1) Nothing in this Schedule shall be read as affecting the operation of Chapter 5 of Part 17 of the Taxes Act (offshore funds).
- (2) Where an offshore income gain accrues to the company under that Chapter from the disposal of any relevant asset of the partnership, the amount of any distribution received or treated as received by the company from the partnership that represents the whole or part of the proceeds of disposal of that asset is treated for the purposes of this Schedule as reduced by the amount of the whole or a corresponding part of the offshore income gain.

### ***Exclusion of negligible value claim***

- 8 No claim may be made in respect of the single asset under section 24(2) (assets that have become of negligible value).

### ***Investment in other venture capital investment partnerships***

- 9 (1) For the purposes of paragraph 2 (meaning of “venture capital investment partnership”) an investment by way of capital contribution to another venture capital investment partnership shall be treated as an investment in unquoted shares or securities.
- (2) The Treasury may by regulations make provision, in place of but corresponding to that made by paragraphs 3 to 8, in relation to gains accruing on a disposal of relevant assets by such a partnership.
- (3) The regulations may make provision for any period of account to which, in accordance with paragraphs 11 to 13, this Schedule applies.

### ***Interpretation***

- 10 (1) In this Schedule—
- “insurance company”, “long-term business” and “long-term insurance fund” have the same meaning as in Chapter 1 of Part 12 of the Taxes Act (see section 431(2) of that Act);
- “limited partner” means—
- (a) a person carrying on a business as a limited partner in a partnership registered under the Limited Partnership Act 1907, or
- (b) a person carrying on a business jointly with others who, under the law of a country or territory outside the United Kingdom, is not entitled to take part in the management of the business and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the business;
- “relevant assets” has the meaning given by paragraph 3(3);
- “securities” has the same meaning as in section 132 and also includes any debentures;
- “unquoted” and “quoted”, in relation to shares or securities, refer to listing on a recognised stock exchange.
- (2) References in this Schedule to the partnership’s accounts are to accounts drawn up in accordance with generally accepted accounting practice.

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If no such accounts are drawn up, the references to the treatment of any matter, or the amounts shown, in the accounts of the partnership are to what would have appeared if accounts had been drawn up in accordance with generally accepted accounting practice.

- (3) References in this Schedule to capital contributed to a limited partnership include amounts purporting to be provided by way of loan if—
- (a) the loan carries no interest,
  - (b) all the limited partners are required to make such loans, and
  - (c) the loans are accounted for as partners' capital, or partners' equity, in the accounts of the partnership.
- (4) For the purposes of this Schedule the assets of—
- (a) a Scottish partnership, or
  - (b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such,
- shall be treated as held by the members of the partnership in the proportions in which they are entitled to share in the profits of the partnership.

References in this Schedule to the company's interest in, or share of, the partnership's assets shall be construed accordingly.

### ***General commencement and transitional provisions***

- 11 (1) Subject to paragraph 12 (election to remain outside Schedule), this Schedule applies—
- (a) to periods of account of the partnership beginning on or after 1st January 2002, and
  - (b) to a period of account of the partnership beginning before that date and ending on or after it, unless the company elects that it shall not do so.
- (2) Where the company became a member of the partnership before the beginning of the first period of account of the partnership to which this Schedule applies, the cost of the single asset at the beginning of that period of account shall be taken to be equal to the total of the relevant indexed base costs.
- (3) For the purposes of sub-paragraph (2)—
- (a) the “indexed base cost” means—
    - (i) in relation to a holding that by virtue of section 104 is to be treated as a single asset, what would be the indexed pool of expenditure within the meaning of section 110 if the holding were disposed of, and
    - (ii) in relation to any other asset, the amount of expenditure together with the indexation allowance that would be fall to be deducted if the asset were disposed of; and
  - (b) the “relevant indexed base costs” means the indexed base costs that would be taken into account in computing in accordance with section 59 the gain or loss of the company if all the shares and securities (other than qualifying corporate bonds) held by the partnership were disposed of on the last day of the company's accounting period immediately preceding its first accounting period beginning on or after 1st January 2002.
- (4) No account shall be taken under this Schedule of a distribution by the partnership in a period of account to which this Schedule applies to the extent that it represents a chargeable gain accruing in an earlier period to which this Schedule does not apply.



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### ***Election to remain outside Schedule***

- 12 If the company—
- (a) became a member of the partnership before the beginning of the first period of account of the partnership to which this Schedule would otherwise apply, or
  - (b) made its first contribution of capital to the partnership before 17th April 2002,
- it may elect that the provisions of this Schedule shall not apply to it in relation to that partnership.

### ***How and when election to be made***

- 13 Any election under paragraph 11 or 12 must be made—
- (a) by notice to an officer of the Board,
  - (b) not later than the end of the period of two years after the end of the company’s first accounting period beginning on or after 1st January 2002.”.

## SCHEDULE 32

Section 86

### LLOYD’S UNDERWRITERS

#### *Individuals*

- 1 Chapter 3 of Part 2 of the Finance Act 1993 (c. 34) (Lloyd’s underwriters, etc) is amended as follows.
- 2 In section 178(stop loss and quota share insurance), in subsection (1) (deductions), for paragraph (c) substitute—
- “(c) where an amount is payable by him under a quota share contract—
    - (i) so much of that amount as exceeds the amount of transferred losses that are declared on or before the date the contract takes effect (“the declared amount”), or
    - (ii) if the contract does not take effect, the amount so payable under the contract.”.
- 3 After subsection (3) of that section insert—
- “(3A) Where the amount payable by a member under a quota share contract is less than the declared amount, the difference between the two amounts shall be treated as a trading receipt in computing the profits arising from the member’s underwriting business in the year of assessment which corresponds to the underwriting year in which the contract takes effect.
  - (3B) Where a member has entered a quota share contract, any amount paid by him to cover a cash call in respect of transferred losses that are not declared at the time the contract takes effect shall be treated—
    - (a) for the purposes of subsection (1)(c)(i) and (3A) above, as an amount payable under the contract, and
    - (b) for the purposes of section 172, as a payment made at the time the contract takes effect.”.
- 4 For subsection (4) of that section substitute—

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“(4) For the purposes of this section—

“cash call” has the same meaning as in Part 1 of Schedule 20 to this Act;

“quota share contract” means any contract between a member and another person which—

- (a) is made in accordance with the rules or practice of Lloyd's, and
- (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which he is a member;

and where the taking over of a member's rights and liabilities is conditional upon the occurrence of any event, the contract does not take effect until that event occurs; and

“transferred loss”, in relation to such a contract, means a loss for which that other person takes over liability under the contract (disregarding, in the case of a loss that has been declared at the time it is taken over, any part of it in respect of which the member has paid a cash call before that time).”.

- 5 In section 184(1) (interpretation), in the definition of “stop-loss insurance”, after “business” insert “, except insurance taken out by entering a quota share contract (within the meaning of section 178 above) ”.

#### *Corporate bodies*

- 6 Chapter 5 of Part 4 of the Finance Act 1994 (c. 9) (Lloyd's underwriters: corporations etc) is amended as follows.

- 7 In section 225 (stop loss and quota share insurance), in subsection (1) (deductions), for paragraph (b) substitute—

- “(b) where an amount is payable by it under a quota share contract—
- (i) so much of that amount as exceeds the amount of transferred losses that are declared on or before the date the contract takes effect (“the declared amount”), or
  - (ii) if the contract does not take effect, the amount so payable under the contract.”.

- 8 After subsection (3) of that section insert—

“(3A) Where the amount payable by a corporate member under a quota share contract is less than the declared amount—

- (a) if the underwriting year in which the contract takes effect falls within a single accounting period, the difference between the two amounts (“the surplus”) shall be treated as a trading receipt in computing the profits arising from the member's underwriting business for that period, and
- (b) if that underwriting year falls within two or more accounting periods, the apportioned part of the surplus shall be treated as a trading receipt in computing the profits arising from the member's underwriting business for each of those periods.

(3B) Where a corporate member has entered a quota share contract, any amount paid by it to cover a cash call in respect of transferred losses that are not

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declared at the time the contract takes effect shall be treated, for the purposes of subsections (1)(b)(i) and (3A) above, as an amount payable under the contract at that time.”.

9 For subsection (4) of that section substitute—

“(4) In this section—

“apportioned part”, in relation to any insurance money or other amount, means a part apportioned under section 72 of the Taxes Act 1988;

“cash call” means a request for funds which, in pursuance of a contract made in accordance with the rules and practices of Lloyd’s, is made to a corporate member by the agent of a syndicate of which it is a member;

“quota share contract” means any contract between a corporate member and another person which—

- (a) is made in accordance with the rules or practice of Lloyd’s; and
- (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which it is a member;

and where the taking over of a member’s rights and liabilities is conditional upon the occurrence of any event, the contract does not take effect until that event occurs; and

“transferred loss”, in relation to such a contract, means a loss for which that other person takes over liability under the contract (disregarding, in the case of a loss that has been declared at the time it is taken over, any part of it in respect of which the member has paid a cash call before that time).”.

10 In section 230(1) (interpretation), in the definition of “stop-loss insurance”, after “business” insert “, except insurance taken out by entering a quota share contract (within the meaning of section 225 above) ”.

## SCHEDULE 33

Section 109

### VENTURE CAPITAL TRUSTS

#### PART 1

##### VENTURE CAPITAL TRUSTS: WINDING UP

###### *Meaning of “VCT-in-liquidation”*

- 1 (1) In this Part of this Schedule “VCT-in-liquidation” means a company—
- (a) that is being wound up (whether or not under the law of a part of the United Kingdom and whether under the law of one, or more than one, territory),
  - (b) that was a venture capital trust immediately before the commencement of its winding-up, and

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- (c) whose winding up is *forbona fide* commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.
- (2) Regulations may, for purposes of this Part of this Schedule, make provision as to when a company's winding up is to be treated as commencing or ending in a case where it is wound up otherwise than under the law of a part of the United Kingdom or otherwise than under the law of a single territory.

*Power to treat VCT-in-liquidation as VCT*

- 2 (1) Regulations may make provision for tax enactments specified by the regulations to have effect as if—
- (a) a VCT-in-liquidation that is not a venture capital trust were, or were during any prescribed period of its winding-up, a venture capital trust;
  - (b) VCT approval withdrawn from a company—
    - (i) at any time during the period when it is a VCT-in-liquidation, or
    - (ii) at any time during a prescribed part of that period,
 were withdrawn at a prescribed time (and not at the time at which it is actually withdrawn).
- (2) In this paragraph “prescribed” means specified by, or determined under, regulations.

