



# Finance Act 2003

## 2003 CHAPTER 14

An Act to grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance. [10th July 2003]

Most Gracious Sovereign,

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

### PART 1

#### EXCISE DUTIES

##### *Tobacco products duty*

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

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

“TABLE

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1. Cigarettes

An amount equal to 22 per cent of the retail price plus £96.88 per thousand cigarettes.

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2. Cigars	£141.10 per kilogram.
3. Hand-rolling tobacco	£101.42 per kilogram.
4. Other smoking tobacco and chewing tobacco	£62.03 per kilogram.”

(2) This section shall be deemed to have come into force at 6 o'clock in the evening of 9th April 2003.

### *Alcoholic liquor duties*

#### **2 Rate of duty on beer**

(1) In section 36(1AA)(a) of the Alcoholic Liquor Duties Act 1979 (c. 4) (rate of duty on beer), for “£11.89” substitute “ £12.22 ”.

(2) This section shall be deemed to have come into force at midnight on 13th April 2003.

#### **3 Rates of duty on wine and made-wine**

(1) For Part 1 of the Table of rates of duty in Schedule 1 to the Alcoholic Liquor Duties Act 1979 (rates of duty on wine and made-wine) substitute—

#### **“PART 1**

#### WINE AND MADE-WINE OF A STRENGTH NOT EXCEEDING 22 PER CENT

<i>Description of wine or made-wine</i>	<i>Rates of duty per hectolitre</i>
	<b>£</b>
Wine or made-wine of a strength not exceeding 4 per cent	48.91
Wine or made-wine of a strength exceeding 4 per cent but not exceeding 5.5 per cent	67.25
Wine or made-wine of a strength exceeding 5.5 per cent but not exceeding 15 per cent and not sparkling	158.69
Sparkling wine or sparkling made-wine of a strength exceeding 5.5 per cent but less than 8.5 per cent	166.70
Sparkling wine or sparkling made-wine of a strength of 8.5 per cent or of a strength exceeding 8.5 per cent but not exceeding 15 per cent	220.54
Wine or made-wine of a strength exceeding 15 per cent but not exceeding 22 per cent	211.58”

(2) This section shall be deemed to have come into force at midnight on 13th April 2003.

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### *Hydrocarbon oil duties*

#### **4 Rates of hydrocarbon oil duties**

- (1) In section 6(1A) of the Hydrocarbon Oil Duties Act 1979 (c. 5) (rates of duty)—
  - (a) in paragraph (a) (ultra low sulphur petrol) for “£0.4582” substitute “ £0.4710 ”,
  - (b) in paragraph (b) (other light oil) for “£0.5468” substitute “ £0.5620 ”,
  - (c) in paragraph (c) (ultra low sulphur diesel) for “£0.4582” substitute “ £0.4710 ”, and
  - (d) in paragraph (d) (other heavy oil) for “£0.5182” substitute “ £0.5327 ”.
- (2) In section 6AA(3) of that Act (biodiesel duty) for “£0.2582” substitute “ £0.2710 ”.
- (3) In section 13A(1) of that Act (rebate on unleaded petrol) for “£0.0586” substitute “ £0.0601 ”.
- (4) This section shall come into force on 1st October 2003.

#### **5 Rebates on hydrocarbon oil duties**

- (1) In section 11(1) of the Hydrocarbon Oil Duties Act 1979 (rebate on heavy oil)—
  - (a) in paragraph (a) (fuel oil) for “£0.0274” substitute “ £0.0382 ”,
  - (b) in paragraph (b) (gas oil: general) for “£0.0313” substitute “ £0.0422 ”, and
  - (c) in paragraph (ba) (ultra low sulphur diesel) for “£0.0313” substitute “ £0.0422 ”.
- (2) In section 14(1) of that Act (furnace fuel) for “£0.0274” substitute “ £0.0382 ”.
- (3) This section shall be deemed to have come into force at 6 o'clock in the evening of 9th April 2003.

### *Betting and gaming duties*

#### **6 General betting duty and pool betting duty: relief for losses**

- (1) Part 1 of the Betting and Gaming Duties Act 1981 (c. 63) (betting duties) is amended as follows.
- (2) In section 5 (net stake receipts) at the end of subsection (3) (negative net stake receipts to be disregarded) insert “ except as provided for by section 5AA ”.
- (3) After that section insert—

##### **“5AA Relief for losses**

- (1) This section applies where the amount of a person’s net stake receipts for an accounting period in respect of a class of bets (calculated in accordance with section 5(1)) is a negative amount.
- (2) That amount shall be carried forward to the following accounting period and, to the extent that it does not exceed it, deducted from the amount of the person’s net stake receipts in respect of the same class of bets for that period.

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- (3) If the amount of those net stake receipts for that following accounting period—
- (a) is not a positive amount, or
  - (b) is less than the amount carried forward,
- the amount carried forward or, as the case may be, the balance of it shall be treated for the purposes of this section as if it were a negative amount of net stake receipts for that period in respect of the same class of bets.”.
- (4) Omit section 5A (multiple bets) (which becomes unnecessary as a result of the amendment made by subsection (3) above).
- (5) After section 7 (duty charged on net pool betting receipts) insert—

**“7ZA Relief for losses**

- (1) This section applies where the amount of a person’s net pool betting receipts for an accounting period is a negative amount.
- (2) That amount shall be carried forward to the following accounting period and, to the extent that it does not exceed it, deducted from the amount of the person’s net pool betting receipts for that period.
- (3) If the amount of the net pool betting receipts for that following accounting period—
  - (a) is not a positive amount, or
  - (b) is less than the amount carried forward,
 the amount carried forward or, as the case may be, the balance of it shall be treated for the purposes of this section as if it were a negative amount of net pool betting receipts for that period.”.
- (6) The amendments made by this section apply in relation to any accounting period beginning on or after 1st September 2003 for which the net stake receipts in respect of a particular class of bets, or (as the case may be) the net pool betting receipts, is a negative amount.

**7 General betting duty: betting exchanges**

- (1) Part 1 of the Betting and Gaming Duties Act 1981 (c. 63) (betting duties) is amended as follows.
- (2) After section 5AA (inserted by section 6 above) insert—

**“5AB Betting exchanges**

- (1) This section applies where—
  - (a) one person makes a bet with another person using facilities provided by a third person in the course of a business, and
  - (b) that business is one that does not involve the provision of premises for use by persons making or taking bets.

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- (2) General betting duty shall be charged on the amounts (“commission charges”) that the parties to the bet are charged, whether by deduction from winnings or otherwise, for using those facilities.
  - (3) No deductions shall be allowed from commission charges.
  - (4) The amount of duty charged under this section in respect of bets determined in an accounting period shall be 15 per cent of the commission charges relating to those bets.
  - (5) For the purposes of this section, and section 5B(4) so far as relating to this section, a person who arranges for facilities relating to a bet to be provided by another person shall be treated as providing them himself (and the other person shall not).”.
- (3) In section 5B (liability to pay)—
- (a) for subsection (1) substitute—
    - “(1) All general betting duty chargeable in respect of—
      - (a) bets made in an accounting period, or
      - (b) in the case of duty chargeable under section 5AB, bets determined in an accounting period,shall become due at the end of that period.”;
    - (b) in subsection (4), after “section 4(1) to (3)” insert “ or 5AB ”.
- (4) In section 5C (bet-brokers)—
- (a) in paragraph (a) of subsection (1) (application of section) after “in the course of a business” insert “, other than a betting-exchange business,”;
  - (b) at the end of that subsection insert— “ In paragraph (a) “betting-exchange business” means a business such as is mentioned in section 5AB(1). ”;
  - (c) omit subsections (2) (bet treated as made between bettor and bet-broker) and (3) (subsection (2) not to apply to off-course bets where bet-taker is a bookmaker);
  - (d) in subsection (4) omit the words “In the case of a bet which is excluded from subsection (2) by virtue of subsection (3).”.
- (5) The amendments made by this section apply in relation to any accounting period beginning on or after 1st June 2003.
- (6) Those amendments do not apply in relation to a bet (a “straddling bet”) that is—
- (a) made, using facilities provided by a person (“the broker”), in an accounting period of the broker beginning before 1st June 2003, but
  - (b) not determined until an accounting period of the broker beginning on or after that date.
- (7) Any winnings paid in respect of a straddling bet to which section 5AB of the Betting and Gaming Duties Act 1981 (c. 63) would apply but for subsection (6) above shall be treated for the purposes of that Act as paid in the broker’s accounting period in which the bet was made (“the earlier accounting period”).
- (8) Subsection (7) shall not have effect to reduce the general betting duty payable by the broker for the earlier accounting period; but the amount of the reduction that would (but for this subsection) have been made for that period shall be set against any liability

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of the broker to general betting duty for accounting periods in the following three years, taking earlier periods before later ones until the amount is exhausted.

## **8 General betting duty: restriction of exemption for on-course bets**

- (1) In section 12(4) of the Betting and Gaming Duties Act 1981 (general betting duty: supplementary provisions), in the definition of “on-course bet” for “a meeting” substitute “ a horse or dog race meeting ”.
- (2) This section applies to bets made on or after 1st September 2003.

## **9 Bingo duty**

- (1) For sections 17 to 20 of the Betting and Gaming Duties Act 1981 (bingo duty) substitute—

### **“17 Bingo duty**

- (1) A duty of excise, to be known as bingo duty, shall be charged—
  - (a) on the playing of bingo in the United Kingdom, and
  - (b) at the rate of 15 per cent of a person’s bingo promotion profits for an accounting period.
- (2) Subsection (1) is subject to the exemptions specified in Part 1 of Schedule 3 to this Act.
- (3) The amount of a person’s bingo promotion profits for an accounting period is—
  - (a) the amount of the person’s bingo receipts for the period (calculated in accordance with section 19), minus
  - (b) the amount of his expenditure on bingo winnings for the period (calculated in accordance with section 20).
- (4) Bingo duty charged in respect of a person’s bingo promotion profits shall be paid by him.
- (5) Where the amount that would be charged in respect of a person’s bingo promotion profits for an accounting period is less than £1, no duty shall be charged.

### **18 Accounting period**

- (1) For the purposes of section 17 an accounting period ends, and another begins, at the end of the last Sunday in each calendar month.
- (2) But regulations under paragraph 9 of Schedule 3 to this Act may make provision in place of subsection (1) for the purposes of the application of section 17 to specified persons or in specified circumstances.
- (3) Regulations made by virtue of subsection (2) may make transitional provision.

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## **19 Bingo receipts**

- (1) A person has bingo receipts for an accounting period if payments fall due in the period in respect of entitlement to participate in bingo promoted by him.
- (2) The amount of the person's bingo receipts for the accounting period is the aggregate of those payments.
- (3) For the purposes of subsections (1) and (2)—
  - (a) an amount in respect of entitlement to participate in a game of bingo is to be treated as falling due in the accounting period in which the game is played,
  - (b) where a payment relates to a supply of services on which value added tax is chargeable, the amount of value added tax chargeable shall be disregarded (irrespective of whether or not that amount is paid by way of value added tax),
  - (c) it is immaterial whether an amount falls due to be paid to the promoter or to another person,
  - (d) it is immaterial whether an amount is described as a fee for participation, as a stake, or partly as one and partly as the other, and
  - (e) where a sum is paid partly in respect of entitlement to participate in a game of bingo and partly in respect of another matter—
    - (i) such part of the sum as is applied to, or properly attributable to, entitlement to participate in the game shall be treated as an amount falling due in respect of entitlement to participate in the game, and
    - (ii) the remainder shall be disregarded.

