SCHEDULES

SCHEDULE 29

Section 84(1)

GAINS AND LOSSES OF A COMPANY FROM INTANGIBLE FIXED ASSETS

Modifications etc. (not altering text)

C1 Sch. 29 applied (with modifications) (15.8.2002) by S.I. 2002/1967, **regs. 3-6**

C2 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

C3 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

C4 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

C5 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

C6 Sch. 29 modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 136(2)(f)**

C7 Sch. 29 modified (21.12.2007) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 4 para. 10** (with s. 6(9)); S.I. 2007/3546, art. 3, Sch.

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).

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.

F1(2) . . . . . .

[F2(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.

Textual Amendments

F1 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)**

F2 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 **[**[F3]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

F3 Words in Sch. 29 para. 8(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 39**

Writing down on accounting basis

9 (1) Where in a period of account a loss is recognised in **[**[F4]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

F4 Words in Sch. 29 para. 9(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 40**

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 **[**F5determining 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 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

F5 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—

(a) receipts in respect of intangible fixed assets that are recognised in **[**F6determining the company's profit or loss**]** as they accrue (see paragraph 14),

[F7(aa) receipts in respect of royalties so far as the receipts do not give rise to a credit under paragraph 14 (see paragraph 14A),**]**

(b) revaluation of an intangible fixed asset (see paragraph 15),

(c) credits recognised for accounting purposes in respect of negative goodwill (see paragraph 16), and

(d) 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

F6 Words in Sch. 29 para. 13(1)(a) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 41**

F7 Sch. 29 para. 13(1)(aa) inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(2)**

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 **[**F8determining 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

F8 Words in Sch. 29 para. 14(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 40**

Receipts in respect of royalties so far as not dealt with under paragraph 14

[F9 14A(1) So far as a receipt in respect of any royalty does not give rise to a credit under paragraph 14 (whether in the period of account in which it is received or in a subsequent period of account), a credit shall be brought into account for tax purposes.

(2) The amount of the credit to be brought into account for tax purposes is equal to so much of the amount of the receipt as does not give rise to a credit under paragraph 14.

(3) The credit shall be brought into account for tax purposes in the accounting period in which the receipt is recognised for accounting purposes.**]**

Textual Amendments

F9 Sch. 29 para. 14A inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(3)**

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:

$$\text{Previous Debits} - \text{Previous Credits}$$

where—

Previous Debits is the total amount of debits previously brought into account for tax purposes in respect of the asset F10... , and

Previous Credits is the total amount of any credits previously brought into account for tax purposes in respect of the asset [F10]... .

(5) For the purposes of this paragraph a "revaluation" includes—

(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

F10 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 **[**[F11]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

F11 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 **[**[F12]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

F12 Words in Sch. 29 para. 17(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 40**

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 "realisatio"n

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—

F13(a) . . . . . .

F13(b) . . . . . .

F13(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

F13 Sch. 29 para. 20(1)(a)(b) (c) repealed (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(7)**

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.

(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 realisatio"n

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 **[**F14determining 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

F14 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:

$$\text{Tax Cost} - \text{Debits} + \text{Credits}$$

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 [F15]... ; and

Credits is the total amount of any credits previously brought into account for tax purposes in respect of the asset [F15]... .

(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.

[[F16](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

F15 Words in Sch. 29 para. 27(1) repealed (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(7)**

F16 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.

[[F17](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

F17 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.

(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.

[[F18](5) On a subsequent change of accounting policy affecting the asset, the provisions of Part 13A of this Schedule apply.**]**

Textual Amendments

F18 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.

(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,

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.

Modifications etc. (not altering text)

C8 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

[F19(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.**]**

F20(4) . . . . . .

F20(5) . . . . . .

F21(6) . . . . . .

Textual Amendments

F19 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)**

F20 Sch. 29 para. 36(4)(5) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 10 para. 4(4)(d), **Sch. 27 Pt. 2(10)**

F21 Sch. 29 para. 36(6) repealed (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 8 para. 27, **Sch. 27 Pt. 2(8)** (with Sch. 8 Pt. 2)

Modifications etc. (not altering text)

C9 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**

C10 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—

(a) the conditions in paragraph 38 are met in relation to the old asset and its realisation,

(b) the conditions in paragraph 39 are met in relation to the expenditure on other assets, and

(c) 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—

(a) the asset must have been a chargeable intangible asset of the company throughout the period during which it was held by the company; and

(b) the proceeds of realisation of the asset must exceed—

(i) the cost of the asset, or

(ii) in the case of a part realisation, the appropriate proportion of the cost of the asset, or

(iii) 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—

(a) at the time of its realisation, and

(b) for a substantial part of, but not throughout, the period during which it was held by the company,

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.