*Power to treat conditions for VCT approval as fulfilled with respect to VCT-in-liquidation*

- 3 (1) Regulations may make provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to a VCT-in-liquidation.
- (2) Provision under sub-paragraph (1) may be made so as to apply in relation to a VCT-in-liquidation—
- (a) throughout its winding-up, or
  - (b) during prescribed periods of its winding-up.
- (3) Regulations may, for purposes of tax enactments specified by the regulations, make provision for VCT approval to be treated as having been withdrawn, with effect as from a time specified by or determined under the regulations, from a VCT-in-liquidation from whom the Board would have power to withdraw such approval but for provision made under sub-paragraph (1).

*Power to make provision about distributions by VCT-in-liquidation*

- 4 (1) Regulations may make provision for tax enactments specified by the regulations—
- (a) to apply in relation to distributions from a VCT-in-liquidation (including, in particular, distributions in the course of dissolving it or winding it up);
  - (b) not to apply in relation to such distributions;
  - (c) to apply in relation to such distributions with modifications specified by the regulations.
- (2) Provision under sub-paragraph (1) may be made so as to apply in relation to distributions from a VCT-in-liquidation made—

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- (a) at any time during its winding-up, or
- (b) during periods of its winding-up specified by, or determined under, regulations.

*Power to facilitate disposals to VCT by VCT-in-liquidation*

- 5 (1) Regulations may make provision authorised by sub-paragraph (2) for cases where shares in or securities of a company are acquired by a venture capital trust (“the trust company”) from a VCT-in-liquidation.
- (2) The provision that may be made under sub-paragraph (1) for such a case is—
- (a) provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to the trust company in relation to periods ending after the acquisition;
  - (b) provision for the shares or securities acquired to be treated, at times after the acquisition when they are held by the trust company, as meeting requirements of Schedule 28B to the Taxes Act 1988 (provisions for determining whether shares or securities held by a venture capital trust form part of its qualifying holdings);
  - (c) provision for shares in the trust company issued in connection with the acquisition of the shares or securities from the VCT-in-liquidation and either—
    - (i) issued to a person who is a member of the VCT-in-liquidation, or
    - (ii) issued to the VCT-in-liquidation and distributed by it in the course of its winding-up or dissolution to a person who is one of its members, to be treated, for purposes of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12), as representing shares in the VCT-in-liquidation held by that person.
- (3) Provision under sub-paragraph (1) may be made so as to apply in relation to shares or securities acquired from a VCT-in-liquidation—
- (a) at any time during its winding-up, or
  - (b) during periods of its winding-up specified by, or determined under, regulations.
- (4) In this paragraph “securities” means any securities and includes any liability that is a security in relation to a company by reason of section 842AA(12)(a) of the Taxes Act 1988.

*Provision in respect of periods before and after winding-up*

- 6 (1) Any power under paragraphs 2 to 5 to make provision in relation to a VCT-in-liquidation includes power to make corresponding or similar provision in relation to—
- (a) a company for whose winding up an application has been made to a court and which is not a VCT-in-liquidation but would be if, at the time that application was made, the court had ordered the company’s winding-up to commence at that time;
  - (b) a company that has been a VCT-in-liquidation but is no longer a VCT-in-liquidation because it has been wound up.

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- (2) For the purposes of making provision in reliance on sub-paragraph (1), references in paragraphs 2 to 5 (however expressed) to a VCT-in-liquidation’s winding-up, or to the commencement or ending of its winding-up, may be taken to be references to, or to the commencement or ending of, the extension period for a company to which sub-paragraph (1) applies.
- (3) In this paragraph—
- “the extension period”—
- (a) in relation to a company to which sub-paragraph (1)(a) applies, means the period beginning with the making of the application and ending with the earlier of its final determination and the company becoming a company that is being wound up, and
- (b) in relation to company to which sub-paragraph (1)(b) applies, means the period between the end of the company’s winding-up and the company’s dissolution;
- “prescribed” means specified by, or determined under, regulations.

*Part 1: supplementary provisions and interpretation*

- 7 (1) Provision made by regulations under paragraphs 2 to 6 applies in cases, and subject to conditions, specified by regulations.
- (2) Such provision may (but need not) be made so as to have effect in a particular case only for such period as may be specified by, or determined under, regulations.
- (3) Such provision may be made in relation to any—
- (a) VCT-in-liquidation, or
- (b) company such as is mentioned in paragraph 6(1), whose winding-up commences on or after 17th April 2002.
- (4) In this Part of this Schedule “VCT approval” means approval for the purposes of section 842AA of the Taxes Act 1988 (approval as a VCT).
- (5) References in this Part of this Schedule to things done by a VCT-in-liquidation include things done by a liquidator of a VCT-in-liquidation.

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

**C43** Sch. 33 para. 7(5) applied (17.9.2004) by [The Venture Capital Trust \(Winding up and Mergers\) \(Tax\) Regulations 2004 \(S.I. 2004/2199\)](#), regs. 1(1), 2(4)

**PART 2**

VENTURE CAPITAL TRUSTS: MERGERS

*Power to facilitate mergers of VCTs*

- 8 (1) The Treasury may by regulations make provision authorised by paragraph 9 for cases where—
- (a) there is a merger of two or more companies each of which is a venture capital trust immediately before the merger begins to be effected, and

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- (b) the merger is *for bona fide* commercial reasons and is not part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.
- (2) Provision made by regulations under sub-paragraph (1) applies—
- (a) in cases, and
  - (b) subject to conditions (including conditions requiring approvals to be obtained),
- specified by the regulations.
- (3) Provision made by regulations under sub-paragraph (1) may apply in relation to any merger where the transactions for effecting the merger take place on or after 17th April 2002.

*Provision that may be made by regulations under paragraph 8(1)*

- 9 (1) The provision that may be made under paragraph 8(1) for a case where there is a merger of two or more companies (“the merging companies”) is—
- (a) provision for the successor company, or any of the merging companies, to be treated (whether at times before, during or after the merger) as a venture capital trust for purposes of tax enactments specified by regulations;
  - (b) provision for paragraph 3 of Schedule 15B to the Taxes Act 1988 (loss of relief on disposal of VCT shares within three years of their issue) not to apply in the case of disposals of shares in a merging company made in the course of effecting the merger;
  - (c) provision for such disposals not to be chargeable events for the purposes of Schedule 5C to the Taxation of Chargeable Gains Act 1992 (c. 12) (VCTs: deferred charge on re-investment);
  - (d) provision for conditions specified in section 842AA(2) of the Taxes Act 1988 (conditions for approval as a VCT) to be treated (whether at times before, during or after the merger) for purposes of section 842AA(2) and (3) of that Act as fulfilled, or as conditions that will be fulfilled, with respect to the successor company or any of the merging companies;
  - (e) provision for shares in or securities of a company that are acquired (whether at times before, during or after the merger) by the successor company from a merging company to be treated, at times after the acquisition when they are held by the successor company, as meeting requirements of Schedule 28B to the Taxes Act 1988 (provisions for determining whether shares or securities held by a venture capital trust form part of its qualifying holdings);
  - (f) provision for tax enactments specified by regulations to apply, with or without adaptations, in relation to the merger or transactions taking place (whether before, during or after the merger) in connection with the merger;
  - (g) provision authorising disclosure for tax purposes connected with the merger—
    - (i) by the Board or officers of the Board,
    - (ii) to any of the merging companies or the successor company,
    - (iii) of any information provided to the Board, or any officer of the Board, by or on behalf of any of the merging companies or the successor company.

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- (2) In this paragraph “securities” has the same meaning as in section 842AA of the Taxes Act 1988.

*Meaning of “merge”r and “successor compan”y*

- 10 (1) For the purposes of this Part of this Schedule there is a merger of two or more companies (“the merging companies”) if—
- (a) shares in one of the merging companies (“company A”) are issued to members of the other merging company or companies, and
  - (b) the shares issued to members of the other merging company or, in the case of each of the other merging companies, the shares issued to members of that other company, are issued—
    - (i) in exchange for their shares in that other company, or
    - (ii) by way of consideration for a transfer to company A of the whole or part of the business of that other company.
- (2) For the purposes of this Part of this Schedule there is also a merger of two or more companies (“the merging companies”) if—
- (a) shares in a company (“company B”) that is not one of the merging companies are issued to members of the merging companies, and
  - (b) in the case of each of the merging companies, the shares issued to members of that company are issued—
    - (i) in exchange for their shares in that company, or
    - (ii) by way of consideration for a transfer to company B of the whole or part of the business of that company.
- (3) In this Part of this Schedule “the successor company”—
- (a) in relation to a merger such as is described in sub-paragraph (1), means the company that fulfils the role of company A, and
  - (b) in relation to a merger such as is described in sub-paragraph (2), means the company that fulfils the role of company B.

### PART 3

#### TIME ALLOWED FOR VCT TO INVEST MONEY RAISED BY FURTHER SHARE ISSUE

*Power to disapply, or limit operation of, section 842AA(5B) of the Taxes Act 1988*

- 11 (1) Regulations may make provision for section 842AA(5B) of the Taxes Act 1988 (use of money raised by VCT’s further issue of shares disregarded during grace period)—
- (a) not to apply, or to be treated as not having applied, in specified cases;
  - (b) to apply, or to be treated as having applied, in specified cases—
    - (i) only to a specified extent;
    - (ii) only if specified conditions (including conditions requiring approvals to be obtained) are satisfied.
- (2) Provision made by regulations under sub-paragraph (1) may (but need not) be made so that, in any particular case, section 842AA(5B) of the Taxes Act 1988—
- (a) does not apply, or is treated as not having applied, at prescribed times or with effect as from a prescribed time, or



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- (b) applies, or is treated as having applied, in accordance with provision made under sub-paragraph (1)(b) at prescribed times or with effect as from a prescribed time.
- (3) Regulations under sub-paragraph (1) may make provision in relation to shares issued on or after 17th April 2002.
- (4) In sub-paragraph (1) “specified” means specified by regulations and in sub-paragraph (2) “prescribed” means specified by, or determined under, regulations.