## **20 Expenditure on bingo winnings**

- (1) A person's expenditure on bingo winnings for an accounting period is the aggregate of the values of prizes provided by him in that period by way of winnings at bingo promoted by him.
- (2) Where a prize is obtained by the promoter from a person not connected with him, the cost to the promoter shall be treated as the value of the prize for the purpose of subsection (1).
- (3) Where a prize is a voucher which—
  - (a) may be used in place of money as whole or partial payment for benefits of a specified kind obtained from a specified person,
  - (b) specifies an amount as the sum or maximum sum in place of which the voucher may be used, and
  - (c) does not fall within subsection (2),the specified amount is the value of the voucher for the purpose of subsection (1).
- (4) Where a prize is a voucher (whether or not it falls within subsection (2)) it shall be treated as having no value for the purpose of subsection (1) if—
  - (a) it does not satisfy subsection (3)(a) and (b), or

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- (b) its use as described in subsection (3)(a) is subject to a specified restriction, condition or limitation which may make the value of the voucher to the recipient significantly less than the amount mentioned in subsection (3)(b).
- (5) In the case of a prize which—
  - (a) is neither money nor a voucher, and
  - (b) does not fall within subsection (2),
 the value of the prize for the purpose of subsection (1) is—
  - (i) the amount which the prize would cost the promoter if obtained from a person not connected with him, or
  - (ii) where no amount can reasonably be determined in accordance with sub-paragraph (i), nil.
- (6) For the purpose of this section—
  - (a) a reference to connection between two persons shall be construed in accordance with section 839 of the Income and Corporation Taxes Act 1988 (connected persons), and
  - (b) an amount paid by way of value added tax on the acquisition of a thing shall be treated as part of its cost (irrespective of whether or not the amount is taken into account for the purpose of a credit or refund).

## **20A Combined bingo**

- (1) A game of bingo is “combined bingo” if—
  - (a) it is multiple bingo within the meaning of section 1 of the Gaming (Bingo) Act 1985, or
  - (b) it is played in more than one place and promoted by more than one person.
- (2) Payments made in respect of entitlement to participate in combined bingo shall be treated for the purposes of section 19(1) as bingo receipts only of the first promoter to whom (or at whose direction) they are paid.
- (3) Where money representing stakes hazarded at combined bingo is paid in an accounting period by one promoter of the bingo (“the first promoter”) to another (“the second promoter”)—
  - (a) the money shall not be treated as a bingo receipt of the second promoter for the purposes of section 19(1),
  - (b) the payment shall be treated as expenditure of the first promoter on bingo winnings for the accounting period for the purposes of section 20(1), and
  - (c) no subsequent payment of all or part of the money shall be treated as expenditure on bingo winnings for the purposes of section 20(1) (whether paid by the second promoter to another person, by the first promoter having received it from the second promoter, or otherwise).
- (4) Subsections (2) and (3) shall apply only where the combined bingo is played entirely in the United Kingdom.



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## **20B Carrying losses forward**

- (1) Where the calculation of a person's bingo promotion profits for an accounting period results in a negative amount ("the loss")—
  - (a) no bingo duty shall be chargeable in respect of that accounting period, and
  - (b) for the purpose of section 17(3), the amount of the person's expenditure on bingo winnings for the next accounting period shall be increased by the amount of the loss.
- (2) Subsection (1) applies to an accounting period whether or not the loss results wholly or partly from the previous application of that subsection.

## **20C Supplementary**

- (1) Part 2 of Schedule 3 to this Act (bingo duty: supplementary) shall have effect.
  - (2) In sections 17 to 20B above, this section and Schedule 3—
    - "bingo" includes any version of that game, whatever name it is called,
      - "licensed bingo" means bingo played at premises licensed under—
        - (a) the Gaming Act 1968, or
        - (b) Chapter II of Part III of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985,
      - "prize" means anything won at bingo, and
      - "United Kingdom" includes the territorial sea of the United Kingdom.
  - (3) For the purposes of those provisions, except in relation to combined bingo, the promoter of a game of bingo is—
    - (a) in the case of licensed bingo, the holder of the licence, and
    - (b) in the case of non-licensed bingo, the person who provides the facilities for the game.
  - (4) For the purposes of those provisions in relation to combined bingo a person promotes a game of bingo if he is wholly or partly responsible for organising it or for providing facilities for it.
  - (5) In those provisions a reference to entitlement to participate in a game of bingo includes a reference to an opportunity to participate in a game of bingo in respect of which a charge is made (whether by way of a fee for participation, a stake, or both).
  - (6) In proceedings relating to bingo duty under the customs and excise Acts an averment in any process that a particular game is a version of bingo shall, until the contrary is proved, be sufficient evidence that it is."
- (2) In paragraph 1 of Schedule 3 to the Betting and Gaming Duties Act 1981 (c. 63) (bingo duty: exemptions: domestic bingo) for "Bingo duty shall not be charged in respect of" substitute " In calculating liability to bingo duty no account shall be taken of "

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- (3) For paragraph 2 of Schedule 3 to the Betting and Gaming Duties Act 1981 (bingo duty: exemptions: small-scale bingo) substitute—

**“Small-scale bingo**

- 2 (1) This paragraph applies where entitlement to participate in non-licensed bingo depends on a person’s being—
- (a) a member of a group or organisation,
  - (b) a guest of a member of a group or organisation, or
  - (c) a guest of a group or organisation.
- (2) Payments in respect of entitlement to participate in the non-licensed bingo shall not be brought into account in relation to any person for the purpose of section 19.
- (3) Winnings at the non-licensed bingo shall not be brought into account in relation to any person for the purpose of section 20.

**Small-scale bingo**

- 2A (1) In the case of non-licensed bingo to which paragraph 2 does not apply—
- (a) payments in respect of entitlement to participate in the non-licensed bingo shall not be brought into account in relation to any person for the purpose of section 19 (subject to sub-paragraphs (2) to (5) below), and
  - (b) winnings at the non-licensed bingo shall not be brought into account in relation to any person for the purpose of section 20 (subject to sub-paragraphs (2) to (5) below).
- (2) If on a day winnings at non-licensed bingo promoted by a person exceed £500, sub-paragraph (1) shall not apply in relation to the person in respect of the accounting period in which that day falls and the next two accounting periods.
- (3) If stakes exceeding in aggregate £500 are hazarded on a day at non-licensed bingo promoted by a person, sub-paragraph (1) shall not apply in relation to the person in respect of the accounting period in which that day falls and the next two accounting periods.
- (4) If in an accounting period winnings at non-licensed bingo promoted by a person exceed £7,500, sub-paragraph (1) shall not apply in relation to the person in respect of that accounting period and the next two accounting periods.
- (5) If stakes exceeding in aggregate £7,500 are hazarded in an accounting period at non-licensed bingo promoted by a person, sub-paragraph (1) shall not apply in relation to the person in respect of that accounting period and the next two accounting periods.
- (6) For the purposes of this paragraph winnings at bingo shall be valued in accordance with section 20(2) to (6).”.

- (4) After paragraph 2A of Schedule 3 to the Betting and Gaming Duties Act 1981 (c. 63) insert—

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### **“Non-profit-making bingo**

- 2B In calculating liability to bingo duty no account shall be taken of bingo to which there apply (without any exception or modification by virtue of regulations) both—
- (a) section 3 of the Gaming Act 1968 or Article 56 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (prohibition on charging for participation), and
  - (b) section 4 of that Act or Article 57 of that Order (prohibition of levy on stakes or winnings).”.
- (5) In paragraph 5(1) of Schedule 3 to the Betting and Gaming Duties Act 1981 (c. 63) (bingo duty: exemptions: commercial amusements) for “Bingo duty shall not be charged in respect of” substitute “ In calculating liability to bingo duty no account shall be taken of ”.
- (6) In paragraph 6 of Schedule 3 to that Act (bingo duty: exemptions: machine bingo) for “Bingo duty shall not be charged in respect of” substitute “ In calculating liability to bingo duty no account shall be taken of ”.
- (7) In paragraph 10(1) of Schedule 3 to that Act (notification and registration of bingo-promoters) for “which will, or may, be chargeable with bingo duty” substitute “ in connection with which bingo duty may be chargeable ”.
- (8) The following paragraphs of Schedule 3 to that Act shall cease to have effect—
- (a) paragraph 11 (announcement of prizes),
  - (b) paragraph 12 (records), and
  - (c) paragraph 15 (disputes).
- (9) In paragraph 16(2) of Schedule 3 to that Act (enforcement)—
- (a) for “(being bingo which is or may be chargeable with bingo duty)” substitute “ (being bingo in connection with which bingo duty may be chargeable) ”, and
  - (b) paragraph (b) (and the word “or” immediately before it) shall cease to have effect.
- (10) This section shall have effect in relation to bingo played on or after 27th October 2003 (with which day the first accounting period for the purposes of section 17 of the Betting and Gaming Duties Act 1981 shall begin).

## **10 Amusement machines not operated by coins or tokens**

- (1) In section 21 of the Betting and Gaming Duties Act 1981 (amusement machine licences), for subsections (3B) to (3D) (meaning of “fifty-penny machine”) substitute—
- “(3B) For the purposes of this section an amusement machine is a “fifty-penny machine” if, and only if—
- (a) where it is a machine on which a game can be played solo, the cost for each time the game is played on it solo—
    - (i) does not exceed 50p, or
    - (ii) where the machine provides differing numbers of games in different circumstances, cannot exceed 50p;

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- and
- (b) where it is a machine on which a game can be played by more than one person at a time, the cost per player for each time the game is played on it simultaneously by more than one player—
- (i) does not exceed 50p, or
- (ii) where the machine provides differing numbers of games in different circumstances, cannot exceed 50p.”.
- (2) In section 25(1) of that Act (definition of “amusement machine”), in paragraph (c) for “coin or token” substitute “ coin, token or other thing ”.
- (3) In section 26(2) of that Act (interpretation), for the definitions of “two-penny machine”, “five-penny machine” and “ten-penny machine” substitute—
- ““two-penny machine” means an amusement machine in relation to which the cost for each time a game is played on it—
- (a) does not exceed 2p, or
- (b) where the machine provides differing numbers of games in different circumstances, cannot exceed 2p,
- and “five-penny machine” and “ten-penny machine” have a corresponding meaning;”.
- (4) In the following provisions of the Value Added Tax Act 1994 (c. 23)—
- (a) the definition of “gaming machine” in section 23(4), and
- (b) Note (3) (definition of “gaming machine”) to Group 4 of Schedule 9, for “coin or token” substitute “ coin, token or other thing ”.

## 11 Amusement machines: use of currencies other than sterling

- (1) In section 26 of the Betting and Gaming Duties Act 1981 (c. 63) (interpretation etc), omit the definition of “coin” in subsection (2).
- (2) After that section insert—

### “26A Amounts in currencies other than sterling

- (1) Any reference in this Part of this Act to a amount in sterling, in the context of—
- (a) the cost of playing a game, or
- (b) the amount of the prize for a game,
- includes a reference to the equivalent amount in another currency.
- (2) The equivalent amount in another currency, in relation to any day, shall be determined by reference to the London closing exchange rate for the previous day.
- (3) For the purposes of determining what duty is payable on an amusement machine licence in a case where this section applies, the equivalent in another currency of an amount in sterling shall be taken to be its equivalent on the day on which the application for the licence is received by the Commissioners, or the due date in the case of a default licence.
- (4) In subsection (3) above—

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“default licence” means a licence granted under paragraph 3(1) of Schedule 4A to this Act;

“due date” has the meaning given by paragraph 2(4) of that Schedule.”.

- (3) This section does not apply in relation to any amusement machine licence granted before the day on which this Act is passed or to anything done under such a licence.

## 12 Responsibility for unlicensed amusement machines

- (1) In section 24(5) of the Betting and Gaming Duties Act 1981 (c. 63) (penalty for unlicensed amusement machines), for paragraph (c) (liability of person responsible for, inter alia, issuing or exchanging coins etc for amusement machine) substitute—

“(c) is a person responsible for controlling the use of any amusement machine on the premises, or”.