(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.

References to cost of asset where asset affected by change of accounting policy

[F22 42A (1) 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

F22 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.

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)

C11 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.

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 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.

[F23 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

F23 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

(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).

[F24(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

(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

F24 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.

(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.

(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).

[[F25](6) Where a relevant asset is transferred as part of the process of a transfer to which paragraph 85 or 87 applies, and in consequence of the transfer the transferee ceases to be a member of a group ("Group 1")—

(a) the transferee shall not be treated for the purposes of this paragraph as having left Group 1, and

(b) if in consequence of the transfer the transferee becomes a member of another group ("Group 2") it shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same.**]**

Textual Amendments

F25 Sch. 29 para. 58(6) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 23**

Modifications etc. (not altering text)

C12 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

C13 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

C14 Sch. 29 para. 58(6) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(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,

(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

(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—

(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).

(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 (degrouping) 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 (degrouping)—

(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 degrouping 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 (degrouping)—

(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 degrouping 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—

(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 **[**F26permanent 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 **[**F26permanent 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 **[**F27permanent establishment**]** of the company in the United Kingdom.

Textual Amendments

F26 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)**

F27 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)**

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 **[**[F28]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;

(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

F28 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,

(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;

(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[F29]...,

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.

Textual Amendments

F29 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

[[F30]73A (1) 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,

(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

F30 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).

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—

[[F31](a) loan relationships**]**

[[F32](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

F31 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)**

F32 Sch. 29 para. 75(3)(b) substituted (with effect as mentioned in s. 83(3)(4) of the amneding 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.

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

F33 80 . . . . . .

Textual Amendments

F33 Sch. 29 paras. 80A, 80B substituted for Sch. 29 para. 80 (1.1.2007) by Finance Act 2006 (c. 25), **ss. 51(1)**, 53(1); S.I. 2006/3399, art. 2

Assets excluded: certain films

[F33 80A (1) This Schedule does not apply to an intangible fixed asset held by a film production company to the extent that it represents production expenditure on a film to which Schedule 4 of the Finance Act 2006 applies.

Expressions used in this sub-paragraph have the same meaning as in Chapter 3 of Part 3 of the Finance Act 2006.

(2) 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—

(a) on the production of the original master version of a film that commenced principal photography before 1st January 2007 ;

(b) on the acquisition before 1st October 2007 of the original master version of a film that commenced principal photography before 1st January 2007 .

(3) In sub-paragraph (2)—

(a) "film" has the same meaning as in Chapter 3 Part 3 of the Finance Act 2006;

(b) "original master version" means the original negative, tape or disc;

(c) references to the original master version of a film include the original master version of the film soundtrack (if any);

(d) references to the original master version include any rights in the original master version that are held or acquired with it.

Textual Amendments

F33 Sch. 29 paras. 80A, 80B substituted for Sch. 29 para. 80 (1.1.2007) by Finance Act 2006 (c. 25), **ss. 51(1)**, 53(1); S.I. 2006/3399, art. 2

Assets excluded except as regards royalties: sound recordings

80B (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 the master version of a sound recording.

(2) For this purpose—

(a) "sound recording" does not include a film soundtrack;

(b) "master version" means master tape or master audio disc of the recording;

(c) references to the master version include any rights in the master version that are held or acquired with it.**]**

Textual Amendments

F33 Sch. 29 paras. 80A, 80B substituted for Sch. 29 para. 80 (1.1.2007) by Finance Act 2006 (c. 25), **ss. 51(1)**, 53(1); S.I. 2006/3399, art. 2

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) **[**F34or 14A (receipts in respect of royalties so far as not dealt with under paragraph 14)**]**;

(b) Part 3 (credits in respect of intangible fixed assets) does not apply, except for **[**F35paragraphs 14 and 14A**]**.

(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.

Textual Amendments

F34 Words in Sch. 29 para. 82(2)(a) inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(4)(a)**

F35 Words in Sch. 29 para. 82(2)(b) substituted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(4)(b)**

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) **[**F36or 14A (receipts in respect of royalties so far as not dealt with under paragraph 14)**]**;

(b) Part 3 does not apply to the asset, except for **[**F37paragraphs 14 and 14A**]**;

(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).

Textual Amendments

F36 Words in Sch. 29 para. 83(3)(a) inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(5)(a)**

F37 Words in Sch. 29 para. 83(3)(b) substituted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(5)(b)**

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

(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.

[F38** Transfer of UK business between companies resident in different EU member States**]

85 **[F39**(1) This paragraph applies where—

(a) an EU company resident in one member State ("the transferor") transfers the whole or part of the business 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.