*Withdrawal of VCT approval in cases for which provision made under paragraph 11*

- 12 (1) Regulations may make provision for withdrawal of approval of a company for the purposes of section 842AA of the Taxes Act 1988 (venture capital trusts) to be treated—
- (a) in a case where the withdrawal is by reference to a condition for approval that would have been, or would be, fulfilled but for provision made under paragraph 11, and
  - (b) for purposes of enactments specified by regulations,
- as having taken effect as from a time specified in the notice of the withdrawal that is earlier than the time when the notice is given to the company.
- (2) Provision made under sub-paragraph (1) has effect subject to the provisions of section 842AA(9) of the Taxes Act 1988 (retrospective effect of notices of withdrawal of VCT approval) as to the earliest time that may be specified by such a notice.

*Consequential amendment in section 842AA(5A) of the Taxes Act 1988*

- 13 In section 842AA(5A) of the Taxes Act 1988 (subsection (5B) applies where VCT makes further issue of shares), after “Subsection (5B) below applies” insert “, subject to any regulations under paragraph 11 of Schedule 33 to the Finance Act 2002, ”.

## PART 4

### SUPPLEMENTARY

*Extension of existing powers to give effect to VCT reliefs*

- 14 (1) Section 73 of the Finance Act 1995 (c. 4) (power to make regulations giving effect to VCT reliefs) shall have effect as if the reliefs mentioned in subsection (1) of that section included any relief arising by reason of regulations under Part 1 or 2 of this Schedule.
- (2) The powers conferred by those Parts of this Schedule are additional to those that (whether or not by reason of sub-paragraph (1)) are conferred by that section.

*Penalties for non-compliance with regulations under this Schedule*

- 15 In each column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failure to furnish information etc), after the final entry insert “Regulations under Schedule 33 to the Finance Act 2002.”.

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*Regulations under this Schedule: inclusion of supplementary etc provisions*

- 16 (1) Regulations under this Schedule may—
- (a) contain such administrative provisions (including provision for advance clearances and provision for the withdrawal of clearances) as appear to the Treasury to be necessary or expedient;
  - (b) authorise the Board to give notice to any person requiring him to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by regulations under this Schedule are met;
  - (c) make different provision for different cases;
  - (d) include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate;
  - (e) include provision having retrospective effect.
- (2) Without prejudice to any specific provisions in this Schedule, a power conferred by any provision of this Schedule to make regulations includes power to provide for the Board, or an officer of the Board, to exercise a discretion in dealing with any matter.

*Interpretation of Schedule*

- 17 In this Schedule—
- “company” includes any body corporate or unincorporated association but does not include a partnership, and shall be construed in accordance with section 99 of the Taxation of Chargeable Gains Act 1992 (c. 12) (application of Act to unit trust schemes);
- “regulations” means regulations made by the Treasury;
- “shares” includes stock;
- (a) the Tax Acts,
  - (b) the Taxation of Chargeable Gains Act 1992 or any other enactment relating to capital gains tax, or
  - (c) the Taxes Management Act 1970 (c. 9);
- “venture capital trust” has the meaning given by section 842AA of the Taxes Act 1988.

*Introduction*

- 1 (1) The provisions of this Schedule supplement section 111 (withdrawal of group relief).
- (2) Expressions used in this Schedule that are defined for the purposes of that section have the same meaning in this Schedule.

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#### *Relief not withdrawn if transferor company leaves group*

- 2 (1) Section 111 does not apply if the transferee company ceases to be a member of the same group as the transferor company by reason of the latter company leaving the group.
- (2) The transferor company is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—
- (a) the transferor company, or
  - (b) another company that as a result of the transaction ceases to be a member of the same group as the transferee company.

#### *Relief not withdrawn in case of winding-up*

- 3 (1) Section 111 does not apply if the transferee company ceases to be a member of the same group as the transferor company by reason of anything done for the purposes of, or in the course of, winding up the transferor company or another company that is above the transferor company in the group structure.
- (2) For the purposes of this paragraph a company is “above” the transferor company in the group structure if it is the parent (within the meaning of the relevant group relief provision)—
- (a) of the transferor company, or
  - (b) of another company that is above the transferor company in the group structure.

#### *Relief not withdrawn in case of exempt acquisition*

- 4 (1) Section 111 does not apply if—
- (a) the transferee company ceases to be a member of the same group as the transferor company as a result of an acquisition of shares by another company (“the parent company”) in relation to which acquisition relief applies, and
  - (b) the transferee company is immediately after that acquisition a member of the same group as the parent company (“the new group”).
- (2) For this purpose—
- (a) “acquisition relief” means relief under section 75 of the Finance Act 1986 (c. 41); and
  - (b) references to an acquisition in relation to which such relief applies are to an acquisition such that an instrument effecting the transfer of the shares is exempt from stamp duty by virtue of that provision.
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed—
- (a) the transferee company ceases to be a member of the new group, and
  - (b) at the time when [<sup>F432</sup>the transferee company ceases] to be a member of the new group [<sup>F433</sup>it or a relevant associated company (as defined in subparagraph (4) below) holds] an estate or interest in land that—
    - (i) was transferred [<sup>F434</sup>to the transferee company] by the relevant instrument, or
    - (ii) is derived from an estate or interest that was so transferred,

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[<sup>F435</sup>and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which group relief was not claimed],

section 111 and the provisions of this Schedule apply [<sup>F436</sup>as if the transferee had then ceased to be a member of the same group as the transferor company and had then held the estate or interest referred to in paragraph (b).]

[<sup>F437</sup>(4) In sub-paragraph (3)(b) “relevant associated company”, in relation to the transferee company, means a company that is in the same group as the transferee company immediately before the transferee company ceases to be a member of the new group and which ceases to be a member of the new group in consequence of the transferee company so ceasing.]

#### Textual Amendments

- F432** Words in Sch. 34 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(a\)\(i\)\(11\)](#) (with s. 126(9)(10))
- F433** Words in Sch. 34 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(a\)\(ii\)\(11\)](#) (with s. 126(9)(10))
- F434** Words in Sch. 34 para. 4(3)(b)(i) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(b\)\(11\)](#) (with s. 126(9)(10))
- F435** Words in Sch. 34 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(c\)\(11\)](#) (with s. 126(9)(10))
- F436** Words in Sch. 34 para. 4(3) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(7\)\(11\)](#) (with s. 126(9)(10))
- F437** Sch. 34 para. 4(4) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(8\)\(11\)](#) (with s. 126(9)(10))

#### Interest

- 5 (1) If any duty payable under section 111 is not paid within the period of 30 days within which payment is to be made, interest is payable on the amount remaining unpaid.
- (2) The provisions of section 15A(3) to (5) of the Stamp Act 1891 (c. 39) (rate of interest on unpaid duty, etc) apply in relation to interest under sub-paragraph (1).

#### Duty of transferee company to notify particulars

- 6 (1) The transferee company shall, within the period of 30 days mentioned in section 111(2)(b) within which payment is to be made, notify the Commissioners of—
- (a) the date on which it ceased to be a member of the same group as the transferor company,
  - (b) the relevant land held by it at that time,
  - (c) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument and the date on which the instrument was stamped,
  - (d) the market value of the land transferred to it by the relevant instrument at the date on which that instrument was executed, and
  - (e) the amount of duty and interest payable by it under section 111 or this Schedule.

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- (2) In sub-paragraph (1)(b) the “relevant land” held by the transferee company means every estate or interest to in relation to which section 111(1)(c) applies.
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), in the second column of the Table, at the appropriate place insert “paragraph 6 of Schedule 34 to the Finance Act 2002”.

#### *Determination, collection and recovery of duty and interest*

- 7 The provisions of regulations under section 98 of the Finance Act 1986 (c. 41) (stamp duty reserve tax: administration etc), and the provisions of the Taxes Management Act 1970 (c. 9) applied by those regulations, have effect with the necessary modifications in relation to—
- (a) the determination by the Commissioners of the duty payable under section 111 or the interest payable thereon,
  - (b) appeals against any such determination, and
  - (c) the collection and recovery of any such duty or interest,
- as if it were an amount of stamp duty reserve tax.

#### *Recovery of group relief from from another group company or controlling director*

- 8 (1) This paragraph applies where—
- (a) an amount is payable under section 111 or this Schedule by the transferee company,
  - (b) a notice of determination of the amount payable has been issued by the Commissioners, and
  - (c) the whole or part of that amount is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 9, be required to pay the unpaid amount—
- (a) the transferor company;
  - (b) any company that, at any relevant time, was a member of the same group as the transferee company and was above it in the group structure;
  - (c) any person who at any relevant time was a controlling director of the transferee company or of a company having control of the transferee company.
- (3) For the purposes of this paragraph—
- (a) a “relevant time” means any time between the execution of the relevant instrument and the transferee company ceasing to be a member of the same group as the transferor company;
  - (b) a company is “above” another company in a group structure if it is the parent (within the meaning of the relevant group relief provision)—
    - (i) of that company, or
    - (ii) of another company that is above that company in the group structure.
- (4) In this paragraph—

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“director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section); and  
 “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988).

*Recovery of group relief from another group company or controlling director: procedure and time limit*

- 9 (1) The Commissioners may serve a notice on a person within paragraph 8(2) requiring him, within 30 days of the service of the notice, to pay the amount that remains unpaid.
- (2) Any notice under this paragraph must be served before the end of the period of three years beginning with the date on which the notice of determination mentioned in paragraph 8(1)(b) is issued.
- (3) The notice must state the amount required to be paid by the person on whom the notice is served.
- (4) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of determination and that amount were an amount of stamp duty reserve tax due from that person.
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the transferee company.
- (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

*Power to require information*

- 10 (1) The Commissioners may by notice require any person to furnish them within such time, not being less than 30 days, as may be specified in the notice with such information (including documents or records) as the Commissioners may reasonably require for the purposes of section 111 or this Schedule.
- (2) A barrister or solicitor shall not be obliged in pursuance of a notice under this paragraph to disclose, without his client’s consent, any information with respect to which a claim to professional privilege could be maintained.
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to comply with notice to provide information), in the first column of the Table, at the appropriate place insert “paragraph 10 of Schedule 34 to the Finance Act 2002”.

*Supplementary*

- 11 Section 111 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39).