- (2) In Schedule 4A to that Act (unlicensed amusement machines), for paragraph (c) of paragraph 7(3) (which makes similar provision) substitute—

“(c) responsible for controlling the use of any amusement machine on the premises, or”.

## 13 Rates of gaming duty

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

“TABLE

<i>Part of gross gaming yield</i>	<i>Rate</i>
The first £502,500	2.5 per cent.
The next £1,115,500	12.5 per cent.
The next £1,115,500	20 per cent.
The next £1,953,000	30 per cent.
The remainder	40 per cent.”

- (2) This section has effect in relation to accounting periods beginning on or after 1st April 2003.

### *Vehicle excise duty*

## 14 Vehicle excise duty: rates

- (1) In paragraph 1 of Schedule 1 to the Vehicle Excise and Registration Act 1994 (c. 22) (the general rate)—

<sup>F1</sup>(a) .....

- (b) in sub-paragraph (2A) (general rate of duty in case of vehicle with engine with cylinder capacity not exceeding 1,549 cubic centimetres) for “£105” substitute “£110”.

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F2(2) .....

- (3) In paragraph 1J of that Schedule (rates of duty applicable to light goods vehicles first registered on or after 1st March 2001)—
- (a) in paragraph (a) (vehicle which is not a lower-emission van) for “£160” substitute “ £165 ”;
  - (b) in paragraph (b) (vehicle which is a lower-emission van) for “£105” substitute “ £110 ”.
- (4) This section applies to any licence taken out on or after 17th April 2003 for a period beginning on or after 1st May 2003.

#### Textual Amendments

- F1** S. 14(1)(a) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 1](#)
- F2** S. 14(2) repealed (7.4.2005) by [Finance Act 2005 \(c. 7\)](#), [Sch. 11 Pt. 1](#)

## 15 Disclosure for exemptions: Northern Ireland

In section 22ZA of the Vehicle Excise and Registration Act 1994 (c. 22) (nil licences for vehicles for disabled persons: disclosure of information) in subsection (1)(a) (which provides that the section applies to certain information held by the Secretary of State or a person providing services to him) in sub-paragraphs (i) and (ii), after “the Secretary of State” insert “ or a Northern Ireland department ”.

## 16 Duty at higher rate: exception for tractive units

- (1) After section 15 of the Vehicle Excise and Registration Act 1994 insert—

### “15A Exception for tractive units from charge at higher rate

- (1) Where—
- (a) a vehicle licence has been taken out for a tractive unit, and
  - (b) the licence was taken out at a rate of vehicle excise duty applicable to a tractive unit which is to be used with semi-trailers with a minimum number of axles,
- duty at a higher rate does not become chargeable under section 15 by reason only that while the licence is in force the tractive unit is used with a semi-trailer with fewer axles than that minimum number, if the condition in subsection (2) is satisfied.
- (2) The condition is that the rate of duty at which the licence was taken out is equal to or exceeds the rate which would have been applicable if the revenue weight of the tractive unit had been a weight equal to the actual laden weight, at the time of the use, of the articulated vehicle consisting of the tractive unit and the semi-trailer.”.

- (2) Section 16 of that Act (which makes provision, in the case of tractive units, for exemptions from the charge to vehicle excise duty at a higher rate on a basis different from that set out in new section 15A) shall cease to have effect.
- (3) This section has effect in relation to the use of a tractive unit on or after 9th April 2003.

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## PART 2

### VALUE ADDED TAX

#### 17 Requirement of evidence or security

- (1) The Value Added Tax Act 1994 (c. 23) is amended as follows.
- (2) In section 24(6)(a) (regulations about input tax etc: requirement of documentary evidence) after “documents” insert “ or other information ”.
- (3) In paragraph 4 of Schedule 11 (power to require security and production of documents) for sub-paragraph (1) substitute—
  - “(1) The Commissioners may, as a condition of allowing or repaying input tax to any person, require the production of such evidence relating to VAT as they may specify.
  - (1A) If they think it necessary for the protection of the revenue, the Commissioners may require, as a condition of making any VAT credit, the giving of such security for the amount of the payment as appears to them appropriate.”.
- (4) For sub-paragraph (2) of that paragraph substitute—
  - “(2) If they think it necessary for the protection of the revenue, the Commissioners may require a taxable person, as a condition of his supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from—
    - (a) the taxable person, or
    - (b) any person by or to whom relevant goods or services are supplied.
  - (3) In sub-paragraph (2) above “relevant goods or services” means goods or services supplied by or to the taxable person.
  - (4) Security under sub-paragraph (2) above shall be of such amount, and shall be given in such manner, as the Commissioners may determine.
  - (5) The powers conferred on the Commissioners by sub-paragraph (2) above are without prejudice to their powers under section 48(7).”.
- (5) In section 72(11) (penalty for supplying goods in contravention of paragraph 4(2) of Schedule 11) after “supplies” insert “ or is supplied with ”.
- (6) In section 83(1) (right of appeal against requirement of security under paragraph 4(2) of Schedule 11 etc) for “paragraph 4(2)” substitute “ paragraph 4(1A) or (2) ”.
- (7) In section 84 (further provisions relating to appeals) after subsection (4D) insert—
  - “(4E) Where an appeal is brought against a requirement imposed under paragraph 4(2)(b) of Schedule 11 that a person give security, the tribunal shall allow the appeal unless the Commissioners satisfy the tribunal that—
    - (a) there has been an evasion of, or an attempt to evade, VAT in relation to goods or services supplied to or by that person, or
    - (b) it is likely, or without the requirement for security it is likely, that VAT in relation to such goods or services will be evaded.

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(4F) A reference in subsection (4E) above to evading VAT includes a reference to obtaining a VAT credit that is not due or a VAT credit in excess of what is due.”.

(8) This section shall be deemed to have come into force on 10th April 2003.

## **18 Joint and several liability for unpaid VAT of another trader**

(1) In Part 4 of the Value Added Tax Act 1994 (c. 23) (administration, collection and enforcement), after section 77 insert—

*“Liability for unpaid VAT of another*

### **77A Joint and several liability of traders in supply chain where tax unpaid**

- (1) This section applies to goods of any of the following descriptions—
- (a) telephones and any other equipment, including parts and accessories, made or adapted for use in connection with telephones or telecommunication;
  - (b) computers and any other equipment, including parts, accessories and software, made or adapted for use in connection with computers or computer systems.
- (2) Where—
- (a) a taxable supply of goods to which this section applies has been made to a taxable person, and
  - (b) at the time of the supply the person knew or had reasonable grounds to suspect that some or all of the VAT payable in respect of that supply, or on any previous or subsequent supply of those goods, would go unpaid,
- the Commissioners may serve on him a notice specifying the amount of the VAT so payable that is unpaid, and stating the effect of the notice.
- (3) The effect of a notice under this section is that—
- (a) the person served with the notice, and
  - (b) the person liable, apart from this section, for the amount specified in the notice,
- are jointly and severally liable to the Commissioners for that amount.
- (4) For the purposes of subsection (2) above the amount of VAT that is payable in respect of a supply is the lesser of—
- (a) the amount chargeable on the supply, and
  - (b) the amount shown as due on the supplier’s return for the prescribed accounting period in question (if he has made one) together with any amount assessed as due from him for that period (subject to any appeal by him).
- (5) The reference in subsection (4)(b) above to assessing an amount as due from a person includes a reference to the case where, because it is impracticable to do so, the amount is not notified to him.



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- (6) For the purposes of subsection (2) above, a person shall be presumed to have reasonable grounds for suspecting matters to be as mentioned in paragraph (b) of that subsection if the price payable by him for the goods in question—
    - (a) was less than the lowest price that might reasonably be expected to be payable for them on the open market, or
    - (b) was less than the price payable on any previous supply of those goods.
  - (7) The presumption provided for by subsection (6) above is rebuttable on proof that the low price payable for the goods was due to circumstances unconnected with failure to pay VAT.
  - (8) Subsection (6) above is without prejudice to any other way of establishing reasonable grounds for suspicion.
  - (9) The Treasury may by order amend subsection (1) above; and any such order may make such incidental, supplemental, consequential or transitional provision as the Treasury think fit.
  - (10) For the purposes of this section—
    - (a) “goods” includes services;
    - (b) an amount of VAT counts as unpaid only to the extent that it exceeds the amount of any refund due.”.
- (2) In section 83 of that Act (appeals) after paragraph (r) insert—

“(ra) any liability arising by virtue of section 77A;”.
  - (3) In section 84(3) of that Act (appeals not to be entertained unless the VAT has been paid or deposited, except where that would cause hardship) for “or (q)” substitute “ , (q) or (ra) ”.
  - (4) This section shall be deemed to have come into force on 10th April 2003 except subsection (3) which applies in relation to any appeal notice of which is given on or after the day on which this Act is passed.

#### **Commencement Information**

- II** [S. 18](#) wholly in force at Royal Assent; [s. 18\(1\)\(2\)\(4\)](#) in force retrospective to 10.4.2003 and [s. 18\(3\)](#) in force at Royal Assent see [s. 18\(4\)](#)

## **19 Face-value vouchers**

Schedule 1 to this Act (VAT: face-value vouchers) has effect.

## **20 Supplies arising from prior grant of fee simple**

- (1) In section 96 of the Value Added Tax Act 1994 (c. 23) (interpretative provisions), after subsection (10A) (time for determining status of supplies arising from prior grant of interest etc) insert—

“(10B) Notwithstanding subsection (10A) above—
  - (a) item 1 of Group 1 of Schedule 9 does not make exempt any supply that arises for the purposes of this Act from the prior grant of a fee simple falling within paragraph (a) of that item; and

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- (b) that paragraph does not prevent the exemption of a supply that arises for the purposes of this Act from the prior grant of a fee simple not falling within that paragraph.”.

- (2) This section applies in relation to any supply that arises for the purposes of the Value Added Tax Act 1994 (c. 23) from the prior grant of a fee simple made on or after 9th April 2003.

## 21 Business gifts

- (1) In Schedule 4 to the Value Added Tax Act 1994 (matters to be treated as supply of goods or services), paragraph 5 (business gifts etc) is amended as follows.

- (2) In sub-paragraph (2) (cases where sub-paragraph (1) does not apply), for paragraph (a) substitute—

“(a) a business gift the cost of which, together with the cost of any other business gifts made to the same person in the same year, was not more than £50.”.

- (3) After that sub-paragraph insert—

“(2ZA) In sub-paragraph (2) above—

“business gift” means a gift of goods that is made in the course or furtherance of the business in question;

“cost”, in relation to a gift of goods, means the cost to the donor of acquiring or, as the case may be, producing the goods;

“the same year”, in relation to a gift, means any period of twelve months that includes the day on which the gift is made.”.

- (4) This section applies in relation to gifts made on or after 1st October 2003.

## 22 Non-business use of business property

- (1) In paragraph 5 of Schedule 4 to the Value Added Tax Act 1994 (matters to be treated as supply of goods or services), after sub-paragraph (4) (non-business use of business asset treated as supply of services) insert—

“(4A) Notwithstanding paragraph 9(1) below, sub-paragraph (4) above does not apply to—

- (a) any interest in land,
- (b) any building or part of a building,
- (c) any civil engineering work or part of such a work, or
- (d) any goods incorporated or to be incorporated in a building or civil engineering work (whether by being installed as fixtures or fittings or otherwise).”.

- (2) This section shall be deemed to have come into force on 9th April 2003.

- (3) This section does not apply in relation to any asset in respect of which the person in question or any of his predecessors became entitled before that date to a credit or repayment as mentioned in paragraph 5(5)(a) or 5(5)(b) of Schedule 4 to the Value Added Tax Act 1994 (c. 23).