(1A) This paragraph also applies where an EU company transfers part of its business to one or more EU companies if—

(a) the transferor is resident in one member State,

(b) the part of the transferor's business which is to be transferred is carried on by the transferor in the United Kingdom,

(c) at least one transferee is resident in a member State other than that in which the transferor is resident,

(d) the transferor continues to carry on a business after the transfer,

(e) a claim is made under this paragraph by the transferor and the transferee (or each of the transferees), and

(f) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1C) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.

[F40(1D) . . . . . .**]**

(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 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 **[**F41business**]** 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 **[**F42(or each of the transferees)**]** , 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.

Textual Amendments

F38 Sch. 29 para. 85 heading substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 21(5)**

F39 Sch. 29 para. 85(1)-(1D) substituted for Sch. 29 para. 85(1) (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 21(2)**

F40 Sch. 29 para. 85(1D) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 11**

F41 Word in Sch. 29 para. 85(4) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 21(3)**

F42 Words in Sch. 29 para. 85(5) inserted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 21(4)**

Modifications etc. (not altering text)

C15 Sch. 29 para. 85 modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

C16 Sch. 29 para. 85(1)-(1D) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

C17 Sch. 29 para. 85(1C) modified (temp.) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), 6(1), **Sch. 4 para. 4(e)** (with reg. 6(2))

C18 Sch. 29 para. 85(4) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

C19 Sch. 29 para. 85(5) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

European cross-border merger: transfer of UK business

[F43 85A (1) This paragraph applies on a merger which satisfies the conditions specified in sub-paragraph (2), 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) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/ 2003 on the Statute for a European Cooperative Society (SCE),

(c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

(d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(2) The conditions mentioned in sub-paragraph (1) are that—

(a) each of the merging companies is resident in a member State,

(b) the merging companies are not all resident in the same State,

(c) paragraph 84 does not apply to any qualifying transferred assets,

(d) in the case of a merger to which sub-paragraph (1)(a), (b) or (c) applies, either—

(i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or

(ii) sub-paragraph (i) is not satisfied in relation to the transfer by reason only, and to the extent only, that the transferee is prevented from complying with that sub-paragraph by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself, and

(e) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each of the companies transferring assets and liabilities ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986).

(3) Where this paragraph applies, a transfer of qualifying transferred assets is treated for the purposes of this Schedule as tax-neutral (see paragraph 140).

(4) For the purposes of sub-paragraphs (2) and (3) 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.

(5) For the purposes of this paragraph—

(a) "cooperative society" means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,

(b) "transferor" means—

(i) in relation to a merger to which sub-paragraph (1)(a) applies, each company merging to form the SE,

(ii) in relation to a merger to which sub-paragraph (1)(b) applies, each cooperative society merging to form the SCE, and

(iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, each company transferring all of its assets and liabilities,

(c) "transferee" means—

(i) in relation to a merger to which sub-paragraph (1)(a) applies, the SE,

(ii) in relation to a merger to which sub-paragraph (1)(b) applies, the SCE, and

(iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, the company to which assets and liabilities are transferred,

F44(d) ... and

(e) a company is resident in a member State if—

(i) it is within a charge to tax under the law of the State as being resident for that purpose, and

(ii) 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.

F45(6) . . . . . .

(7) This paragraph applies only if the merger—

(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 avoiding liability to corporation tax, capital gains tax or income tax.

(8) The requirements of sub-paragraph (7) are treated as met where, before **[**F46the merger**]**, the Commissioners for 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 (7)(b).

(9) An application under sub-paragraph (8) must be made in accordance with paragraph 88.**]**

Textual Amendments

F43 Sch. 29 para. 85A substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 11**

F44 Sch. 29 para. 85A(5)(d) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 12(2)**

F45 Sch. 29 para. 85A(6) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 12(3)**

F46 Words in Sch. 29 para. 85A(8) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 12(4)**

Modifications etc. (not altering text)

C20 Sch. 29 para. 85A(2)(d) modified (temp.) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), 6(1), **Sch. 4 para. 4(f)** (with reg. 6(2))

[F47Transparent entities

Textual Amendments

F47 Sch. 29 paras. 85B-85D and cross-heading inserted (with effect in accordance with reg. 3(3) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 3 para. 5**

85B (1) This paragraph applies in relation to a transfer of a business, or a part of a business, where—

(a) the transfer is of a kind **[**F48mentioned in paragraph 85(1) or (1A) (or which would be of such a kind**]** if the business, or the part of the business, transferred were carried on by the transferor in the United Kingdom), and

(b) the transferor is a transparent entity.

(2) Where this paragraph applies paragraph **[**F49**]**85 does not apply in relation to the transfer.