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## SCHEDULE 35

Section 113

### STAMP DUTY: WITHDRAWAL OF RELIEF FOR COMPANY ACQUISITIONS: SUPPLEMENTARY PROVISIONS

#### Introduction

- 1 (1) The provisions of this Schedule supplement section 113 (withdrawal of relief under s.76 of the Finance Act 1986 (c. 41)).
- (2) Expressions used in this Schedule that are defined for the purposes of that section have the same meaning in this Schedule.

#### Change of control due to exempt transfer

- 2 Section 113 does not apply by reason of control of the acquiring company changing as a result of any of the transactions listed in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987 (S.I. 1987/516).

#### Change of control due to intra-group transfer

- 3 (1) Section 113 does not apply by reason of control of the acquiring company changing as a result of a transfer of shares (“the intra-group transfer”) in relation to which group relief applies.
- (2) In this paragraph—
  - (a) “group relief” means relief under section 42 of the Finance Act 1930 (c. 28) or section 11 of the Finance Act (Northern Ireland) 1954 (c. 23 (N.I.)) (transfer of property between associated bodies corporate); and
  - (b) references to a transfer in relation to which group relief applies are to a transfer such that an instrument effecting the transfer is exempt from stamp duty by virtue of either of the group relief provisions.
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed—
  - (a) a company (“company B”) holding shares in the acquiring company to which the intra-group share transfer related, or that are derived from shares to which that instrument related, ceases to be a member of the same group as the company referred to in section 76 as the target company (“company C”), and
  - (b) the acquiring company [<sup>F438</sup>or a relevant associated company], at that time, holds an estate or interest in land—
    - (i) that was transferred [<sup>F439</sup>to the acquiring company] by the relevant instrument, or
    - (ii) that is derived from an estate or interest so transferred, [<sup>F440</sup>and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which section 76 relief was not claimed],
- (4) In those circumstances—
  - (a) section 76 relief in relation to the relevant instrument (or an appropriate proportion of that relief) is withdrawn, and

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- (b) the additional stamp duty that would have been paid on stamping the relevant instrument but for that relief if the land in question had been transferred by that instrument at market value, or an appropriate proportion of that amount, is payable by the acquiring company within 30 days after company B ceases to be a member of the same group as company C.
- (5) In this paragraph—
- (a) “company” includes any body corporate; and
  - (b) references to a company being in the same group as another company are to the companies being associated bodies corporate within the meaning of the relevant group relief provision.

#### Textual Amendments

- F438** Words in Sch. 35 para. 3(3)(b) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(6\)\(a\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))
- F439** Words in Sch. 35 para. 3(3)(b)(i) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(6\)\(b\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))
- F440** Words in Sch. 35 para. 3(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(6\)\(c\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))

#### Change of control due to exempt share acquisition

- 4 (1) Section 113 does not apply by reason of control of the acquiring company changing as a result of a transfer of shares (“the exempt transfer”) to another company (“the parent company”) in relation to which share acquisition relief applies.
- (2) For this purpose—
- (a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c. 41); and
  - (b) references to a transfer in relation to which such relief applies are to a transfer such that an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed—
- (a) control of the parent company changes at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred, and
  - (b) the acquiring company [<sup>F441</sup>or a relevant associated company], at that time, holds an estate or interest in land—
    - (i) that was transferred [<sup>F442</sup>to the acquiring company] by the relevant instrument, or
    - (ii) that is derived from an estate or interest so transferred,<sup>F443</sup>and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which section 76 relief was not claimed],
- the following provisions apply.
- (4) In those circumstances—



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- (a) section 76 relief in relation to the relevant instrument (or an appropriate proportion of that relief) is withdrawn, and
- (b) the additional stamp duty that would have been paid on stamping the relevant instrument but for that relief if the land in question had been transferred by that instrument at market value, or an appropriate proportion of that additional duty, is payable by the acquiring company within 30 days after control of the parent company changed.

#### Textual Amendments

- F441** Words in Sch. 35 para. 4(3)(b) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(6\)\(a\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))
- F442** Words in Sch. 35 para. 4(3)(b)(i) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(6\)\(b\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))
- F443** Words in Sch. 35 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 127\(6\)\(c\)\(9\)](#) (with [s. 127\(7\)\(8\)](#))

#### *Change of control due to interest of loan creditor*

- 5 (1) Section 113 does not apply by reason of control of the acquiring company changing as a result of a loan creditor becoming, or ceasing to be, treated as having control of the company if the other persons who were previously treated as controlling the company continue to be so treated.
- (2) In sub-paragraph (1) “loan creditor” has the meaning given by section 417(7) to (9) of the Taxes Act 1988.

#### *Interest*

- 6 (1) If any duty payable under section 113 or this Schedule is not paid within the period of 30 days within which payment is to be made, interest is payable on the amount remaining unpaid.
- (2) The provisions of section 15A(3) to (5) of the Stamp Act 1891 (c. 39) (rate of interest on unpaid duty, etc) apply in relation to interest under this paragraph.

#### *Duty of acquiring company to notify particulars*

- 7 (1) The acquiring company shall, within the period of 30 days within which payment is to be made, notify the Commissioners of—
- (a) the date on which the event occurred by reason of which it is liable to make a payment of duty under section 113 or this Schedule,
  - (b) the relevant land held by it at that time,
  - (c) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument and the date on which the instrument was stamped,
  - (d) the market value of the land transferred to it by the relevant instrument at the date it was executed, and
  - (e) the amount of duty and interest payable by it.
- (2) In sub-paragraph (1)(b) the “relevant land” held by the acquiring company means every estate or interest to in relation to which section 113(1)(c) applies.

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- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), in the second column of the Table, at the appropriate place insert “paragraph 7 of Schedule 35 to the Finance Act 2002”.

*Determination, collection and recovery of duty and interest*

- 8 The provisions of regulations under section 98 of the Finance Act 1986 (c. 41) (stamp duty reserve tax: administration etc), and the provisions of the Taxes Management Act 1970 applied by those regulations, have effect with the necessary modifications in relation to—
- (a) the determination by the Commissioners of the duty payable under section 113 or this Schedule, or of the interest payable thereon,
  - (b) appeals against any such determination, and
  - (c) the collection and recovery of any such duty or interest,
- as if it were an amount of stamp duty reserve tax.

*Recovery of section 76 relief from from another group company or controlling director*

- 9 (1) This paragraph applies where—
- (a) an amount is payable under section 113 or this Schedule by the acquiring company,
  - (b) a notice of determination of the amount payable has been issued by the Inland Revenue, and
  - (c) the whole or part of that amount is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 10, be required to pay the unpaid amount—
- (a) any company that at any relevant time was a member of the same group as the acquiring company and was above it in the group structure, and
  - (b) any person who at any relevant time was a controlling director of the acquiring company or of a company having control of the acquiring company.
- (3) For this purpose a “relevant time” means any time between the execution of the relevant instrument and the change of control by virtue of which the liability to pay the amount arises.
- (4) In this paragraph—
- (a) references to companies being in the same group are to one company having control of the other or both companies being under the control of the same person or persons;
  - (b) a company is “above” another company in a group structure if it controls—
    - (i) that company, or
    - (ii) another company that is above that company in the group structure;
  - (c) “director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section); and
  - (d) “controlling director”, in relation to a company, means a director of the company who has control of it.

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*Recovery of section 76 relief from another group company or controlling director: procedure and time limit*

- 10 (1) The Commissioners may serve a notice on a person within paragraph 9(2) requiring him, within 30 days of the service of the notice, to pay the amount that remains unpaid.
- (2) A notice under this paragraph must be served before the end of the period of three years beginning with the date on which the notice of determination mentioned in paragraph 9(1)(b) is issued.
- (3) The notice must state the amount required to be paid by the person on whom the notice is served.
- (4) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of determination and that amount were an amount of stamp duty reserve tax due from that person.
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the acquiring company.
- (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

*Power to require information*

- 11 (1) The Commissioners may by notice require any person to furnish them within such time, not being less than 30 days, as may be specified in the notice with such information (including documents or records) as the Commissioners may reasonably require for the purposes of section 113 or this Schedule.
- (2) A barrister or solicitor shall not be obliged in pursuance of a notice under this paragraph to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained.
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to comply with notice to provide information), in the first column of the Table, at the appropriate place insert "paragraph 11 of Schedule 35 to the Finance Act 2002".

*Supplementary*

- 12 Section 113 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39).

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## SCHEDULE 36

Section 115(7)

### STAMP DUTY: CONTRACTS CHARGEABLE AS CONVEYANCES: SUPPLEMENTARY PROVISIONS

#### PART 1

#### SUBSALES

##### *Introduction*

- 1 This Part of this Schedule has effect for affording relief from duty under section 115 (contracts chargeable as conveyances) on a subsale.

##### *Meaning of “subsale”*

- 2 For the purposes of this Schedule there is a subsale—
- (a) where the purchaser under a contract or agreement for the sale of an estate or interest in land in the United Kingdom (“the original sale”), without having obtained a conveyance of the property contracted to be sold, contracts to sell the whole or part of the property to another person, or
  - (b) where the sub-purchaser under a subsale of an estate or interest in land in the United Kingdom, without having obtained a conveyance of the property contracted to be sold, contracts to sell to another person the whole or part of the property contracted to be sold by the original sale,
- so as to entitle that person to call for a conveyance from the original seller.

##### *Relief where duty paid on original sale or earlier subsale*

- 3 (1) Where duty under section 115 has been paid—
- (a) on the original sale, or
  - (b) on an intervening subsale,
- duty under that section on a subsale, or subsequent subsale, is chargeable only in respect of the amount (if any) by which the chargeable consideration on that transaction exceeds the chargeable consideration on the earlier transaction.
- (2) If there is more than one such earlier transaction on which duty has been paid, the reference in sub-paragraph (1) to the chargeable consideration on the earlier transaction shall be read as a reference to the higher or highest amount of chargeable consideration on which duty has been paid.
  - (3) If the subsale does not relate to the whole of the property to which the earlier transaction related, the references in sub-paragraphs (1) and (2) to the chargeable consideration on an earlier transaction shall be read as references to an appropriate proportion of that consideration.
  - (4) What is an appropriate proportion shall be determined on a just and reasonable basis having regard to the subject matter of the subsale and of the earlier transaction.
  - (5) For the purposes of this paragraph the chargeable consideration on a transaction is the consideration that falls to be brought into account in determining the duty chargeable on it.