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- (4) In subsection (3)—
- (a) “the person in question” means the person carrying on the business referred to in sub-paragraph (4) of paragraph 5 of that Schedule;
  - (b) “predecessor” has the same meaning as in that paragraph;
  - (c) the reference to an “asset” is to anything falling within any of paragraphs (a) to (d) of the sub-paragraph (4A) inserted into that paragraph by subsection (1).

## **23 Supply of electronic services in member States: special accounting scheme**

- (1) Schedule 2 to this Act (scheme enabling persons who supply certain electronic services in any member State, but who are not established in a member State, to account for and pay VAT in the United Kingdom on those supplies) has effect.
- (2) The amendments made by that Schedule have effect in relation to qualifying supplies made on or after 1st July 2003.

## **PART 3**

### TAXES AND DUTIES ON IMPORTATION AND EXPORTATION: PENALTIES

#### *Preliminary*

## **24 Introductory**

- (1) This Part makes provision for and in connection with the imposition of liability to a penalty where a person—
  - (a) engages in any conduct for the purpose of evading any relevant tax or duty, or
  - (b) engages in any conduct by which he contravenes a duty, obligation, requirement or condition imposed by or under legislation relating to any relevant tax or duty.
- (2) For the purposes of this Part “relevant tax or duty” means any of the following—
  - (a) customs duty;
  - (b) Community export duty;
  - (c) Community import duty;
  - (d) import VAT;
  - (e) customs duty of a preferential tariff country.
- (3) In this Part—
  - “appeal tribunal” means a VAT and duties tribunal;
  - “the Commissioners” means the Commissioners of Customs and Excise;
  - “the Community Customs Code” means Council Regulation 2913/92/EEC establishing the Community Customs Code;
  - “Community export duty” means any of the duties, charges or levies which are export duties within the meaning of the Community Customs Code (as at 9th April 2003, see the definition of “export duties” in Article 4(11) of that Code);
  - “Community import duty” means any of the duties, charges or levies which are import duties within the meaning of the Community Customs Code (as at

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9th April 2003, see the definition of “import duties” in Article 4(10) of that Code);

“contravene” includes fail to comply with;

“customs duty of a preferential tariff country” includes a reference to any charge imposed by a preferential tariff country and having an equivalent effect to customs duty payable on the importation of goods into the territory of that country;

“demand notice” means a demand notice within the meaning of section 30;

“import VAT” means value added tax chargeable by virtue of section 1(1) (c) of the Value Added Tax Act 1994 (c. 23) (importation of goods from places outside the member States);

“notice” means notice in writing;

“preferential tariff country” means a country outside the European Community which is, or is a member of a group of countries which is, party to an agreement falling within Article 20(3)(d) of the Community Customs Code (preferential tariff agreements with the Community);

“prescribed” means specified in, or determined in accordance with, regulations made by the Treasury;

“relevant rule”, in relation to any relevant tax or duty, has the meaning given by subsection (8) of section 26 (as read with subsection (9) of that section);

“representative”, in relation to any person, means—

- (a) his personal representative,
- (b) his trustee in bankruptcy or interim or permanent trustee,
- (c) any receiver or liquidator appointed in relation to that person or any of his property,

or any other person acting in a representative capacity in relation to that person.

- (4) References in this Part to the Community Customs Code are references to that Code as from time to time amended, whether before or after the coming into force of this Part.
- (5) The Treasury may by order amend this Part for the purpose of replacing any reference to, or to a provision of,—
  - (a) the Community Customs Code, or
  - (b) any instrument referred to in this Part by virtue of an order under this subsection,
 with a reference to, or (as the case may be) to a provision of, a different instrument.
- (6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (7) Except for this subsection and section 41 (which accordingly come into force on the passing of this Act), this Part comes into force on such day as the Treasury may by order appoint.

#### Commencement Information

**I2** S. 24 partly in force; s. 24(7) in force at 10.7.2003, see s. 24(7)

**I3** S. 24(1)-(6) in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

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## *The penalties*

### **25 Penalty for evasion**

- (1) In any case where—
- (a) a person engages in any conduct for the purpose of evading any relevant tax or duty, and
  - (b) his conduct involves dishonesty (whether or not such as to give rise to any criminal liability),
- that person is liable to a penalty of an amount equal to the amount of the tax or duty evaded or, as the case may be, sought to be evaded.
- (2) Subsection (1) is subject to the following provisions of this Part.
- (3) Nothing in this section applies in relation to any customs duty of a preferential tariff country.
- (4) Any reference in this section to a person’s “evading” any relevant tax or duty includes a reference to his obtaining or securing, without his being entitled to it,—
- (a) any repayment, rebate or drawback of any relevant tax or duty,
  - (b) any relief or exemption from, or any allowance against, any relevant tax or duty, or
  - (c) any deferral or other postponement of his liability to pay any relevant tax or duty or of the discharge by payment of any such liability,
- and also includes a reference to his evading the cancellation of any entitlement to, or the withdrawal of, any such repayment, rebate, drawback, relief, exemption or allowance.
- (5) In relation to any such evasion of any relevant tax or duty as is mentioned in subsection (4), the reference in subsection (1) to the amount of the tax or duty evaded or sought to be evaded is a reference to the amount of—
- (a) the repayment, rebate or drawback,
  - (b) the relief, exemption or allowance, or
  - (c) the payment which, or the liability to make which, is deferred or otherwise postponed,
- as the case may be.
- (6) Where, by reason of conduct falling within subsection (1) in the case of any relevant tax or duty, a person—
- (a) is convicted of an offence,
  - (b) is given, and has not had withdrawn, a demand notice in respect of a penalty to which he is liable under section 26, or
  - (c) is liable to a penalty imposed upon him under any other provision of the law relating to that relevant tax or duty,
- that conduct does not also give rise to liability to a penalty under this section in respect of that relevant tax or duty.

#### **Commencement Information**

**I4** S. 25 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

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## 26 Penalty for contravention of relevant rule

- (1) If, in the case of any relevant tax or duty, a person of a prescribed description engages in any conduct by which he contravenes—
  - (a) a prescribed relevant rule, or
  - (b) a relevant rule of a prescribed description,
 he is liable to a penalty under this section of a prescribed amount.
- (2) Subsection (1) is subject to the following provisions of this Part.
- (3) The power conferred by subsection (1) to prescribe a description of person includes power to prescribe any person (without further qualification) as such a description.
- (4) Different penalties may be prescribed under subsection (1) for different cases or different circumstances.
- (5) Any amount prescribed under subsection (1) as the amount of a penalty must not be more than £2,500.
- (6) The Treasury may by order amend subsection (5) by substituting a different amount for the amount for the time being specified in that subsection.
- (7) A statutory instrument containing an order under subsection (6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (8) In this Part “relevant rule”, in relation to any relevant tax or duty, means any duty, obligation, requirement or condition imposed by or under any of the following—
  - (a) the Customs and Excise Management Act 1979 (c. 2), as it applies in relation to the relevant tax or duty;
  - (b) any other Act, or any statutory instrument, as it applies in relation to the relevant tax or duty;
  - (c) in the case of customs duty, Community export duty or Community import duty, Community customs rules;
  - (d) in the case of import VAT, Community customs rules as they apply in relation to import VAT;
  - (e) any directly applicable Community legislation relating to the relevant tax or duty;
  - (f) any relevant international rules applying in relation to the relevant tax or duty.
- (9) In subsection (8)—
 

“Community customs rules” means customs rules, as defined in Article 1 of the Community Customs Code;

“relevant international rules” means international agreements so far as applying in relation to a relevant tax or duty and having effect as part of the law of any part of the United Kingdom by virtue of—

  - (a) any Act or statutory instrument, or
  - (b) any directly applicable Community legislation.

### Commencement Information

**I5** S. 26 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

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## 27 Exceptions from section 26

- (1) A person is not liable to a penalty under section 26 if he satisfies—
  - (a) the Commissioners, or
  - (b) on appeal, an appeal tribunal,that there is a reasonable excuse for his conduct.
- (2) For the purposes of subsection (1) none of the following is a reasonable excuse—
  - (a) an insufficiency of funds available to any person for paying any relevant tax or duty or any penalty due;
  - (b) that reliance was placed by any person on another to perform any task;
  - (c) that the contravention is attributable, in whole or in part, to the conduct of a person on whom reliance to perform any task was so placed.
- (3) Where, by reason of conduct falling within subsection (1) of section 26 in the case of any relevant tax or duty, a person—
  - (a) is prosecuted for an offence,
  - (b) is given, and has not had withdrawn, a demand notice in respect of a penalty to which he is liable under section 25, or
  - (c) is liable to a penalty imposed upon him under any other provision of the law relating to that relevant tax or duty,that conduct does not also give rise to liability to a penalty under section 26 in respect of that relevant tax or duty.
- (4) A person is not liable to a penalty under section 26 in respect of any conduct, so far as relating to import VAT, if in respect of that conduct—
  - (a) he is liable to a penalty under any of sections 62 to 69A of the Value Added Tax Act 1994 (c. 23) (penalty for contravention of statutory requirements as to VAT), or
  - (b) he would be so liable but for section 62(4), 63(11), 64(6), 67(9), 69(9) or 69A(7) of that Act (conduct resulting in conviction, different penalty etc).

### Commencement Information

**16** S. 27 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

## 28 Liability of directors etc where body corporate liable to penalty for evasion

- (1) Where it appears to the Commissioners—
  - (a) that a body corporate is liable to a penalty under section 25, and
  - (b) that the conduct giving rise to the penalty is, in whole or in part, attributable to the dishonesty of a person who is, or at the material time was, a director or managing officer of the body corporate (a “relevant officer”),the Commissioners may give a notice under this section to the body corporate (or its representative) and to the relevant officer (or his representative).
- (2) A notice under this section must state—
  - (a) the amount of the penalty referred to in subsection (1)(a) (the “basic penalty”), and

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- (b) that the Commissioners propose, in accordance with this section, to recover from the relevant officer such portion (which may be the whole) of the basic penalty as is specified in the notice.
- (3) If a notice is given under this section, this Part shall apply in relation to the relevant officer as if he were personally liable under section 25 to a penalty which corresponds to that portion of the basic penalty specified in the notice.
- (4) If a notice is given under this section—
  - (a) the amount which may be recovered from the body corporate under this Part is limited to so much (if any) of the basic penalty as is not recoverable from the relevant officer by virtue of subsection (3), and
  - (b) the body corporate is to be treated as discharged from liability for so much of the basic penalty as is so recoverable from the relevant officer.
- (5) In this section “managing officer”, in relation to a body corporate, means—
  - (a) a manager, secretary or other similar officer of the body corporate, or
  - (b) a person purporting to act in any such capacity or as a director.
- (6) Where the affairs of a body corporate are managed by its members, this section applies in relation to the conduct of a member in connection with his functions of management as if he were a director of the body corporate.

**Commencement Information**

**17** S. 28 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

*Reduction of amount of penalty*

**29 Reduction of penalty under section 25 or 26**

- (1) Where a person is liable to a penalty under section 25 or 26—
  - (a) the Commissioners (whether originally or on review) or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper; and
  - (b) the Commissioners on a review, or an appeal tribunal on an appeal, relating to a penalty reduced by the Commissioners under this subsection may cancel the whole or any part of the reduction previously made by the Commissioners.
- (2) In exercising their powers under subsection (1), neither the Commissioners nor an appeal tribunal are entitled to take into account any of the matters specified in subsection (3).
- (3) Those matters are—
  - (a) the insufficiency of the funds available to any person for paying any relevant tax or duty or the amount of the penalty,
  - (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of any relevant tax or duty,
  - (c) the fact that the person liable to the penalty, or a person acting on his behalf, has acted in good faith.