(3) If, as a result of a transfer to which this paragraph applies, a transfer profit would, but for the Mergers Directive, have been chargeable to tax under the law of a member State other than the United Kingdom, 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 that tax, calculated in accordance with sub-paragraph (5), had been chargeable.

(4) In sub-paragraph (3) "transfer profit" means a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset were it not transparent, by reason of the transfer of **[**F50**]**intangible fixed assets**]** by the transparent entity.

(5) Tax is calculated in accordance with this sub-paragraph if—

(a) so far as permitted under the law of the relevant member State, losses arising on the transfer **[**F51**]**of those intangible fixed assets**]** are set against profits arising on the transfer **[**F51**]**of those intangible fixed assets**]**, and

(b) any relief available under that law has been claimed.

Textual Amendments

F48 Words in Sch. 29 para. 85B(1)(a) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 13(2)**

F49 Word in Sch. 29 para. 85B(2) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 13(3)**

F50 Words in Sch. 29 para. 85B(4) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 13(4)**

F51 Words in Sch. 29 para. 85B(5)(a) inserted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 13(5)**

Modifications etc. (not altering text)

C21 Sch. 29 paras. 85B-85D modification to earlier affecting provision S.I. 2007/3186, reg. 3(3) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(2)**

85C (1) This paragraph applies in relation to a merger if—

(a) the merger is of a kind **[**F52**]**mentioned in paragraph 85A(1)**]**,

(b) the conditions in paragraph 85A(2) are satisfied in relation to it,

(c) one or more of the merging companies is a transparent entity.

(2) Where this paragraph applies, if the assets and liabilities of a transparent entity are transferred to another company by reason of the merger, paragraph **[**F53**]**85A shall not apply in relation to the transfer**]**.

(3) If, as a result of a merger in relation to which this paragraph applies, a merger profit would, but for the Mergers Directive, have been chargeable to tax under the law of a

member State other than the United Kingdom, 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 that tax, calculated in accordance with sub-paragraph (5), had been chargeable.

(4) In sub-paragraph (3) "merger profit" means a profit which would be treated as accruing to a transparent entity in respect of an intangible fixed asset were it not transparent, by reason of the transfer of **[**F54intangible fixed assets**]** by the transparent entity on the merger.

(5) Tax is calculated in accordance with this sub-paragraph if—

(a) so far as is permitted under the law of the relevant member State, losses arising on the transfer **[**F55of those intangible fixed assets**]** are set against profits arising on the transfer **[**F55of those intangible fixed assets**]**, and

(b) any relief available under that law has been claimed.

Textual Amendments

F52 Words in Sch. 29 para. 85C(1)(a) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 14(2)**

F53 Words in Sch. 29 para. 85C(2) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 14(3)**

F54 Words in Sch. 29 para. 85C(4) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 14(4)**

F55 Words in Sch. 29 para. 85C(5)(a) inserted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 14(5)**

Modifications etc. (not altering text)

C22 Sch. 29 paras. 85B-85D modification to earlier affecting provision S.I. 2007/3186, **reg. 3(3)** (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **regs. 1(2)**, 4(2)

85D (1) In paragraphs **[**F56**85**, 85A, 85B, 85C, 87 and 87A and this paragraph**]**—

(a) "the Mergers Directive" means Council Directive 90/434/ EEC of 23rd July 1990 on mergers, transfers &c.,

(b) "company" means an entity listed as a company in the Annex to the Mergers Directive, and

(c) "transparent entity" means an entity which is resident in a member State other than the United Kingdom and is listed as a company in the Annex to the Mergers Directive, but which does not have an ordinary share capital (within the meaning given by section 832 of the Taxes Act).

(2) For the purposes of **[**F57paragraphs 85B and 85C**]** and sub-paragraph (1) above, 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 purpose 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

F56 Words in Sch. 29 para. 85D(1) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 15(2)**

F57 Words in Sch. 29 para. 85D(2) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 15(3)**

Modifications etc. (not altering text)

C23 Sch. 29 paras. 85B-85D modification to earlier affecting provision S.I. 2007/3186, **reg. 3(3)** (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **regs. 1(2)**, 4(2)

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 **[**[F58]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

"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).

Textual Amendments

F58 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)**

[F59 Transfer of non-UK business]

87 **[F60**(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 business 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 permanent establishment,

(b) the transfer—

(i) includes the whole of the assets of the transferor used for the purposes of the business 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 costs recognised for tax purposes, and

(d) the transferor makes a claim under this paragraph.