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- (6) Where under this paragraph duty on a subsale is chargeable in respect of part only of the consideration for the subsale, it is chargeable at the rate that would be applicable if the whole of the chargeable consideration on the subsale were taken into account.

## PART 2

### SUBSEQUENT CONVEYANCE OR TRANSFER

#### *Introduction*

- 4 (1) This Part of this Schedule has effect for affording relief where *ad valorem* duty is chargeable both—
- (a) under section 115 on a contract or agreement (“the original sale”), and
  - (b) on a subsequent conveyance or transfer by the original seller to the purchaser, or a sub-purchaser, in conformity with that contract or agreement.
- (2) References in this Part to the purchaser under the original sale, or a sub-purchaser under a subsale, include a person by whom the rights of the purchaser, or a sub-purchaser, are exercisable by virtue of any assignment (in Scotland, assignation) or agreement (other than a subsale).

#### *Conveyance or transfer of property contracted to be sold*

- 5 (1) Where the original seller conveys the whole of the property contracted to be sold—
- (a) to the purchaser, or
  - (b) to a sub-purchaser in circumstances in which section 58(4) of the Stamp Act 1891 (c. 39) applies (conveyance chargeable only on consideration moving from sub-purchaser),
- the conveyance or transfer is chargeable with duty only to the extent (if any) that the *ad valorem* duty chargeable on it (apart from this sub-paragraph) exceeds the duty paid under section 115 on the original sale together with the amount of any such duty paid on an intervening subsale.
- (2) Where—
- (a) the original seller conveys the property contracted to be sold to different sub-purchasers in parts or parcels, and
  - (b) section 58(5) of the Stamp Act 1891 (c. 39) applies (conveyance chargeable only on consideration moving from sub-purchaser),
- the conveyance or transfer of each part or parcel is chargeable with duty only to the extent (if any) that the *ad valorem* duty chargeable on it (apart from this sub-paragraph) exceeds an appropriate proportion of the *ad valorem* duty paid on the original sale together with an appropriate proportion of any such duty paid on an intervening subsale.
- (3) What is an appropriate proportion shall be determined on a just and reasonable basis having regard to the subject matter of the conveyance or transfer and of the earlier transaction.
- (4) Where sub-paragraph (1) or (2) applies to reduce or extinguish the duty payable on a conveyance or transfer, the Commissioners shall, upon application and upon production of the earlier instrument or instruments, duly stamped, either—

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- (a) denote the payment of the whole of the *ad valorem* duty upon the conveyance or transfer, or
- (b) transfer to the conveyance or transfer the *ad valorem* duty paid on the earlier instrument or instruments.

*Repayment of duty in certain cases*

- 6 (1) Where—
- (a) duty is paid under section 115 on the original sale,
  - (b) one or more conveyances or transfers are executed in conformity with that contract or agreement so that the whole of the property contracted to be sold is duly conveyed to a purchaser or to one or more sub-purchasers,
  - (c) those conveyances or transfers are all duly stamped, and
  - (d) the aggregate amount of the duty that would have been paid on those conveyances or transfers but for duty having been previously paid on the original sale is less than the duty paid on the original sale,
- the Commissioners shall repay the difference to the person by whom the duty was paid on the original sale.
- (2) If duty has been paid under section 115 on one or more intervening subsales, sub-paragraph (1) has effect with the following modifications—
- (a) the reference to duty having been paid on the original sale shall be read as a reference to duty having been paid either on the original sale or on an intervening subsale;
  - (b) the reference to the amount of duty paid on the original sale shall be read as a reference to the aggregate of the amounts paid on the original sale and any intervening subsales, and
  - (c) any repayment shall be apportioned among the persons by whom those amounts were paid.
- (3) The apportionment mentioned in sub-paragraph (2)(c) shall be made on a just and reasonable basis having regard to the subject matter of the original sale and of the subsale or subsales in question.

### PART 3

#### GENERAL SUPPLEMENTARY PROVISIONS

*Construction of references to duty on transactions*

- 7 Any reference in section 115 or this Schedule to duty chargeable or paid on a transaction is to duty chargeable or paid on the stamping of the instrument by which the transaction is effected.

*Transactions relating to land in the UK and to other property*

- 8 (1) Where a transaction relates both to land in the United Kingdom and to other property, section 115 and this Schedule apply as if there were separate transactions.
- (2) Similarly, the reference in section 115(1)(b) to a series of transactions is to a series of transactions so far as relating to land in the United Kingdom.

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- (3) If, in a case where a transaction or series of transactions relates partly to land in the United Kingdom and partly to other property, the consideration is not apportioned in a manner that is just and reasonable, section 115 and this Schedule shall have effect as if the consideration had been apportioned in such a manner.

*Person claiming relief to establish entitlement*

- 9 It is for a person claiming any relief under this Schedule to prove to the satisfaction of the Commissioners that he is entitled to relief and in what amount.

*Construction as one*

- 10 Section 115 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39).

SCHEDULE 37

Section 116(2)

STAMP DUTY: ABOLITION OF DUTY ON INSTRUMENTS  
RELATING TO GOODWILL: SUPPLEMENTARY PROVISIONS

*Reduction of stamp duty where instrument partly relating to goodwill*

- 1 (1) This paragraph applies where stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (c. 16) (conveyance or transfer on sale) is chargeable on an instrument that relates partly to goodwill and partly to property other than goodwill.
- (2) In such a case—
- (a) the consideration in respect of which duty would otherwise be charged shall be apportioned, on a just and reasonable basis, as between the goodwill and the other property, and
  - (b) the instrument shall be charged only in respect of the consideration attributed to the other property.
- (3) This paragraph applies to instruments executed on or after 23rd April 2002.

*Apportionment of consideration for stamp duty purposes*

- 2 (1) Where part of the property referred to in section 58(1) of the Stamp Act 1891 (c. 39) (consideration to be apportioned between different instruments as parties think fit) consists of goodwill, that provision shall have effect as if “the parties think fit” read “is just and reasonable”.
- (2) Where—
- (a) part of the property referred to in section 58(2) of the Stamp Act 1891 (property contracted to be purchased by two or more persons etc) consists of goodwill, and
  - (b) both or (as the case may be) all the relevant persons are connected with one another,
- that provision shall have effect as if the words from “for distinct parts of the consideration” to the end of the subsection read “, the consideration shall be

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apportioned in such manner as is just and reasonable, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with *ad valorem* duty in respect of such distinct consideration."

- (3) In a case where sub-paragraph (1) or (2) applies and the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty shall have effect as if—
- (a) the consideration had been apportioned in a manner that is just and reasonable, and
  - (b) the amount of any distinct consideration set forth in any conveyance relating to a separate part or parcel of property were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth).
- (4) For the purposes of sub-paragraph (2)—
- (a) a person is a relevant person if he is a person by or for whom the property is contracted to be purchased;
  - (b) the question whether persons are connected with one another shall be determined in accordance with section 839 of the Taxes Act 1988.
- (5) This paragraph applies to instruments executed on or after 23rd April 2002.

#### *Certification of instruments for stamp duty purposes*

- 3 (1) Goodwill shall be disregarded for the purposes of paragraph 6 of Schedule 13 to the Finance Act 1999 (c. 19) (certification of instrument as not forming part of transaction or series of transactions exceeding specified amount).
- (2) Any statement as mentioned in paragraph 6(1) of that Schedule shall be construed as leaving out of account any matter which is to be so disregarded.
- (3) This paragraph applies to instruments executed on or after 23rd April 2002.

#### *Acquisition under statute*

- 4 (1) Section 12 of the Finance Act 1895 (c. 16) (property vested by Act or purchased under statutory powers) does not require any person who is authorised to purchase any property as mentioned in that section after 23rd April 2002 to include any goodwill in the instrument of conveyance required by that section to be produced to the Commissioners.
- (2) If the property consists wholly of goodwill no instrument of conveyance need be produced to the Commissioners under that section.
- (3) This paragraph applies where the Act mentioned in that section, and by virtue of which property is vested or a person is authorised to purchase property, is passed after 23rd April 2002.

#### *Interpretation*

- 5 In this Schedule “the enactments relating to stamp duty” means the Stamp Act 1891 (c.39) and any enactment amending that Act or that is to be construed as one with that Act.



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## SCHEDULE 38

Section 132

### AGGREGATES LEVY AMENDMENTS

#### *Introduction*

- 1 This Schedule makes amendments to provisions of Part 2 of the Finance Act 2001 (c. 9) (aggregates levy).

#### *The charge*

- 2 In section 16(1) (charge to aggregates levy), for “A levy” substitute “ A tax ”.

#### *Meaning of “aggregat”e etc*

- 3 (1) Section 17 (meaning of “aggregate” etc) is amended as follows.
- (2) In subsection (2) (meaning of “taxable” aggregate), for paragraph (d) substitute—
- “ (d) it is aggregate that on the commencement date is on a site other than—
- (i) its originating site, or
- (ii) a site that is required to be registered under the name of a person who is the operator, or one of the operators, of that originating site.”.
- (3) In subsection (3)(d) (exemption for aggregate won in the course of road works), in sub-paragraph (ii) for “otherwise than wholly or mainly” substitute “ not ”.
- (4) In subsection (4), in paragraph (d) (exemption for cuttings from oil drilling)—
- (a) after “the Petroleum Act 1998” insert “ or the Petroleum (Production) Act (Northern Ireland) 1964 ”;
- (b) omit the words from “otherwise” to the end (which restrict the exemption to off-shore drilling).

#### *Exempt processes*

- 4 (1) Section 18 (exempt processes) is amended as follows.
- (2) In subsection (2)(c) (exemption for production of lime etc), for “some other substance” substitute “ anything else ”.
- (3) In subsection (3) (meaning of “relevant substance”), omit paragraphs (d) (calcite) and (h) (flint).

#### *Commercial exploitation*

- 5 (1) Section 19 (commercial exploitation) is amended as follows.
- (2) In subsection (2) (description of sites removal of aggregate from which counts as exploitation), in paragraph (b) for the words from “who is the operator” to the end substitute “ under whose name that originating site is also registered ”.
- (3) After subsection (3) (meaning of “commercial” exploitation) insert—

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“(3A) For the purposes of subsection (3)(a) above “business” includes any activity of a Government department, local authority or charity.”.

(4) In subsection (4) (exemption in certain cases where aggregate is won from one site and incorporated into a neighbouring site), for the words “adjacent land” in both places substitute “ other land ”.