*Status: Point in time view as at 18/04/2005.*

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#### Commencement Information

**I8** S. 29 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

### *Demand notices*

## **30 Demands for penalties**

- (1) Where a person is liable to a penalty under this Part, the Commissioners may give to that person or his representative a notice in writing (a “demand notice”) demanding payment of the amount due by way of penalty.
- (2) An amount demanded as due from a person or his representative in accordance with subsection (1) is recoverable as if it were an amount due from the person or, as the case may be, the representative as an amount of customs duty.

This subsection is subject to—

- (a) any appeal under section 36 (appeals to tribunal); and
  - (b) subsection (3).
- (3) An amount so demanded is not recoverable if or to the extent that—
    - (a) the demand has subsequently been withdrawn; or
    - (b) the amount has been reduced under section 29.

#### Commencement Information

**I9** S. 30 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

## **31 Time limits for demands for penalties**

- (1) A demand notice may not be given—
  - (a) in the case of a penalty under section 25, more than 20 years after the conduct giving rise to the liability to the penalty ceased, or
  - (b) in the case of a penalty under section 26, more than 3 years after the conduct giving rise to the liability to the penalty ceased.
- (2) A demand notice may not be given more than 2 years after there has come to the knowledge of the Commissioners evidence of facts sufficient in the opinion of the Commissioners to justify the giving of the demand notice.
- (3) A demand notice—
  - (a) may be given in respect of a penalty to which a person was liable under section 25 or 26 immediately before his death, but
  - (b) in the case of a penalty to which the deceased was so liable under section 25, may not be given more than 3 years after his death.

#### Commencement Information

**I10** S. 31 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

*Status: Point in time view as at 18/04/2005.*

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### 32 No prosecution after demand notice for penalty under section 26

Where a demand notice is given demanding payment of an amount due by way of penalty under section 26 in respect of any conduct of a person, no proceedings may be brought against that person for any offence constituted by that conduct (whether or not the demand notice is subsequently withdrawn).

#### Commencement Information

**III** S. 32 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

#### Reviews

### 33 Right to review of certain decisions

- (1) If, in the case of any relevant tax or duty, the Commissioners give a person or his representative a notice informing him—
  - (a) that they have decided that the person has engaged in conduct by which he contravenes a relevant rule, and
  - (b) that the person is, in consequence, liable to a penalty under section 26, but
  - (c) that they do not propose to give a demand notice in respect of the penalty,
 the person or his representative may give a notice to the Commissioners requiring them to review the decision mentioned in paragraph (a).
- (2) Where the Commissioners give a demand notice to a person or his representative, the person or his representative may by notice require the Commissioners to review—
  - (a) their decision that the person is liable to a penalty under section 25 or 26, or
  - (b) their decision as to the amount of the liability.
- (3) Where the Commissioners give a notice under section 28 to a body corporate and to a relevant officer—
  - (a) subsection (2) does not apply to any demand notice given in respect of the liability of either of them to a penalty under this Part in respect of the conduct in question, but
  - (b) subsections (4) and (5) have effect instead in relation to any such demand notice.
- (4) Where the Commissioners give a demand notice to the relevant officer or his representative for a penalty which corresponds to the portion of the basic penalty specified in the notice under section 28, the relevant officer or his representative may by notice require the Commissioners to review—
  - (a) their decision that the conduct of the body corporate referred to in section 28(1)(b) is, in whole or in part, attributable to the relevant officer's dishonesty, or
  - (b) their decision as to the portion of the basic penalty which the Commissioners are seeking to recover from the relevant officer or his representative.
- (5) Where the Commissioners give a demand notice to the body corporate or its representative for so much of the basic penalty as is not recoverable from the relevant officer by virtue of section 28(3), the body corporate or its representative may by notice require the Commissioners to review—

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- (a) their decision that the body corporate is liable to a penalty under section 25, or
  - (b) their decision as to amount of the basic penalty as if it were the amount specified in the demand notice.
- (6) A person may not under this section require a review of a decision under section 35 (decision on review).

**Commencement Information**

**I12** S. 33 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

**34 Time limit and right to further review**

- (1) The Commissioners are not required under section 33 to review any decision unless the notice requiring the review is given before the end of the permitted period.
- (2) For the purposes of this section the “permitted period” is the period of 45 days beginning with the day on which the relevant notice is given.
- (3) For the purposes of subsection (2) the “relevant notice” is—
  - (a) in the case of a review by virtue of subsection (1) of section 33, the notice mentioned in that subsection; or
  - (b) in any other case, the demand notice in question.
- (4) Nothing in subsection (1) prevents the Commissioners from agreeing on request to review a decision in a case where the notice required by that subsection is not given within the permitted period.
- (5) A person may give notice under section 33 requiring a decision to be reviewed a second or subsequent time only if—
  - (a) the grounds on which he requires the further review are that the Commissioners did not, on any previous review, have the opportunity to consider any particular facts or matters; and
  - (b) he does not, on the further review, require the Commissioners to consider any facts or matters which were considered on a previous review of the decision, except in so far as they are relevant to any issue to which the facts or matters not previously considered relate.

**Commencement Information**

**I13** S. 34 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

**35 Powers of Commissioners on a review**

- (1) Where the Commissioners—
  - (a) are required in accordance with section 33 to review a decision, or
  - (b) agree to do so on such a request as is mentioned in section 34(4),the following provisions of this section apply.
- (2) On any such review, the Commissioners may—
  - (a) confirm the decision,

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- (b) withdraw the decision, or
  - (c) vary the decision.
- (3) Where the Commissioners withdraw or vary the decision, they may also take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.
- (4) If the Commissioners do not within the permitted period give notice of their determination on the review to the person who required the review or his representative, they shall be taken for the purposes of this Part to have confirmed the decision.
- (5) For the purposes of subsection (4), the “permitted period” is the period of 45 days beginning with the day on which the review—
- (a) is required by the person or his representative in accordance with section 33, or
  - (b) is agreed to by the Commissioners as mentioned in section 34(4).

#### Commencement Information

**I14** S. 35 in force at 27.11.2003 by S.I. 2003/2985, art. 2

### *Appeals*

#### **36 Appeals to a tribunal**

- (1) Where the Commissioners—
- (a) are required in accordance with section 33 to review a decision, or
  - (b) agree to do so on such a request as is mentioned in section 34(4),
- an appeal lies to an appeal tribunal against any decision by the Commissioners on the review (including any confirmation under section 35(4)).
- (2) An appeal lies under this section only if the appellant is one of the following persons—
- (a) the person who required the review in question,
  - (b) where the person who required the review in question did so as representative of another person, that other person, or
  - (c) a representative of a person falling within paragraph (a) or (b).
- (3) The powers of an appeal tribunal on an appeal under this section include—
- (a) power to quash or vary a decision; and
  - (b) power to substitute the tribunal’s own decision for any decision so quashed.
- (4) On an appeal under this section—
- (a) the burden of proof as to the matters mentioned in section 25(1) or 26(1) lies on the Commissioners; but
  - (b) it is otherwise for the appellant to show that the grounds on which any such appeal is brought have been established.

#### Commencement Information

**I15** S. 36 in force at 27.11.2003 by S.I. 2003/2985, art. 2

*Status: Point in time view as at 18/04/2005.*

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### 37 Appeal tribunals

- (1) Sections 85 and 87 of the Value Added Tax Act 1994 (c. 23) (settling of appeals by agreement and enforcement of decisions of tribunal) have effect as if—
  - (a) any reference to section 83 of that Act included a reference to section 36 above, and
  - (b) any reference to VAT included a reference to any relevant tax or duty.
- (2) The provision that may be made by rules under paragraph 9 of Schedule 12 to the Value Added Tax Act 1994 (rules of procedure for tribunals) includes provision for costs awarded against an appellant on an appeal by virtue of this Part to be recoverable as if the amount awarded were an amount of customs duty which the appellant is required to pay.

#### Commencement Information

**I16** S. 37 in force at 27.11.2003 by [S.I. 2003/2985](#), [art. 2](#)

### *Evidence*

### 38 Admissibility of certain statements and documents

- (1) Statements made or documents produced by or on behalf of a person are not inadmissible in—
  - (a) any criminal proceedings against that person in respect of any offence in connection with or in relation to any relevant tax or duty, or
  - (b) any proceedings against that person for the recovery of any sum due from him in connection with or in relation to any relevant tax or duty,by reason only that any of the matters specified in subsection (2) has been drawn to his attention and that he was, or may have been, induced by that matter having been brought to his attention to make the statements or produce the documents.
- (2) The matters mentioned in subsection (1) are—
  - (a) that the Commissioners have power, in relation to any relevant tax or duty, to demand by means of a written notice an amount by way of a civil penalty, instead of instituting criminal proceedings;
  - (b) that it is the Commissioners' practice, without being able to give an undertaking as to whether they will make such a demand in any case, to be influenced in determining whether to make such a demand by the fact (where it is the case) that a person has made a full confession of any dishonest conduct to which he has been a party and has given full facilities for an investigation;
  - (c) that the Commissioners or, on appeal, an appeal tribunal have power to reduce a penalty under section 25, as provided in subsection (1) of section 29; and
  - (d) that, in determining the extent of such a reduction in the case of any person, the Commissioners or tribunal will have regard to the extent of the co-operation which he has given to the Commissioners in their investigation.
- (3) References in this section to a relevant tax or duty do not include a reference to customs duty of a preferential tariff country.

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**Commencement Information**

**I17** S. 38 in force at 27.11.2003 by [S.I. 2003/2985](#), **art. 2**

*Miscellaneous and supplementary*

**39 Service of notices**

Any notice to be given to any person for the purposes of this Part may be given by sending it by post in a letter addressed to that person or his representative at the last or usual residence or place of business of that person or representative.

**Commencement Information**

**I18** S. 39 in force at 27.11.2003 by [S.I. 2003/2985](#), **art. 2**

**40 Penalties not to be deducted for income tax or corporation tax purposes**

In section 827 of the Taxes Act 1988 (no deduction for penalties etc) after subsection (1E) insert—

“(1F) Where a person is liable to make a payment by way of a penalty under section 25 or 26 of the Finance Act 2003 (evasion of, or contravention of relevant rule relating to, certain taxes and duties under the management of the Commissioners of Customs and Excise etc) the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”.

**Commencement Information**

**I19** S. 40 in force at 27.11.2003 by [S.I. 2003/2985](#), **art. 2**

**41 Regulations and orders**

- (1) Any power conferred on the Treasury by this Part to make regulations or an order includes power—
  - (a) to make different provision for different cases, and
  - (b) to make incidental, consequential, supplemental or transitional provision or savings.
- (2) Any power conferred on the Treasury by this Part to make regulations or an order shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations under this Part shall be subject to annulment in pursuance of a resolution of the House of Commons.

*Status: Point in time view as at 18/04/2005.*

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## PART 4

### STAMP DUTY LAND TAX

#### *Introduction*

#### **42 The tax**

- (1) A tax (to be known as “stamp duty land tax”) shall be charged in accordance with this Part on land transactions.
- (2) The tax is chargeable—
  - (a) whether or not there is any instrument effecting the transaction,
  - (b) if there is such an instrument, whether or not it is executed in the United Kingdom, and
  - (c) whether or not any party to the transaction is present, or resident, in the United Kingdom.
- (3) The tax is under the care and management of the Commissioners of Inland Revenue (referred to in this Part as “the Board”).