(1A) This paragraph also applies where an EU company resident in the United Kingdom transfers part of its business to one or more EU companies—

(a) immediately before the time of the transfer, the transferor was carrying on the part of its business to be transferred in the other member State through a permanent establishment,

(b) at least one transferee is resident in a member State other than the United Kingdom,

(c) the transferor continues to carry on a business,

(d) the conditions in sub-paragraph (1)(b)(i), (c) and (d) are satisfied, and

(e) either of the following conditions is satisfied.

(1B) Condition 1 is that the transfer is made in exchange for the issue of shares in or debentures of each transferee company to the persons holding shares in or debentures of the transferor.

(1D) Condition 2 is that the transfer is not made in exchange for the issue of shares in or debentures of each transferee by reason only, and to the extent only, that a transferee is prevented from complying with Condition 1 by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or by a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself.**]**

(2) Where tax would have been chargeable under the law of the other member State in respect of the transfer of **[**F61the intangible fixed 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 **[**F62of those intangible fixed assets**]** 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.

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 **[**F63business**]** 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

F59 Sch. 29 para. 87 heading substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 22(4)**

F60 Sch. 29 para. 87(1)-(1D) substituted for Sch. 29 para. 87(1) (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 22(2)**

F61 Words in Sch. 29 para. 87(2) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 16(2)**

F62 Words in Sch. 29 para. 87(3) inserted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 16(3)**

F63 Word in Sch. 29 para. 87(7) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 22(3)**

Modifications etc. (not altering text)

C24 Sch. 29 para. 87 modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

C25 Sch. 29 para. 87(1)-(1D) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

C26 Sch. 29 para. 87(1D) modified (temp.) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), 6(1), **Sch. 4 para. 4(g)** (with reg. 6(2))

C27 Sch. 29 para. 87(7) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

European cross-border merger: transfer of non-UK business

[**F64**87A(1) This paragraph applies on a merger which satisfies the conditions specified in sub-paragraph (2), 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) an SCE is formed by the merger of two or more cooperative societies, at least one of which is a society registered under the Industrial and Provident Societies Act 1965, in accordance with Articles 2(1) and 19 of Council Regulation (EC) 1435/ 2003 on the Statute for a European Cooperative Society (SCE),

(c) the merger is effected by the transfer by one or more companies of all their assets and liabilities to a single existing company, or

(d) the merger is effected by the transfer by two or more companies of all their assets and liabilities to a single new company (other than an SE or an SCE) in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures.

(2) The conditions mentioned in sub-paragraph (1) are that—

(a) each merging company is resident in a member State,

(b) the merging companies are not all resident in the same State,

(c) in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in another member State ("company B") the whole or part of a business that, immediately before the

transfer, company A carried on in a member State other than the United Kingdom through a permanent establishment,

(d) the transfer includes the whole of the assets of company A used for the purposes of the business or part,

(e) the transfer includes intangible fixed assets—

(i) that are chargeable intangible assets in relation to company A 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,

(f) no claim is made under paragraph 86 in relation to those assets, [F65]...

(g) in the case of a merger to which sub-paragraph (1)(a), (b) or (c) applies, either—

(i) the transfer of assets and liabilities is made in exchange for the issue by the transferee, to each person holding shares in or debentures of a transferor, of shares or debentures, or

(ii) sub-paragraph (i) is not satisfied in relation to the transfer by reason only, and to the extent only, that the transferee is prevented from complying with that sub-paragraph by section 658 of the Companies Act 2006 (rule against limited company acquiring own shares) or a corresponding provision of the law of another member State preventing the issue of shares or debentures to itself, **[**[F66]and

(h) in the case of a merger to which sub-paragraph (1)(c) or (d) applies, in the course of the merger each transferor ceases to exist without being in liquidation (within the meaning given by section 247 of the Insolvency Act 1986 (c.55)).**]**

(3) 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 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.

(4) In this paragraph "the Mergers Directive" has the same meaning as in paragraph 87.

(5) For the purposes of this paragraph—

(a) "cooperative society" means a society registered under the Industrial and Provident Societies Act 1965 or a similar society governed by the law of a member State other than the United Kingdom,

(b) "transferor" means—

(i) in relation to a merger to which sub-paragraph (1)(a) applies, each company merging to form the SE,

(ii) in relation to a merger to which sub-paragraph (1)(b) applies, each cooperative society merging to form the SCE, and

(iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, each company transferring all of its assets and liabilities,

(c) "transferee" means—

(i) in relation to a merger to which sub-paragraph (1)(a) applies, the SE,

(ii) in relation to a merger to which sub-paragraph (1)(b) applies, the SCE, and

(iii) in relation to a merger to which sub-paragraph (1)(c) or (d) applies, the company to which assets and liabilities are transferred,

F67(d) . . . . . and

(e) a company is resident in a member State if—

(i) it is within a charge to tax under the law of the State as being resident for that purpose, and

(ii) 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.