#### *Responsibility for commercial exploitation*

6 In section 22 (which determines who is taken to be responsible for exploitation of aggregate), at the end of subsection (2) (responsibility for “commercial” exploitation) insert—

“For the purposes of this subsection “business” includes any activity of a Government department, local authority or charity.”.

#### *The register*

7 In section 24 (the register), in subsection (6) (premises that may be registered) insert after paragraph (c)—

“(ca) for mixing, otherwise than in permitted circumstances (within the meaning given by section 19(7)), any aggregate with any material or substance other than water.”.

#### *Insolvency etc*

8 In section 37 (regulations about cases of insolvency etc), in subsection (7) (meaning of “insolvency procedure) omit paragraphs (g) to (j) (appointment of receiver and other interim or provisional orders).

#### *Notification of registrability etc*

9 (1) Paragraph 1 of Schedule 4 (notification of registrability etc) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) An unregistered person who—

- (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

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by section 24(2) of this Act to be registered for the purposes of aggregates levy.”.

(3) In sub-paragraphs (2) and (5), after “sub-paragraph (1)” insert “ or (1A) ”.

*Restriction on powers to provide for set-off*

10 In paragraph 11 of Schedule 8 (restriction on powers to provide for set-off), in sub-paragraph (2) (meaning of “insolvency procedure”) omit paragraphs (f), (g) and (h) (appointment of receiver and other interim or provisional orders).

SCHEDULE 39

Section 134(1)

RECOVERY OF TAXES ETC DUE IN OTHER MEMBER STATES

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

**C44** Sch. 39 applied (with modifications) (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 322](#)

*Introduction*

1 (1) This Schedule applies where in accordance with the Mutual Assistance Recovery Directive an authority in another member State makes a request for the recovery in the United Kingdom of a sum claimed by that authority in that State.

(2) In this Schedule—

- (a) the “Mutual Assistance Recovery Directive” has the meaning given by section 134; and
- (b) the “foreign claim” means the claim in relation to which a request under that Directive is made as mentioned in sub-paragraph (1).

*Enforcement of claims in the United Kingdom*

2 (1) Subject to the following provisions of this Schedule—

- (a) such proceedings may be taken by or on behalf of the relevant UK authority to enforce the foreign claim, by way of legal proceedings, distress, diligence or otherwise, as might be taken to enforce a corresponding UK claim, and
- (b) any enactment or rule of law relating to a corresponding UK claim shall apply, with any necessary adaptations, in relation to the foreign claim.

(2) “The relevant UK authority” means—

- (a) in relation to matters corresponding to those within the care and management of the Commissioners of Customs and Excise, those Commissioners;
- (b) in relation to matters corresponding to those within the care and management of the Commissioners of Inland Revenue, those Commissioners;
- (c) in relation to agricultural levies of the European Community, the relevant Minister, that is—
  - (i) in England, the Secretary of State,
  - (ii) in Scotland, the Scottish Ministers,

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- (iii) in Wales, the National Assembly for Wales, and
- (iv) in Northern Ireland, the Department of Agriculture and Rural Development.

- (3) A “corresponding UK claim” means a claim in the United Kingdom corresponding to the foreign claim.
- (4) The enactments referred to in sub-paragraph (1)(b) include, in particular, those relating to the recovery of penalties and of interest on unpaid amounts.

*Power to make supplementary provision by regulations*

- 3 (1) The Treasury may make provision by regulations—
  - (a) as to what is a corresponding UK claim in relation to any description of foreign claim, and
  - (b) as to such other procedural and other supplementary matters as appear to them appropriate for implementing the Mutual Assistance Recovery Directive.
- (2) In relation to a case where there is no claim in the United Kingdom that is directly equivalent to a particular description of foreign claim, regulations under sub-paragraph (1)(a) may prescribe as the corresponding UK claim one that appears to the Treasury to be closest to an equivalent.
- (3) The power conferred by sub-paragraph (1)(b) includes power to make any provision appearing to the Treasury to be appropriate to give effect to any Commission Directive laying down detailed rules for implementing the Mutual Assistance Recovery Directive.
- (4) The relevant UK authority may make provision by regulations as to the application, non-application or adaptation in relation to foreign claims of any enactment or rule of law applicable to corresponding UK claims.
 

This is without prejudice to the application of any such enactment or rule in relation to foreign claims in circumstances not dealt with by regulations under this sub-paragraph.
- (5) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

*Proceedings on contested claims*

- 4 (1) Except where permitted by virtue of regulations under paragraph 3(4) applying an enactment that permits such proceedings in the case of a corresponding UK claim, no proceedings under this Schedule shall be taken against a person if he shows that proceedings relevant to his liability on the foreign claim are pending, or are about to be instituted, before a court, tribunal or other competent body in the member State in question.
- (2) For this purpose proceedings are pending so long as an appeal may be brought against any decision in the proceedings.
- (3) Proceedings under this Schedule may be taken if the proceedings in the member State are not prosecuted or instituted with reasonable expedition.

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### *Claims determined in taxpayer's favour*

- 5 (1) No proceedings under this Schedule shall be taken against a person if a final decision on the foreign claim has been given in his favour by a court, tribunal or other competent body in the member State in question.
- (2) For this purpose a final decision is one against which no appeal lies or against which an appeal lies within a period that has expired without an appeal having been brought.
- (3) If he shows that such a decision has been given in respect of part of the claim no proceedings under this Schedule shall be taken in relation to that part.

### *Other supplementary provisions*

- 6 For the purposes of proceedings under this Schedule—
- (a) a request made by an authority in another member State shall be taken to be duly made in accordance with the Mutual Assistance Recovery Directive unless the contrary is proved, and
- (b) except as mentioned in paragraph 5, no question may be raised as to a person's liability on the foreign claim.

## SCHEDULE 40

Section 141

### REPEALS

#### PART 1

#### EXCISE DUTIES

##### (1) ALCOHOLIC LIQUOR DUTIES

| <i>Short title and chapter</i>          | <i>Extent of repeal</i> |
|---|-------------------------|
| Alcoholic Liquor Duties Act 1979 (c. 4) | Section 1(9).           |

This repeal shall be deemed to have come into force on 28th April 2002.

##### (2) HYDROCARBON OIL DUTIES

| <i>Short title and chapter</i>         | <i>Extent of repeal</i>                                       |
|--|---|
| Hydrocarbon Oil Duties Act 1979 (c. 5) | In section 6AB(1), the words from "and delivered" to the end. |
| Finance Act 1998 (c. 36)               | Section 9(2) and (3).   |

1 The repeal in the Hydrocarbon Oil Duties Act 1979 has effect in accordance with section 5(8)(c) of this Act.

2 The repeals in the Finance Act 1988 have effect in accordance with section 5(8)(b) of this Act.

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### (3) AMUSEMENT MACHINE LICENCE DUTY

| <i>Short title and chapter</i>             | <i>Extent of repeal</i>  |
|--|--|
| Betting and Gaming Duties Act 1981 (c. 63) | In section 26(2), the definition of “thirty-five-penny machine”. |
| Finance Act 1995 (c. 4)                    | In Schedule 3, paragraph 8(2)(b).                                |

These repeals have effect in accordance with section 8(6) of this Act.

### (4) BETTING DUTIES

| <i>Short title and chapter</i>                        | <i>Extent of repeal</i>   |
|---|---|
| Excise Duties (Surcharges or Rebates) Act 1979 (c. 8) | In section 1(3), the words from “, except that if the duty is pool betting duty” to the end.  |
| Betting and Gaming Duties Act 1981 (c. 63)            | In section 2(2), paragraph (d) and the word “or” preceding it.<br>In section 9(2), the words “or coupon betting” (in both places).<br>In section 9(3)(a), the words “or coupon betting”.<br>In section 9(3)(aa)(i), the words “or coupon betting”.<br>Section 9(4).<br>Section 11.<br>In section 12(3), the words “(except in sections 6, 7, 8, 9(2)(a) and 9(5) in their application to coupon betting)”.<br>In Schedule 1—<br>(a) in paragraph 3, the words “shall be under the care and management of the Commissioners, and”;<br>(b) paragraphs 4(4) to (6), 6(2)(b), 8 and 12;<br>(c) in paragraph 14(1), the words after paragraph (b). |
| Finance Act 1986 (c. 41)                              | In Schedule 4, paragraph 2(1).  |
| Finance Act 1993 (c. 34)                              | Section 39(a).  |
| Finance Act 2001 (c. 9)                               | In Schedule 1, the second paragraph (which begins “In section 6(1)”).   |

1 The repeal of section 9(4) of the Betting and Gaming Duties Act 1981 has effect in accordance with section 14(6) of this Act.

2 The other repeals have effect in accordance with section 12 of this Act.

### (5) VEHICLE EXCISE DUTY

| <i>Short title and chapter</i> | <i>Extent of repeal</i> |
|--------------------------------|-------------------------|
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|   |  |
|---|--|
| Vehicle Excise and Registration Act 1994<br>(c. 22) | Section 57(8).<br>In Schedule 1, paragraph 2(4). |
| Finance Act 1995 (c. 4)                             | In Schedule 4, paragraph 7.                      |

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1 The repeal of paragraph 2(4) of Schedule 1 to the Vehicle Excise and Registration Act 1994 has effect subject to the saving in section 20(3) of this Act.

2 The repeal of paragraph 7 of Schedule 4 to the Finance Act 1995 has effect in accordance with section 18(3) of this Act.

#### (6) Drawback of excise duty

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| <i>Short title and chapter</i>                   | <i>Extent of repeal</i> |
|--|-------------------------|
| Customs and Excise Management Act 1979<br>(c. 2) | Section 133(3).         |

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## PART 2

### VALUE ADDED TAX

#### (1) DISALLOWANCE OF INPUT TAX WHERE CONSIDERATION NOT PAID

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| <i>Short title and chapter</i>   | <i>Extent of repeal</i>     |
|----------------------------------|-----------------------------|
| Value Added Tax Act 1994 (c. 23) | Section 36(4A) and (5)(ea). |
| Finance Act 1997 (c. 16)         | Section 39(2) to (4).       |

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These repeals have effect in accordance with section 22(3) of this Act.