#### **Commencement Information**

**I20** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

#### *Land transactions*

#### **43 Land transactions**

- (1) In this Part a “land transaction” means any acquisition of a chargeable interest. As to the meaning of “chargeable interest” see section 48.
- (2) Except as otherwise provided, this Part applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any statutory provision or by operation of law.
- (3) For the purposes of this Part—
  - (a) the creation of a chargeable interest is—
    - (i) an acquisition by the person becoming entitled to the interest created, and
    - (ii) a disposal by the person whose interest or right is subject to the interest created;
  - (b) the surrender or release of a chargeable interest is—
    - (i) an acquisition of that interest by any person whose interest or right is benefitted or enlarged by the transaction, and
    - (ii) a disposal by the person ceasing to be entitled to that interest; <sup>F3</sup>...
  - (c) the variation of a chargeable interest [<sup>F4</sup>(other than a lease)] is—
    - (i) an acquisition of a chargeable interest [<sup>F4</sup>(other than a lease)] by the person benefitting from the variation, and

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- (ii) a disposal of a chargeable interest [<sup>F4</sup>(other than a lease)] by the person whose interest is subject to or limited by the variation.
- [<sup>F5</sup>(d) the variation of a lease is an acquisition and disposal of a chargeable interest only where
- [ it takes effect, or is treated for the purposes of this Part, as the grant <sup>F6</sup>(i) of a new lease<sup>F7</sup>, or
- (ii) paragraph 15A of Schedule 17A (reduction of rent or term) applies.]]
- (4) References in this Part to the “purchaser” and “vendor”, in relation to a land transaction, are to the person acquiring and the person disposing of the subject-matter of the transaction.
- These expressions apply even if there is no consideration given for the transaction.
- (5) A person is not treated as a purchaser unless he has given consideration for, or is a party to, the transaction.
- (6) References in this Part to the subject-matter of a land transaction are to the chargeable interest acquired (the “main subject-matter”), together with any interest or right appurtenant or pertaining to it that is acquired with it.

#### Textual Amendments

- F3** Word in s. 43(3) repealed (with effect in accordance with Sch. 39 para. 13 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#)
- F4** Words in s. 43(3)(c) inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 2\(a\)](#)
- F5** S. 43(3)(d) inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 2\(b\)](#)
- F6** Words in s. 43(3)(d) renumbered as s. 43(3)(d)(i) (with effect in accordance with s. 297(9) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 297\(2\)](#)
- F7** S. 43(3)(d)(ii) and word inserted (with effect in accordance with s. 297(9) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 297\(2\)](#)

#### Commencement Information

- I21** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 44 Contract and conveyance

- (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
- (2) A person is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
- (3) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction. In this case the effective date of the transaction is the date of completion.
- (4) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.



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In this case the effective date of the transaction is when the contract is substantially performed.

- (5) A contract is “substantially performed” when—
- (a) the purchaser<sup>[F8]</sup>, or a person connected with the purchaser,] takes possession of the whole, or substantially the whole, of the subject-matter of the contract, or
  - (b) a substantial amount of the consideration is paid or provided.
- (6) For the purposes of subsection (5)(a)—
- [F9(a) possession includes receipt of rents and profits or the right to receive them, and]
  - (b) it is immaterial whether [F10possession is taken] under the contract or under a licence or lease of a temporary character.
- (7) For the purposes of subsection (5)(b) a substantial amount of the consideration is paid or provided—
- (a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided;
  - (b) if the only consideration is rent, when the first payment of rent is made;
  - (c) if the consideration includes both rent and other consideration, when—
    - (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
    - (ii) the first payment of rent is made.
- (8) Where subsection (4) applies and the contract is subsequently completed by a conveyance—
- (a) both the contract and the transaction effected on completion are notifiable transactions, and
  - (b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.
- (9) Where subsection (4) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

[F11(9A) Where—

- (a) paragraph 12A of Schedule 17A applies (agreement for lease), or
- (b) paragraph 19(3) to (6) of Schedule 17A applies (missives of let etc in Scotland),

it applies in place of subsections (4), (8) and (9).]

(10) In this section—

- (a) references to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract; and
- (b) “contract” includes any agreement and “conveyance” includes any instrument.

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[<sup>F12</sup>(11) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this section.]

#### Textual Amendments

- F8** Words in s. 44(5)(a) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 15\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F9** S. 44(6)(a) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 15\(3\)\(a\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F10** Words in s. 44(6)(b) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 15\(3\)\(b\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F11** S. 44(9A) inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 3](#)
- F12** S. 44(11) added (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 15\(4\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

#### Commencement Information

- I22** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, [Sch. 19 para. 1\(1\)](#)

#### [<sup>F13</sup>44A Contract providing for conveyance to third party

- (1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
  - (a) to a person (C) who is not a party to the contract, or
  - (b) either to such a person or to B.
- (2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
- (3) If the contract is substantially performed B is treated for the purposes of this Part as acquiring a chargeable interest, and accordingly as entering into a land transaction.
 

The effective date of the transaction is when the contract is substantially performed.
- (4) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) shall (to that extent) be repaid by the Inland Revenue.

Repayment must be claimed by amendment of the land transaction return made in respect of the contract.

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- (5) Subject to subsection (6), section 44 (contract and conveyance) does not apply (except so far as it defines “substantial performance”) in relation to the contract.
- (6) Where—
- (a) this section applies by virtue of subsection (1)(b), and
  - (b) by reason of B’s direction or request, A becomes obliged to convey a chargeable interest to B,
- section 44 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a conveyance.
- (7) Section 44 applies in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1) above, that is to be completed by a conveyance.
- References to completion in that section, as it so applies, include references to conveyance by A to C of the subject matter of the contract between B and C.
- (8) In this section “contract” includes any agreement and “conveyance” includes any instrument.]

#### Textual Amendments

**F13** S. 44A inserted (with effect in accordance with Sch. 39 para. 13(1) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 4\(1\)](#)

## 45 Contract and conveyance: effect of transfer of rights

- (1) This section applies where—
- (a) a contract for a land transaction (“the original contract”) is entered into under which the transaction is to be completed by a conveyance,<sup>F14</sup>...
  - (b) there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person other than the original purchaser becomes entitled to call for a conveyance to him<sup>F15</sup>, and
  - (c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.]
- References in the following provisions of this section to a transfer of rights are to any such assignment, subsale or other transaction<sup>F16</sup>, and references to the transferor and the transferee shall be read accordingly].
- (2) The transferee is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44 (contract and conveyance) has effect in accordance with the following provisions of this section.
- (3) That section applies as if there were a contract for a land transaction (a “secondary contract”) under which—
- (a) the transferee is the purchaser, and
  - (b) the consideration for the transaction is—
    - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given

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(directly or indirectly) by the transferee or a person connected with him, and

(ii) the consideration given for the transfer of rights.

The substantial performance or completion of the original contract at the same time as, and in connection with, the substantial performance or completion of the secondary contract shall be disregarded.

(4) Where there are successive transfers of rights, subsection (3) has effect in relation to each of them.

The substantial performance or completion of the secondary contract arising from an earlier transfer of rights at the same time as, and in connection with, the substantial performance or completion of the secondary contract arising from a subsequent transfer of rights shall be disregarded.

[<sup>F17</sup>(5) Where a transfer of rights relates to part only of the subject-matter of the original contract (“the relevant part”)—

- (a) subsection (8)(b) of section 44 (restriction of charge to tax on subsequent conveyance) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount, and
- (b) a reference in the second sentence of subsection (3) above to the original contract, or a reference in subsection (4) above to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not relating to the relevant part shall be treated as a separate contract).]

[<sup>F18</sup>(5A) In relation to a land transaction treated as taking place by virtue of subsection (3)—

- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to the vendor under the original contract;
- (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either the vendor under the original contract or the transferor.]

(6) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b)(i).

(7) In this section “contract” includes any agreement and “conveyance” includes any instrument.

#### Textual Amendments

- F14** Word in s. 45(1) repealed (with effect in accordance with Sch. 39 para. 13 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#)
- F15** S. 45(1)(c) and word inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 5\(2\)\(a\)](#)
- F16** Words in s. 45(1) inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 5\(2\)\(b\)](#)
- F17** S. 45(5) substituted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 5\(3\)](#)
- F18** S. 45(5A) inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 5\(4\)](#)

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#### Commencement Information

- I23** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)
- I24** S. 45(6) has effect as specified by [The Stamp Duty Land Tax \(Appointment of the Implementation Date\) Order 2003 \(S.I. 2003/2899\)](#), [art. 2](#)

### [<sup>F19</sup>45A Contract providing for conveyance to third party: effect of transfer of rights

- (1) This section applies where—
- (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
    - (i) to a person (C) who is not a party to the contract, or
    - (ii) either to such a person or to B,
  - and
  - (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (D) becomes entitled to exercise any of B’s rights under the original contract in place of B.

References in the following provisions of this section to a transfer of rights are to any such assignment or other transaction.

- (2) D is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44A (contract providing for conveyance to third party) has effect in accordance with the following provisions of this section.
- (3) That section applies as if—
- (a) D had entered into a contract (a “secondary contract”) in the same terms as the original contract except with D as a party instead of B, and
  - (b) the consideration due from D under the secondary contract were—
    - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by D or a person connected with him, and
    - (ii) the consideration given for the transfer of rights.
- (4) The substantial performance of the original contract shall be disregarded if—
- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract, or
  - (b) it occurs after the transfer of rights.
- (5) Where there are successive transfers of rights, subsection (3) has effect in relation to each of them.
- (6) The substantial performance of the secondary contract arising from an earlier transfer of rights shall be disregarded if—
- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or
  - (b) it occurs after that subsequent transfer.
- (7) Where a transfer of rights relates to only part of the subject matter of the original contract, or to only some of the rights under that contract—

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- (a) a reference in subsection (3)(a) or (4) to the original contract, or a reference in subsection (6) to the secondary contract arising from an earlier transfer, is to that contract so far as relating to that part or those rights, and
  - (b) that contract so far as not relating to that part or those rights shall be treated as a separate contract.
- (8) The effective date of a land transaction treated as entered into by virtue of subsection (3) is not earlier than the date of the transfer of rights.
- (9) In relation to a such a transaction—
- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to A;
  - (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either A or B.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b).
- (11) In this section “contract” includes any agreement.]

#### Textual Amendments

**F19** S. 45A inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 5\(5\)](#)

## 46 Options and rights of pre-emption

- (1) The acquisition of—
- (a) an option binding the grantor to enter into a land transaction, or
  - (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,
- is a land transaction distinct from any land transaction resulting from the exercise of the option or right.
- They may be “linked transactions” (see section 108).
- (2) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge his obligations under the option in some other way.
- (3) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).
- (4) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

#### Commencement Information

**I25** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Status: Point in time view as at 18/04/2005.*

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## 47 Exchanges

- (1) Where a land transaction is entered into by the purchaser (alone or jointly) wholly or partly in consideration of another land transaction being entered into by him (alone or jointly) as vendor, this Part applies in relation to each transaction as if each were distinct and separate from the other.
- (2) A transaction is treated for the purposes of this Part as entered into by the purchaser wholly or partly in consideration of another land transaction being entered into by him as vendor in any case where an obligation to give consideration for a land transaction that a person enters into as purchaser is met wholly or partly by way of that person entering into another transaction as vendor.
- (3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
  - paragraphs 5 and 6 of Schedule 4 (exchanges, partition etc),<sup>F20</sup> ...
  - [<sup>F21</sup>paragraph 17 of that Schedule (arrangements involving public or educational bodies), and]
  - <sup>F20</sup> ...

### Textual Amendments

- F20** Words in s. 47(3) repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F21** S. 47(3) entry inserted (7.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, [3\(b\)](#)

### Commencement Information

- I26** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Chargeable interests, chargeable transactions and chargeable consideration*

## 48 Chargeable interests

- (1) In this Part “chargeable interest” means—
  - (a) an estate, interest, right or power in or over land in the United Kingdom, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,other than an exempt interest.
- (2) The following are exempt interests—
  - (a) any security interest;
  - (b) a licence to use or occupy land;
  - (c) in England and Wales or Northern Ireland—
    - (i) a tenancy at will;
    - (ii) an advowson, franchise or manor.
- (3) In subsection (2)—

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- (a) “security interest” means an interest or right (other than a rentcharge) held for the purpose of securing the payment of money or the performance of any other obligation; and
  - (b) “franchise” means a grant from the Crown such as the right to hold a market or fair, or the right to take tolls.
- (4) In the application of this Part in Scotland the reference in subsection (3)(a) to a rentcharge shall be read as a reference to a feu duty or a payment mentioned in section 56(1) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).
- (5) The Treasury may by regulations provide that any other description of interest or right in relation to land in the United Kingdom is an exempt interest.
- (6) The regulations may contain such supplementary, incidental and transitional provision as appears to the Treasury to be appropriate.
- [<sup>F22</sup>(7) This section has effect subject to subsection (3) of section 44A (contract and conveyance to third party) [<sup>F23</sup>and to paragraph 15A of Schedule 17A (reduction of rent or term of lease)].]