(6) This paragraph applies only if a merger—

(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 avoiding liability to corporation tax, capital gains tax or income tax.

(7) The requirements of sub-paragraph (6) are treated as met where, before the transfer, the Commissioners for 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 (6)(b).

(8) An application under sub-paragraph (7) must be made in accordance with paragraph 88.**]**

Textual Amendments

F64 Sch. 29 para. 87A substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 12**

F65 Word in Sch. 29 para. 87A(2)(f) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 17(2)(a)**

F66 Sch. 29 para. 87A(2)(h) and word inserted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 17(2)(b)**

F67 Sch. 29 para. 87A(5)(d) omitted (with effect in accordance with reg. 3 of the amending S.I.) by virtue of The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 17(3)**

Modifications etc. (not altering text)

C28 Sch. 29 para. 87A(2)(g) modified (temp.) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), 6(1), **Sch. 4 para. 4(h)** (with reg. 6(2))

Procedure on application for clearance

88 (1) This paragraph applies in relation to an application under paragraph 84(6), 85(5), **[**F68**[**F69**]**85A(8)**]**, 87A(7)**]**, 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.

(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), **[**F70 85A(7), 87A(7)**]**, 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

F68 Words in Sch. 29 para. 88(1) substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 13**

F69 Word in Sch. 29 para. 88(1) substituted (with effect in accordance with reg. 3 of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), **Sch. 3 para. 18**

F70 Words in Sch. 29 para. 88(5) substituted (with effect in accordance with reg. 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 13**

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 **[**F71 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—

F72 . . . . . .

F73 . . . . . .

Textual Amendments

F71 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)**

F72 Words in Sch. 29 para. 89(3) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(10)(e), **Sch. 27 Pt. 2(10)**

F73 Words in Sch. 29 para. 89(3) repealed (with effect in accordance with Sch. 9 para. 17(1) of the amending Act) by Finance Act 2007 (c. 11), Sch. 9 para. 1(2)(h), **Sch. 27 Pt. 2(9)**

Modifications etc. (not altering text)

C29 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 otherwise 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.

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 **[**F74the 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 **[**F75, but**]**

(b) the actual provision does not differ from the arm's length provisionF76...

F77(c) . . . . . .

(4) The second exception is where any provision of this Schedule applies so as to make the transfer tax-neutral.

[F78(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

F74 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)**

F75 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)**

F76 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)**

F77 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)**

F78 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)**

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)).

[*F79**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.**]**

[*F80**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,

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

F79 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)**

F80 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 "contro"l and "major interes"t

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.

(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 "participato"r and "associat"e

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.

(2) A person is connected with an individual if that person is the individual's **[**[F81]spouse or civil partner**]**, or is a relative, or the wife or husband of a relative, of the individual or of the individual's **[**[F81]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—

(a) any individual who in relation to the settlement is a settlor,

(b) any person who is connected with such an individual, and

(c) 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 **[**[F82]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—

(a) 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

(b) 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—

(a) "company" includes any body corporate or unincorporated association, but does not include a partnership; and

(b) 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

F81 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**

F82 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.

(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 **[**F83determining 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 **[**F84determining 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

F83 Words in Sch. 29 para. 103(2) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 40**

F84 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 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.

(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,

(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 **[**[F85]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:

$$\frac{\text{Old Value-New Value}}{\text{Old Value}}$$

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).

(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

F85 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—

(a) on the company becoming resident in the United Kingdom, or

(b) 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 **[**F86permanent establishment**]**, or

(c) 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

F86 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 **[**F87whether 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—

(a) to obtain a debit **[**F88under 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

(b) to avoid having to bring a credit into account **[**F89under 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.

Textual Amendments

F87 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)**

F88 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)**

F89 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—

(a) section 577 of the Taxes Act 1988 (expenditure on business entertainment or gifts),

(b) section 577A of that Act (crime-related expenditure),

(c) section 578A of that Act (expenditure on expensive hired cars), or

[F90(d) section 246(2) of the Finance Act 2004 (expenditure on benefits under employer-financed retirement benefits schemes).**]**

Textual Amendments

F90 Sch. 29 para. 112(2)(d) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 52(2)** (with Sch. 36)

*Delayed payment of **[**F91 employees' remuneration**]***

113 (1) Where—

(a) a debit in respect of **[**F92employees' remuneration**]** is recognised by a company for accounting purposes, and

(b) the **[**F93remuneration 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 **[**F94remuneration shall**]** be brought into account for the purposes of this Schedule only when they are paid.

[F95(2) Sub-paragraph (1) applies whether the amount is in respect of particular employments or in respect of employments generally.**]**

[F96(3) This paragraph applies to potential employees' remuneration as it applies to employees' remuneration.