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#### (2) INVOICES

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| <i>Short title and chapter</i>   | <i>Extent of repeal</i>  |
|----------------------------------|--|
| Value Added Tax Act 1994 (c. 23) | Section 6(9).<br>In paragraph 2 of Schedule 11—<br>(a) in the heading, the words “, VAT invoices”;<br>(b) in sub-paragraph (1), the words from “and may require” to the end;<br>(c) sub-paragraphs (2) and (2A). |
| Finance Act 1996 (c. 8)          | Section 38(2).   |

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These repeals have effect in accordance with section 24(5) and (6) of this Act.

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### PART 3

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

##### (1) DEDUCTIONS FROM PAYMENTS TO SUB-CONTRACTORS

| <i>Short title and chapter</i>                  | <i>Extent of repeal</i>  |
|---|--|
| Income and Corporation Taxes Act 1988<br>(c. 1) | In section 559—<br>(a) in subsection (4), the words from “and the sum so deducted” to the end;<br>(b) subsections (5) and (5A);<br>(c) subsection (8). |
| Finance Act 1998 (c. 36)                        | In Schedule 7, in paragraph 1 the words “559(4)(b) and (5) (twice)”.<br>In Schedule 8, paragraph 2(1).   |

These repeals have effect in accordance with section 40(4) of this Act.

##### (2) COMPANY RECONSTRUCTIONS

| <i>Short title and chapter</i>                   | <i>Extent of repeal</i>  |
|--|--|
| Income and Corporation Taxes Act 1988<br>(c. 1)  | In section 842(3)(c), the words “or amalgamation”.   |
| Taxation of Chargeable Gains Act 1992<br>(c. 12) | In the heading before section 135, the words “and amalgamations”.<br>In section 139(1), in the heading, in subsection (1)(a) and in subsection (5) (twice), the words “or amalgamation”.<br>In section 211(2)—<br>(a) in paragraph (a), and<br>(b) in the closing words, the words “or amalgamation”.<br>In section 214C(2)(a) and (3), the words “or amalgamation”. |
| Finance (No. 2) Act 1992 (c. 48)                 | Section 35(1).   |

These repeals have effect in accordance with paragraphs 7 and 8 of Schedule 9 to this Act.

##### (3) TAPER RELIEF

| <i>Short title and chapter</i>                   | <i>Extent of repeal</i>   |
|--|---|
| Taxation of Chargeable Gains Act 1992<br>(c. 12) | In section 2A(8)(b)(ii), the words “11 or”.<br>In Schedule A1—<br>(a) paragraph 11;<br>(b) in paragraph 22(1), in the definition of “51 per cent subsidiary”, the words “(except in paragraph 11 above)”;<br>(c) in paragraph 23, the final sentence of sub-paragraph (4), sub-paragraph (5), in sub- |

These repeals have effect in accordance with paragraphs 2, 4 and 7 of Schedule 10 to this Act.



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paragraph (7) the words “, (5)(b)” and sub-paragraphs (9) and (10);  
(d) paragraph 24(6).

These repeals have effect in accordance with paragraphs 2, 4 and 7 of Schedule 10 to this Act.

#### (4) GAINS TREATED AS ACCRUING TO SETTLORS

| <i>Short title and chapter</i>                | <i>Extent of repeal</i>   |
|---|---|
| Taxation of Chargeable Gains Act 1992 (c. 12) | In section 2(5)(b), the words “77, 86,”.<br>Section 77(6A).<br>Section 86(4A).<br>In section 86A(8), the words “or aggregate amount”. |
| Finance Act 1998 (c. 36)                      | In Schedule 21, paragraph 6(1) and (2).   |

These repeals have effect in accordance with paragraphs 7 and 8 of Schedule 11 to this Act.

#### (5) TAX RELIEF FOR RESEARCH AND DEVELOPMENT EXPENDITURE

| <i>Short title and chapter</i> | <i>Extent of repeal</i>   |
|--------------------------------|---|
| Finance Act 2000 (c. 17)       | In Schedule 20—<br>(a) in paragraph 5(1)(c), the words “(within the meaning of section 231A(4) of the Taxes Act 1988)”;<br>(b) in paragraph 12, the word “and” at the end of paragraph (a). |

These repeals have effect for accounting periods ending on or after 1st April 2002.

#### (6) COMMUNITY INVESTMENT TAX CREDIT

| <i>Short title and chapter</i> | <i>Extent of repeal</i>                                       |
|--------------------------------|---|
| Finance Act 1990 (c. 29)       | In section 25(7), the word “and” at the end of paragraph (b). |

This repeal has effect in accordance with section 57(3) and (4)(b) of this Act.

#### (7) CARS WITH LOW CARBON DIOXIDE EMISSIONS

| <i>Short title and chapter</i>     | <i>Extent of repeal</i>  |
|------------------------------------|--|
| Capital Allowances Act 2001 (c. 2) | In section 39, the word “or” preceding the words “section 45A”.<br>In section 46(1), the word “or” preceding the words “section 45A”.<br>In section 74(2), the word “and” preceding paragraph (b). |

These repeals have effect in accordance with section 59 of this Act.

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#### (8) COMPUTATION OF PROFITS

| <i>Short title and chapter</i>               | <i>Extent of repeal</i>  |
|--|--|
| Income and Corporation Taxes Act 1988 (c. 1) | In section 473(2), the words, “, if the securities were not such as are mentioned in subsection (1)(b) above”. |
| Finance Act 1998 (c. 36)                     | Section 44.<br>Schedule 6.   |
| Capital Allowances Act 2001                  | In Schedule 2, paragraph 102.  |

The repeal in section 473(2) of the Taxes Act 1988 has effect in accordance with section 67(4)(a) of this Act.

The other repeals have effect in accordance with section 64(6) of and paragraphs 16 and 17 of Schedule 22 to this Act.

#### (9) ASSET-LINKED LOAN RELATIONSHIPS

| <i>Short title and chapter</i> | <i>Extent of repeal</i>  |
|--------------------------------|--|
| Finance Act 1996 (c. 8)        | In section 92, in subsection (1)(e), the word “and”.<br>Section 93(11) and (13). |

The repeal in section 92 of the Finance Act 1996 (c. 8) has effect in accordance with section 72 of this Act.

The repeals in section 93 of that Act have effect in accordance with section 75 of this Act.

#### (10) FOREX AND EXCHANGE GAINS AND LOSSES FROM LOAN RELATIONSHIPS ETC

| <i>Short title and chapter</i>                | <i>Extent of repeal</i>   |
|---|---|
| Income and Corporation Taxes Act 1988 (c. 1)  | In section 15(1), the second indent of paragraph 2(3) of Schedule A.<br>Section 56(3A) to (3D).<br>In Schedule 24, paragraphs 13 to 19.<br>In Schedule 27, paragraph 5(2A) so far as relating to sections 125 to 133 of the Finance Act 1993. |
| Taxation of Chargeable Gains Act 1992 (c. 12) | In section 117(A1), the words “(subject to sections 117A and 117B below)”.<br>Sections 117A and 117B.   |
| Finance Act 1993 (c. 34)                      | Section 60.<br>Sections 125 to 169.<br>Schedules 15 to 17.<br>In Schedule 18, paragraph 2.  |
| Finance Act 1994 (c. 9)                       | Sections 114 to 116.<br>Section 226(2).   |
| Finance Act 1995 (c. 4)                       | Section 52(2).  |

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|                          | Section 131.<br>In Schedule 24, paragraphs 1 to 3.<br>In Schedule 25, paragraphs 6(5) and 7.   |
| Finance Act 1996 (c. 8)  | In section 85(2), the word “and” at the end of paragraph (b).<br>In section 92(6)(b), the words “127 or”.<br>In Schedule 9—<br>(a) paragraphs 4 and 11(4);<br>(b) in paragraph 13(6), the definition of “related transaction”;<br>(c) in paragraph 15(1), the words “for the purposes of section 84 of this Act”.<br>In Schedule 11, in paragraph 3A(1)(b), the words “debt or”.<br>In Schedule 14, paragraphs 67 to 74.<br>In Schedule 15, paragraphs 22 to 24.<br>In Schedule 20, paragraphs 68 to 70. |
| Finance Act 1998 (c. 36) | Section 108(3) and (4)(a).<br>In section 109—<br>(a) subsections (1) and (2);<br>(b) subsection (4) so far as relating to those subsections;<br>(c) subsection (5) so far as relating to the enactments specified in paragraph (a) of it.<br>Section 110(4)(b).<br>Schedule 4, paragraph 7.  |
| Finance Act 2000 (c. 17) | Section 106.<br>In Schedule 22, paragraph 50(2)(b).<br>In Schedule 29, paragraphs 20, 21 and 41 to 43.   |

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The repeal in Schedule 27 to the Taxes Act 1988 has effect for account periods beginning on or after 1st October 2002.

The other repeals have effect in accordance with section 79(3) of this Act and Schedule 23 to this Act.

#### (11) CORPORATION TAX: CURRENCY

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| <i>Short title and chapter</i> | <i>Extent of repeal</i>  |
|--------------------------------|--|
| Finance Act 1993 (c. 34)       | In section 93, subsections (3) and (6) and, in subsection (7), the definitions of “branch” and “the closing rate/net investment method”. |
| Finance Act 1994 (c. 9)        | Section 226(1).  |
| Finance Act 1998 (c. 36)       | Section 163(3)(b) and (c).   |

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These repeals have effect in accordance with section 80 of this Act and Schedule 24 to this Act.