#### Textual Amendments

- F22** S. 48(7) inserted (with effect in accordance with Sch. 39 para. 13(1) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 4\(2\)](#)
- F23** Words in s. 48(7) inserted (with effect in accordance with s. 297(9) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 297\(3\)](#)

#### Commencement Information

- I27** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 49 Chargeable transactions

- (1) A land transaction is a chargeable transaction if it is not a transaction that is exempt from charge.
- (2) Schedule 3 provides for certain transactions to be exempt from charge.  
Other transactions are exempt from charge under other provisions of this Part.

#### Commencement Information

- I28** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 50 Chargeable consideration

- (1) Schedule 4 makes provision as to the chargeable consideration for a transaction.
- (2) The Treasury may by regulations amend or repeal the provisions of this Part relating to chargeable consideration and make such other provision as appears to them appropriate with respect to—
  - (a) what is to count as chargeable consideration, or
  - (b) the determination of the amount of chargeable consideration.



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- (3) The regulations may make different provision in relation to different descriptions of transaction or consideration and different circumstances.

#### Commencement Information

**I29** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 51 Contingent, uncertain or unascertained consideration

- (1) Where the whole or part of the chargeable consideration for a transaction is contingent, the amount or value of the consideration shall be determined for the purposes of this Part on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
- (2) Where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, its amount or value shall be determined for the purposes of this Part on the basis of a reasonable estimate.
- (3) In this Part—  
“contingent”, in relation to consideration, means—  
(a) that it is to be paid or provided only if some uncertain future event occurs, or  
(b) that it is to cease to be paid or provided if some uncertain future event occurs; and  
“uncertain”, in relation to consideration, means that its amount or value depends on uncertain future events.
- (4) This section has effect subject to—  
section 80 (adjustment where contingency ceases or consideration is ascertained), and  
section 90 (application to defer payment in case of contingent or uncertain consideration).
- [<sup>F24</sup>(5) This section applies in relation to chargeable consideration consisting of rent only to the extent that it is applied by paragraph 7 of Schedule 17A.]

#### Textual Amendments

**F24** S. 51(5) added (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(3\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

#### Commencement Information

**I30** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 52 Annuities etc: chargeable consideration limited to twelve years' payments

- (1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—

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- (a) for life, or
  - (b) in perpetuity, or
  - (c) for an indefinite period, or
  - (d) for a definite period exceeding twelve years.
- (2) For the purposes of this Part the consideration to be taken into account is limited to twelve years' annual payments.
- (3) Where the amount payable varies, or may vary, from year to year, the twelve highest annual payments shall be taken.
- No account shall be taken for the purposes of this Schedule of any provision for adjustment of the amount payable in line with the retail price index.
- (4) References in this section to annual payments are to payments in respect of each successive period of twelve months beginning with the effective date of the transaction.
- (5) For the purposes of this section the amount or value of any payment shall be determined (if necessary) in accordance with section 51 (contingent, uncertain or unascertained consideration).
- (6) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically. References to payment shall be read accordingly.
- (7) Where this section applies—
- (a) section 80 (adjustment where contingency ceases or consideration is ascertained) does not apply, and
  - (b) no application may be made under section 90 (application to defer payment in case of contingent or uncertain consideration).

#### **Commencement Information**

**I31** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### **53 Deemed market value where transaction involves connected company**

- [<sup>F25</sup>(1) This section applies where the purchaser is a company and—
- (a) the vendor is connected with the purchaser, or
  - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected.
- (1A) The chargeable consideration for the transaction shall be taken to be not less than—
- (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
  - (b) if the acquisition is the grant of a lease at a rent, that rent.]
- (2) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this section.
- (3) In this section—
- “company” means any body corporate;

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“shares” includes stock and the reference to shares in a company includes a reference to securities issued by a company.

- (4) Where this section applies paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.

But this section has effect subject to any other provision affording exemption or relief from stamp duty land tax.

- (5) This section is subject to the exceptions provided for in section 54.

#### Textual Amendments

- F25** S. 53(1)(1A) substituted for s. 53(1) (with effect in accordance with s. 297(9) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 297\(4\)](#)

#### Commencement Information

- I32** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)  
**I33** S. 53(2) has effect as specified by [The Stamp Duty Land Tax \(Appointment of the Implementation Date\) Order 2003 \(S.I. 2003/2899\), art. 2](#)

## 54 Exceptions from deemed market value rule

- (1) Section 53 (chargeable consideration: transaction with connected company) does not apply in the following cases.

In the following provisions “the company” means the company that is the purchaser in relation to the transaction in question.

- (2) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.
- (3) Case 2 is where—
- immediately after the transaction the company holds the property as trustee, and
  - the vendor is connected with the company only because of section 839(3) of the Taxes Act 1988.
- (4) Case 3 is where—
- the vendor is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
  - it is not the case that—
    - the subject-matter of the transaction, or
    - an interest from which that interest is derived,has, within the period of three years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the vendor.

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### Commencement Information

**I34** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### Amount of tax chargeable

#### 55 Amount of tax chargeable: general

- (1) The amount of tax chargeable in respect of a chargeable transaction is a percentage of the chargeable consideration for the transaction.
- (2) That percentage is determined by reference to whether the relevant land—
- consists entirely of residential property (in which case Table A below applies), or
  - consists of or includes land that is not residential property (in which case Table B below applies),
- and, in either case, by reference to the amount of the relevant consideration.

TABLE A: RESIDENTIAL

<i>Relevant consideration</i>	<i>Percentage</i>
Not more than [ <sup>F26</sup> £120,000]	0%
More than [ <sup>F26</sup> £120,000] but not more than £250,000	1%
More than £250,000 but not more than £500,000	3%
More than £500,000	4%

TABLE B: NON-RESIDENTIAL OR MIXED

<i>Relevant consideration</i>	<i>Percentage</i>
Not more than £150,000	0%
More than £150,000 but not more than £250,000	1%
More than £250,000 but not more than £500,000	3%
More than £500,000	4%

- (3) For the purposes of subsection (2)—
- the relevant land is the land an interest in which is the main subject-matter of the transaction, and
  - the relevant consideration is the chargeable consideration for the transaction, subject as follows.
- (4) If the transaction in question is one of a number of linked transactions—

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- (a) the relevant land is any land an interest in which is the main subject-matter of any of those transactions, and
  - (b) the relevant consideration is the total of the chargeable consideration for all those transactions.
- (5) This section has effect subject to—  
section 74 (collective enfranchisement by leaseholders), and  
section 75 (crofting community right to buy),  
(which provide for the rate of tax to be determined by reference to a fraction of the relevant consideration).
- (6) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 56 and Schedule 5 (amount of tax chargeable: rent).
- (7) References in this Part to the “rate of tax” are to the percentage determined under this section.

#### Textual Amendments

**F26** Sum in s. 55(2) substituted (with application in accordance with s. 95(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 95\(1\)](#)

#### Commencement Information

**I35** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, [Sch. 19 para. 1\(1\)](#)

### 56 Amount of tax chargeable: rent

Schedule 5 provides for the calculation of the tax chargeable where the chargeable consideration for a transaction consists of or includes rent.

#### Commencement Information

**I36** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, [Sch. 19 para. 1\(1\)](#)

## Reliefs

### 57 Disadvantaged areas relief

- (1) Schedule 6 provides for relief in the case of transactions relating to land in a disadvantaged area.
- (2) In that Schedule—
  - Part 1 defines “disadvantaged area”,
  - Part 2 relates to transactions where the land to which the transaction relates is wholly situated in a disadvantaged area,
  - Part 3 relates to transactions where the land to which the transaction relates is partly situated in a disadvantaged area, and
  - Part 4 contains supplementary provisions.

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### Commencement Information

**I37** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## [<sup>F27</sup> 57A Sale and leaseback arrangements

- (1) The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions specified below are met.
- (2) A “sale and leaseback” arrangement means an arrangement under which—
  - (a) A transfers or grants to B a major interest in land (the “sale”), and
  - (b) out of that interest B grants a lease to A (the “leaseback”).
- (3) The qualifying conditions are—
  - (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
  - [<sup>F28</sup>(aa) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
  - (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),]
  - (c) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
  - (d) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.
  - [<sup>F29</sup>(e) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7) at that date.]

<sup>F30</sup>(4) . . . . .]

### Textual Amendments

- F27** S. 57A inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 16](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F28** S. 57A(3)(aa)(b) substituted for s. 57A(3)(b) (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 6\(2\)](#)
- F29** S. 57A(3)(e) inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 6\(3\)](#)
- F30** S. 57A(4) omitted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by virtue of [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 6\(4\)](#)

## [<sup>F31</sup> 58A Relief for certain acquisitions of residential property

Schedule 6A provides for relief in the case of certain acquisitions of residential property.]

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### Textual Amendments

- F31** S. 58A substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) for ss. 58 and 59 by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 17\(1\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

## 60 Compulsory purchase facilitating development

- (1) A compulsory purchase facilitating development is exempt from charge.
- (2) In this section “compulsory purchase facilitating development” means—
  - (a) in relation to England and Wales or Scotland, the acquisition by a person of a chargeable interest in respect of which that person has made a compulsory purchase order for the purpose of facilitating development by another person;
  - (b) in relation to Northern Ireland, the acquisition by a person of a chargeable interest by means of a vesting order made for the purpose of facilitating development by a person other than the person who acquires the interest.
- (3) For the purposes of subsection (2)(a) it does not matter how the acquisition is effected (so that provision applies where the acquisition is effected by agreement).
- (4) In subsection (2)(b) a “vesting order” means an order made under any statutory provision to authorise the acquisition of land otherwise than by agreement.
- (5) In this section “development”—
  - (a) in relation to England and Wales, has the same meaning as in the Town and Country Planning Act 1990 (c. 8) (see section 55 of that Act);
  - (b) in relation to Scotland, has the same meaning as in the Town and Country Planning (Scotland) Act 1997 (c. 8) (see section 26 of that Act); and
  - (c) in relation to Northern Ireland, has the same meaning as in the Planning (Northern Ireland) Order 1991 (1991/1220 (N.I. 11)) (see Article 11 of that Order).

### Commencement Information

- I38** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 61 Compliance with planning obligations

- (1) A land transaction that is entered into in order to comply with a planning obligation or a modification of a planning obligation is exempt from charge if—
  - (a) the planning obligation or modification is enforceable against the vendor,
  - (b) the purchaser is a public authority, and
  - (c) the transaction takes place within the period of five years beginning with the date on which the planning obligation was entered into or modified.
- (2) In this section—
  - (a) in relation to England and Wales—

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*Status: Point in time view as at 18/04/2005.*

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“planning obligation” means either of the following—

- (a) a planning obligation within the meaning of section 106 of the Town and Country Planning Act 1990 that is entered into in accordance with subsection (9) of that section, or
- (b) a planning obligation within the meaning of section 299A of that Act that is entered into in accordance with subsection (2) of that section; and

“modification” of a planning obligation means modification as mentioned in section 106A(1) of that Act;

- (b) in relation to Scotland, “planning obligation” means an agreement made under section 75 or section 246 of the Town and Country Planning (Scotland) Act 1997;

- (c) in relation to Northern Ireland—

“planning obligation” means a planning agreement within the meaning of Article 40 of the Planning (Northern Ireland) Order 1991 that is entered into in accordance with paragraph (10) of that Article, and

“modification” of a planning obligation means modification as mentioned in Article 40A(1) of that Order.