For this purpose—

(a) potential employees' remuneration is an amount reserved in the accounts of an employer, with a view to it becoming employees' remuneration, and

(b) 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.

(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 **[**F97employees' remuneration has not**]** been paid—

(a) it shall be assumed for the purpose of making the calculation that **[**F98it**]** will not be paid before the end of that period, but

(b) the calculation shall be adjusted if the **[**F99remuneration 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.

[F100(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

F91 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)**

F92 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)**

F93 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)**

F94 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)**

F95 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)**

F96 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)**

F97 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)**

F98 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)**

F99 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)**

F100 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—

(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.

[F101(3) For the purposes of this paragraph "pension contributions" means—

(a) sums paid by an employer by way of contributions under a registered pension scheme,

(b) sums paid to the trustees or managers of a registered pension scheme that are treated as if they were the payment of contributions under the pension scheme (see section 199 of the Finance Act 2004), or

(c) expenses within section 246(3) of the Finance Act 2004 (expenditure on benefits under employer-financed retirement benefits schemes).**]**

(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.

Textual Amendments

F101 Sch. 29 para. 114(3) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 53** (with Sch. 36)

Bad debts etc

115 **[**[F102](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.**]**

[F103](2) . . . . . .

(3) Where a debt is released as mentioned in **[**[F104]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.

[[F105](6) In this paragraph "debt" includes an obligation or liability that falls to be discharged otherwise than by the payment of money.**]**

Textual Amendments

F102 Sch. 29 para. 115(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 20(2)**

F103 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)**

F104 Words in Sch. 29 para. 115(3) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 20(4)**

F105 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).

[F106PART 13A

ADJUSTMENT ON CHANGE OF ACCOUNTING POLICY

Textual Amendments

F106 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—

(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).

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)

AccountingDifference×OldTaxValueOldAccountingValue

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)

$$AdjustedOldTaxValue \times \frac{NewAccountingValue}{AggregateNewAccountingValue}$$

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)—

(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:

Old Tax Value x (New Accounting Value / Aggregate New Accounting Value)

$$\text{OldTaxValue} \times \frac{\text{NewAccountingValue}}{\text{AggregateNewAccountingValue}}$$

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—

(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 sub-

paragraph (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:

New Accounting Value / Aggregate New Accounting Value

NewAccountingValueAggregateNewAccountingValue

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:

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 asset, and
Previous Credits is the total amount of credits previously brought into account for tax purposes in respect of the asset.

(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
(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) **[**F107and

(c) paragraph 127A (assets whose value derives from existing assets treated as existing assets), and

(d) paragraph 127B (assets acquired in connection with disposals of existing assets 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)**[**F108, but see sub-paragraph (5) of that paragraph.**]**

Textual Amendments

F107 Sch. 29 para. 118(4)(c)(d) and word inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(6)(a)**

F108 Words in Sch. 29 para. 118(6) inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(6)(b)**

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.

(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.

[F109(5) Nothing in this paragraph shall be read as authorising or requiring an amount to be brought into account in connection with the realisation of an existing asset within the meaning of Part 4.**]**

Textual Amendments

F109 Sch. 29 para. 119(5) inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(7)**

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

(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,

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 **[**F110business**]** to company resident in another member State) **[**F111, or

(iii) section 140E of that Act **[**F112(merger leaving assets within UK tax charge)**]**,**]**

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.

Textual Amendments

F110 Word in Sch. 29 para. 127(1)(b)(ii) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 24(a)**

F111 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)**

F112 Words in Sch. 29 para. 127(1)(b)(iii) substituted (with effect in accordance with reg. 3(1) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 24(b)**

Modifications etc. (not altering text)

C30 Sch. 29 para. 127(1)(b)(ii) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

C31 Sch. 29 para. 127(1)(b)(iii) modification to earlier affecting provision S.I. 2007/3186, reg. 3(1) (8.7.2008) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2008 (S.I. 2008/1579), regs. 1(2), **4(1)**

Assets whose value derives from existing assets treated as existing assets

[F113127ZA (1) This paragraph applies where—

(a) a company acquires an intangible fixed asset ("the acquired asset") after commencement from a person ("the transferor") who at the time of the acquisition is a related party in relation to the company,

(b) the acquired asset is created, whether by the transferor or any other person, after commencement,

(c) the value of the acquired asset derives in whole or in part from any other asset ("the other asset"),

(d) the other asset has not at any time on or after 5th December 2005 been a chargeable intangible asset in the hands of the company or a related party in relation to the company or the transferor, and

(e) the existing asset condition is met.