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(12) LOAN RELATIONSHIPS: GENERAL AMENDMENTS

| <i>Short title and chapter</i>               | <i>Extent of repeal</i>   |
|--|---|
| Income and Corporation Taxes Act 1988 (c. 1) | In section 77(2)(a), sub-paragraph (ii) and the preceding word "or".<br>Section 403ZC(2).<br>In section 432A(9B), the definition of "money debt".<br>In section 797A, the second sentence in subsection (5) and in subsection (7).<br>In Schedule 28A—<br>(a) in paragraph 7, in sub-paragraph (1)(d), the word "and" preceding sub-paragraph (iii), in sub-paragraph (1)(e), the word "and" preceding sub-paragraph (iii), and sub-paragraph (2);<br>(b) in paragraph 16, in sub-paragraph (1)(d), the word "and" preceding sub-paragraph (iii), in sub-paragraph (1)(e), the word "and" preceding sub-paragraph (iii), and sub-paragraph (2).   |
| Finance Act 1988 (c. 39)                     | In Schedule 6, in paragraph 3—<br>(a) sub-paragraphs (3)(a), (4)(a) and (5)(a) and (b);<br>(b) in sub-paragraph (5), in the words following paragraph (c), the word "group";<br>(c) sub-paragraph (6).  |
| Finance Act 1996 (c. 8)                      | In section 83—<br>(a) in subsection (2), paragraphs (b) and (d) and the word "or" at the end of paragraph (c);<br>(b) subsection (4);<br>(c) in subsection (7), in paragraph (a), the word "(b)", and paragraph (b) and the preceding word "and".<br>In section 87—<br>(a) in subsection (3), in paragraph (a) the words "or in the two years before the beginning of that period", in paragraph (b) the words "or in those two years", and paragraph (c) and the preceding word "or";<br>(b) subsections (6) to (8).<br>Section 89.<br>Section 91.<br>In Schedule 8, paragraph 2.<br>In Schedule 9, in paragraph 17—<br>(a) in sub-paragraph (5), in paragraph (a) the words "or in the period of two years before the beginning of that period" and in paragraph (b) the words "or in those two years"; |

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|                          | (b) sub-paragraphs (6) and (7).<br>In Schedule 9, in paragraph 18—<br>(a) in sub-paragraph (1), the word “and”<br>immediately preceding paragraph (b);<br>(b) in sub-paragraph (4), the definition of<br>“control”. |
| Finance Act 1998 (c. 36) | Section 82(1) and (2)(c) and (e).   |

These repeals have effect in accordance with section 82(2) of this Act.

### (13) DERIVATIVE CONTRACTS

| <i>Short title and chapter</i>                  | <i>Extent of repeal</i>   |
|---|---|
| Income and Corporation Taxes Act 1988<br>(c. 1) | Section 468AA.<br>In section 807A(7), the definition of<br>“relevant qualifying payment”.<br>In Schedule 5AA—<br>(a) in paragraph 1, sub-paragraphs (2)(b) and<br>(c) and (3), in sub-paragraph (5), the words<br>“and 396”, in sub-paragraph (6), the words<br>“, corporation tax” and “or 396”, and sub-<br>paragraph (7);<br>(b) paragraph 2(3);<br>(c) paragraph 4(4A);<br>(d) in paragraph 4A, in sub-paragraph (5)<br>(b), the words “or 396”, and sub-<br>paragraph (10A);<br>(e) paragraph 6(3A);<br>(f) paragraph 9.<br>In Schedule 27, paragraph 5(2A) so far as<br>relating to sections 159 and 160 of, and<br>paragraph 1 of Schedule 18 to, the Finance<br>Act 1994. |
| Finance Act 1990 (c. 29)                        | Section 81(1).  |
| Finance Act 1994 (c. 9)                         | Sections 147 to 175.<br>Section 177.<br>Schedule 18.  |
| Finance Act 1995 (c. 4)                         | Section 52(3).<br>Section 132.  |
| Finance Act 1996 (c. 8)                         | Section 93A(3)(a) and (7).<br>Section 101(2) to (6).<br>Schedule 12.<br>In Schedule 14, paragraphs 75 to 79.<br>In Schedule 15, paragraph 25.<br>In Schedule 20, paragraph 71.  |
| Finance Act 1998 (c. 36)                        | Section 99(2) and (3).<br>In section 109—<br>(a) subsection (3);  |

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|--------------------------|---|
|                          | (b) subsection (4) so far as relating to subsection (3);<br>(c) subsection (5) so far as relating to the enactments specified in paragraph (b) of it. |
| Finance Act 2000 (c. 17) | In Schedule 30, paragraph 24(3).  |
| Finance Act 2002 (c. 23) | Sections 69 and 70.<br>Section 78.  |

The repeal in Schedule 27 to the Taxes Act 1988 has effect for account periods beginning on or after 1st October 2002.

The other repeals have effect in accordance with section 83(3) of this Act.

#### (14) DEDUCTION OF TAX: PAYMENTS TO EXEMPT BODIES ETC

| <i>Short title and chapter</i>                                       | <i>Extent of repeal</i>                            |
|--|--|
| Income and Corporation Taxes Act 1988 (c. 1)                         | Section 349B(1)(b) and the word “or” preceding it. |
| This repeal has effect in accordance with section 94(7) of this Act. |  |

#### (15) GIFTS OF REAL PROPERTY TO CHARITY

| <i>Short title and chapter</i>                                    | <i>Extent of repeal</i>                                     |
|---|---|
| Income and Corporation Taxes Act 1988                             | In section 587B(9), the word “and” preceding paragraph (d). |
| This repeal has effect in accordance with section 97 of this Act. |   |

#### (16) REFERENCES TO ACCOUNTING PRACTICE AND PERIODS OF ACCOUNT

| <i>Short title and chapter</i>               | <i>Extent of repeal</i>  |
|--|--|
| Taxes Management Act 1970 (c. 9)             | In section 12AB(5), the definition of “period of account”.   |
| Income and Corporation Taxes Act 1988 (c. 1) | Section 43A(2).<br>Section 91A(8).<br>Section 91B(11)(e) and the word “and” preceding it.<br>In section 297(5B), the second sentence.<br>Section 494AA(2)(b) and the word “or” preceding it.<br>In section 560(2), the words from “and in paragraph (f)” to the end.<br>In section 834(1), in the definition of “accounting date”, the words from “and “period of account”” to the end.<br>Section 837A(5).<br>In section 842B(2), the second sentence.<br>In Schedule 5, in paragraphs 2(6) and 6(4), the definitions of “period of account”. |

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|---|--|
|   | In Schedule 28B, in paragraph 4(6B), the second sentence.  |
| Finance Act 1988 (c. 39)                      | In section 86(3), the definition of “period of account”.   |
| Finance Act 1989 (c. 26)                      | In section 43(9), the definition of “period of account”.   |
| Taxation of Chargeable Gains Act 1992 (c. 12) | In section 161(3A), the words from “and in paragraph (a)” to the end.<br>In section 13(5B), the second sentence.   |
| Finance Act 1997 (c. 16)                      | In Schedule 12—<br>(a) in paragraph 1(1)(c), the words “, in the case of companies incorporated in any part of the United Kingdom,” and “for the purposes of the accounts of such companies”;<br>(b) in paragraph 4(5), the words “, if the recipient were a company incorporated in the United Kingdom,”;<br>(c) in paragraph 15(1)(c), the words “, in the case of companies incorporated in any part of the United Kingdom,” and “for the purposes of the accounts of such companies”;<br>(d) paragraph 28(1) to (4). |
| Finance Act 1998 (c. 36)                      | Section 45.<br>In Schedule 18, in paragraph 14(2), the second sentence.  |
| Finance Act 1999 (c. 16)                      | In Schedule 6, paragraph 3(5).   |
| Finance Act 2000 (c. 17)                      | In Schedule 14, in paragraph 22(4), the second sentence.<br>In Schedule 15, in paragraph 29(4), the second sentence.<br>In Schedule 20, in paragraph 25(1), the definition of “normal accounting practice”.<br>In Schedule 23, in paragraph 5, the definitions of “normal accounting practice” and “statutory accounts”.   |
| Capital Allowances Act 2001 (c. 2)            | Section 179(2).<br>Section 219(2).   |

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(17) FINANCIAL TRADING STOCK

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| <b>Short title and chapter</b>               | <b>Extent of repeal</b>      |
|--|------------------------------|
| Income and Corporation Taxes Act 1988 (c. 1) | Section 100(1B)(a).          |
| Finance Act 1988 (c. 39)                     | In Schedule 12, paragraph 2. |

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## (18) BANKS ETC IN COMPULSORY LIQUIDATION

| <i>Short title and chapter</i>   | <i>Extent of repeal</i>                                 |
|----------------------------------|---|
| Finance (No. 2) Act 1992 (c. 48) | In Schedule 12, paragraphs 3(3)(c) and 4(3).            |
| Finance Act 1998 (c. 36)         | In Schedule 7, in paragraph 8, the words "3(3)(c) and". |

These repeals have effect in accordance with section 107 of this Act.

## PART 4

### OTHER TAXES

#### (1) AIR PASSENGER DUTY: EXTENSION OF AREA TO WHICH EEA RATES APPLY

| <i>Short title and chapter</i> | <i>Extent of repeal</i>                                  |
|--------------------------------|--|
| Finance Act 1994 (c. 9)        | In section 30(2), the word "or" preceding paragraph (b). |

This repeal has effect in accordance with section 121 of this Act.

#### (2) CLIMATE CHANGE LEVY

| <i>Short title and chapter</i> | <i>Extent of repeal</i>  |
|--------------------------------|--|
| Finance Act 2000 (c. 17)       | In Schedule 6, in paragraph 20(7), paragraph (c) and the preceding word "and". |

This repeal has effect in accordance with section 125(2) of this Act.

#### (3) AGGREGATES LEVY

| <i>Short title and chapter</i> | <i>Extent of repeal</i>   |
|--------------------------------|---|
| Finance Act 2001 (c. 9)        | In section 17—<br>(a) subsection (3)(a);<br>(b) in subsection (4), paragraph (b) and the words in paragraph (d) from "otherwise" to the end.<br>Section 18(3)(d) and (h).<br>In section 20(1)—<br>(a) the words "and is not rock" in paragraphs (a) and (b);<br>(b) paragraph (c).<br>Section 21(2)(b).<br>Section 24(6)(b) and (8)(a).<br>Section 37(7)(g) to (j).<br>In Schedule 6, in paragraph 7(1), paragraph (b) and the words from "equal to the amount" to the end. |



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In Schedule 8, in paragraph 11(2), paragraphs (f), (g) and (h).

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The repeals in Schedule 6 to the Finance Act 2001 shall be deemed to have come into force on 1st May 2002.

The other repeals shall be deemed to have come into force on 1st April 2002.

## PART 5

### MISCELLANEOUS

#### RECOVERY OF TAX DUE IN OTHER MEMBER STATES

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| <i>Short title and chapter</i> | <i>Extent of repeal</i>   |
|--------------------------------|---|
| Finance Act 1977 (c. 36)       | Section 11.   |
| Finance Act 1980 (c. 48)       | In section 17—<br>(a) subsection (1);<br>(b) in subsection (2A), the words “(1) and”;<br>(c) in subsection (3), the words from the beginning to “passing of this Act;”. |

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