(2) The existing asset condition is that, after commencement,—

(a) the other asset has been an existing asset in the hands of the transferor at a time when the transferor was a related party in relation to the company, or

(b) the other asset has been an existing asset in the hands of any other person at a time when the other person was a related party in relation to the company or the transferor.

(3) Where this paragraph applies the acquired asset shall be treated for the purposes of this Schedule as an existing asset in the hands of the company, but only so far as its value derives from the other asset.

(4) If only part of the value of the acquired asset so derives—

(a) this Schedule has effect as if there were a separate asset representing the part of the value not so derived, and

(b) the enactments that apply where this Schedule does not apply have effect as if there were a separate asset representing the part of the value so derived.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

(5) For the purposes of this paragraph the cases in which the value of an asset may be derived from any other asset include any case where—

(a) assets have been merged or divided,

(b) assets have changed their nature, or

(c) rights or interests in or over assets have been created or extinguished.

(6) For the purposes of this paragraph the time at which an asset is created or acquired is the time at which it would be regarded as created or acquired for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement).

Textual Amendments

F113 Sch. 29 paras. 127A, 127B inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(8)**

Assets acquired in connection with disposals of existing assets treated as existing assets

127B (1) This paragraph applies where—

(a) a person disposes of an asset which, at the time of the disposal, is an existing asset in the hands of the person,

(b) a company which at the time of the disposal is a related party in relation to the person acquires an intangible fixed asset directly or indirectly in consequence of, or otherwise in connection with, the disposal, and

(c) the intangible fixed asset that is acquired would, apart from this paragraph, at the time of the acquisition be a chargeable intangible asset in the hands of the company.

(2) Where this paragraph applies the intangible fixed asset that is acquired shall be treated for the purposes of this Schedule as an existing asset in the hands of the company.

(3) For the purposes of this paragraph—

(a) "asset", in relation to any disposal, means any asset for the purposes of the Taxation of Chargeable Gains Act 1992,

(b) a person "disposes of" an asset if, for the purposes of that Act, the person makes a part disposal of the asset or any other disposal of the asset,

(c) the time at which a disposal of an asset is made is the time at which it is made for the purposes of that Act.

(4) For the purposes of this paragraph it does not matter—

(a) whether the asset that the person disposes of is the same asset as the one that the company acquires,

(b) whether the asset that is acquired is acquired at the time of the disposal or at any other time, or

(c) whether the asset that is acquired is acquired by merging two or more assets or is acquired in any other way.**]**

Textual Amendments

F113 Sch. 29 paras. 127A, 127B inserted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(8)**

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,

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.

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 sub-paragraph (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—

(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 **[**[F114]4 to 7A**]** in section 155 of the Taxation of Chargeable Gains Act 1992 (c. 12) **[**[F115](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

F114 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)**

F115 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.

"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 ***[****F116* *determining profit or loss****]***

134 **[**F117(1)**]** References in this Schedule to an amount recognised in **[**F118determining a company's profit or loss**]** for a period include—

(a) an amount recognised in **[**F119the company's profit and loss account or income statement,**]** a statement of total recognised gains and losses **[**F120, 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.

F121 . . . . . .

[F122(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

F116 Words in Sch. 29 para. 134 heading substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 46(2)**

F117 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)**

F118 Words in Sch. 29 para. 134(1) substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 46(4)(a)**

F119 Words in Sch. 29 para. 134(1)(a) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 46(4)(b)**

F120 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)**

F121 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)**

F122 Sch. 29 para. 134(2) inserted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 46(5)**

Meaning of "accounting valu"e

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—

(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 asse"t and "chargeable realisation gai"n

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[F123](1) . . . . . .

(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 **[**[F124]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

F123 Sch. 29 para. 138(1) repealed (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(10)(e), **Sch. 27 Pt. 2(10)**

F124 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)**

Meaning of "royalt"y

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 transfe"r

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 Revenu"e

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.

Index of defined expressions

143 The expressions listed below are defined or otherwise explained by the provisions indicated:

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 **[**[F125]paragraphs 127 to 127B**]**)
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

[F126profit and loss (amounts recognised in determining)**]**	paragraph 134
realisation (of asset)	paragraph 19
related party	paragraph 95 to 101
royalty	paragraph 139
subsidiary (in relation to company formed outside UK)	paragraph 46(3)
the Taxes Acts	paragraph 142
tax-neutral transfer	paragraph 140
tax written down value	Part 5

Textual Amendments

F125 Words in Sch. 29 para. 143 substituted (with effect in accordance with s. 77(10)(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 77(9)**

F126 Words in Sch. 29 para. 143 substituted (7.4.2005) by Finance Act 2005 (c. 7), **Sch. 4 para. 47**

Status:
Point in time view as at 08/07/2008.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 29.