- (3) The following are public authorities for the purposes of subsection (1)(b)—

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***Government***

A Minister of the Crown or government department

The Scottish Ministers

A Northern Ireland department

The National Assembly for Wales

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***Local government: England***

A county or district council constituted under section 2 of the Local Government Act 1972 (c. 70)

The council of a London borough

The Common Council of the City of London

The Greater London Authority

Transport for London

The Council of the Isles of Scilly

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***Local government: Wales***

A county or county borough council constituted under section 21 of the Local Government Act 1972

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***Local government: Scotland***

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)

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***Local government: Northern Ireland***



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A district council within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))

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***Health: England and Wales***

A Strategic Health Authority or Health Authority established under section 8 of the National Health Service Act 1977 (c. 49)

A Special Health Authority established under section 11 of that Act

A Primary Care Trust established under section 16A of that Act

A Local Health Board established under section 16BA of that Act

A National Health Service Trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19)

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***Health: Scotland***

The Common Services Agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c. 29)

A Health Board established under section 2(1)(a) of that Act

A National Health Service Trust established under section 12A(1) of that Act

A Special Health Board established under section 2(1)(b) of that Act

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***Health: Northern Ireland***

A Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))

A Health and Social Services Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

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***Other planning authorities***

Any other authority that—

- (a) is a local planning authority within the meaning of the Town and Country Planning Act 1990 (c. 8), or
- (b) is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c. 8).

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***Prescribed persons***

A person prescribed for the purposes of this section by Treasury order

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**Commencement Information**

**I39** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, [Sch. 19 para. 1\(1\)](#)

**62 Group relief and reconstruction or acquisition relief**

- (1) Schedule 7 provides for relief from stamp duty land tax.
- (2) In that Schedule—

*Status: Point in time view as at 18/04/2005.*

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Part 1 makes provision for group relief,

Part 2 makes provision for reconstruction and acquisition reliefs.

- (3) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return.

#### **Commencement Information**

**I40** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### **63 Demutualisation of insurance company**

- (1) A land transaction is exempt from charge if it is entered into for the purposes of or in connection with a qualifying transfer of the whole or part of the business of a mutual insurance company (“the mutual”) to a company that has share capital (“the acquiring company”).
- (2) A transfer is a qualifying transfer if—
- (a) it is a transfer of business consisting of the effecting or carrying out of contracts of insurance and takes place under an insurance business transfer scheme, or
  - (b) it is a transfer of business of a general insurance company carried on through a permanent establishment in the United Kingdom and takes place in accordance with authorisation granted outside the United Kingdom for the purposes of—
    - (i) Article 14 of the life assurance Directive, or
    - (ii) Article 12 of the 3rd non-life insurance Directive,
 and, in either case, the requirements of subsections (3) and (4) are met in relation to the shares of a company (“the issuing company”) which is either the acquiring company or a company of which the acquiring company is a wholly-owned subsidiary.
- (3) Shares in the issuing company must be offered, under the scheme, to at least 90% of the persons who are members of the mutual immediately before the transfer.
- (4) Under the scheme all of the shares in the issuing company that will be in issue immediately after the transfer has been made, other than shares that are to be or have been issued pursuant to an offer to the public, must be offered to the persons who (at the time of the offer) are—
- (a) members of the mutual,
  - (b) persons who are entitled to become members of the mutual, or
  - (c) employees, former employees or pensioners of—
    - (i) the mutual, or
    - (ii) a wholly-owned subsidiary of the mutual.
- (5) The Treasury may by regulations—
- (a) amend subsection (3) by substituting a lower percentage for the percentage mentioned there;
  - (b) provide that any or all of the references in subsections (3) and (4) to members shall be construed as references to members of a class specified in the regulations.

*Status: Point in time view as at 18/04/2005.*

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Regulations under paragraph (b) may make different provision for different cases.

(6) For the purposes of this section a company is the wholly-owned subsidiary of another company (“the parent”) if the company has no members except the parent and the parent’s wholly-owned subsidiaries or persons acting on behalf of the parent or the parent’s wholly-owned subsidiaries.

(7) In this section—

“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

“employee”, in relation to a mutual insurance company or its wholly-owned subsidiary, includes any officer or director of the company or subsidiary and any other person taking part in the management of the affairs of the company or subsidiary;

“general insurance company” means a company that has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8), or paragraph 15 of Schedule 3 to that Act (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule), to effect or carry out contracts of insurance;

“insurance company” means a company that carries on the business of effecting or carrying out contracts of insurance;

“insurance business transfer scheme” has the same meaning as in Part 7 of the Financial Services and Markets Act 2000;

“the life assurance Directive” means the Council Directive of 5th November 2002 concerning life assurance (No.2002/83/EC);

“mutual insurance company” means an insurance company carrying on business without having any share capital;

“the 3rd non-life insurance Directive” means the Council Directive of 18th June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (No. 92/49/EEC);

“pensioner”, in relation to a mutual insurance company or its wholly-owned subsidiary, means a person entitled (whether presently or prospectively) to a pension, lump sum, gratuity or other like benefit referable to the service of any person as an employee of the company or subsidiary.

#### **Commencement Information**

**I41** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## **64 Demutualisation of building society**

A land transaction effected by section 97(6) or (7) of the Building Societies Act 1986 (c. 53) (transfer of building society’s business to a commercial company) is exempt from charge.

#### **Commencement Information**

**I42** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Status: Point in time view as at 18/04/2005.*

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### [<sup>F32</sup>64A Initial transfer of assets to trustees of unit trust scheme

- (1) The acquisition of a chargeable interest by trustees of a unit trust scheme is exempt from charge if the following conditions are met.
- (2) The conditions are that—
  - (a) immediately before the acquisition—
    - (i) there were no assets held by the trustees for the purposes of the scheme, and
    - (ii) there were no units of the scheme in issue,
  - (b) the only consideration for the acquisition is the issue of units in the scheme to the vendor, and
  - (c) immediately after the acquisition the vendor is the only unit holder of the scheme.]

#### Textual Amendments

**F32** S. 64A inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 18](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### 65 Incorporation of limited liability partnership

- (1) A transaction by which a chargeable interest is transferred by a person (“the transferor”) to a limited liability partnership in connection with its incorporation is exempt from charge if the following three conditions are met.
- (2) The first condition is that the effective date of the transaction is not more than one year after the date of incorporation of the limited liability partnership.
- (3) The second condition is that at the relevant time the transferor—
  - (a) is a partner in a partnership comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), or
  - (b) holds the interest transferred as nominee or bare trustee for one or more of the partners in such a partnership.
- (4) The third condition is that—
  - (a) the proportions of the interest transferred to which the persons mentioned in subsection (3)(a) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or
  - (b) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to any duty or tax.
- (5) In this section “the relevant time” means—
  - (a) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after he acquired it, and
  - (b) in any other case, immediately before its incorporation.

*Status: Point in time view as at 18/04/2005.*

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- (6) In this section “limited liability partnership” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c. 12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N. I.)).

#### **Commencement Information**

**I43** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## **66 Transfers involving public bodies**

- (1) A land transaction entered into on, or in consequence of, or in connection with, a reorganisation effected by or under a statutory provision is exempt from charge if the purchaser and vendor are both public bodies.
- (2) The Treasury may by order provide that a land transaction that is not entered into as mentioned in subsection (1) is exempt from charge if—
- (a) the transaction is effected by or under a prescribed statutory provision, and
  - (b) either the purchaser or the vendor is a public body.
- In this subsection “prescribed” means prescribed in an order made under this subsection.
- (3) A “reorganisation” means changes involving—
- (a) the establishment, reform or abolition of one or more public bodies,
  - (b) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies, or
  - (c) the transfer of functions from one public body to another.
- (4) The following are public bodies for the purposes of this section—

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### ***Government, Parliament etc***

A Minister of the Crown

The Scottish Ministers

A Northern Ireland department

The National Assembly for Wales

The Corporate Officer of the House of Lords

The Corporate Officer of the House of Commons

The Scottish Parliamentary Corporate Body

The Northern Ireland Assembly Commission

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### ***Local government: England***

A county or district council constituted under section 2 of the Local Government Act 1972 (c. 70)

The council of a London borough

The Greater London Authority

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The Common Council of the City of London

The Council of the Isles of Scilly

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***Local government: Wales***

A county or county borough council constituted under section 21 of the Local Government Act 1972

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***Local government: Scotland***

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)

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***Local government: Northern Ireland***

A district council within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))

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***Health: England and Wales***

A Strategic Health Authority or Health Authority established under section 8 of the National Health Service Act 1977 (c. 49)

A Special Health Authority established under section 11 of that Act

A Primary Care Trust established under section 16A of that Act

A Local Health Board established under section 16BA of that Act

A National Health Service Trust established under section 5 of the National Health Service and Community Care Act 1990 (c. 19)

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***Health: Scotland***

The Common Services Agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c. 29)

A Health Board established under section 2(1)(a) of that Act

A National Health Service Trust established under section 12A(1) of that Act

A Special Health Board established under section 2(1)(b) of that Act

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***Health: Northern Ireland***

A Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))

A Health and Social Services Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

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***Other planning authorities***

Any other authority that—

- (a) is a local planning authority within the meaning of the Town and Country Planning Act 1990 (c. 8), or
  - (b) is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c. 8)
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### ***Statutory bodies***

A body (other than a company) that is established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision

### ***Prescribed persons***

A person prescribed for the purposes of this section by Treasury order

- (5) In this section references to a public body include—
- (a) a company in which all the shares are owned by such a body, and
  - (b) a wholly-owned subsidiary of such a company.

#### **Commencement Information**

**I44** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, [Sch. 19 para. 1\(1\)](#)

## **67 Transfer in consequence of reorganisation of parliamentary constituencies**

- (1) Where—
- (a) an Order in Council is made under the Parliamentary Constituencies Act 1986 (c. 56) (orders specifying new parliamentary constituencies), and
  - (b) an existing local constituency association transfers a chargeable interest to—
    - (i) a new association that is a successor to the existing association, or
    - (ii) a related body that as soon as practicable transfers the interest or right to a new association that is a successor to the existing association,the transfer, or where paragraph (b)(ii) applies each of the transfers, is exempt from charge.
- (2) In relation to any such order as is mentioned in subsection (1)(a)—
- (a) “the date of the change” means the date on which the order comes into operation;
  - (b) “former parliamentary constituency” means an area that, for the purposes of parliamentary elections, was a constituency immediately before that date but is no longer such a constituency after that date;
  - (c) “new parliamentary constituency” means an area that, for the purposes of parliamentary elections, is such a constituency after that date but was not such a constituency immediately before that date.
- (3) In relation to the date of the change—
- (a) “existing local constituency association” means a local constituency association whose area was the same, or substantially the same, as the area of a former parliamentary constituency or two or more such constituencies, and
  - (b) “new association” means a local constituency association whose area is the same, or substantially the same, as that of a new parliamentary constituency or two or more such constituencies.
- (4) In this section—
- (a) “local constituency association” means an unincorporated association (whether described as an association, a branch or otherwise) whose primary

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purpose is to further the aims of a political party in an area that at any time is or was the same or substantially the same as the area of a parliamentary constituency or two or more parliamentary constituencies, and

(b) “related body”, in relation to such an association, means a body (whether corporate or unincorporated) that is an organ of the political party concerned.

(5) For the purposes of this section a new association is a successor to an existing association if any part of the existing association’s area is comprised in the new association’s area.

**Commencement Information**

**I45** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**68 Charities relief**

(1) Schedule 8 provides for relief from stamp duty land tax for acquisitions by charities.

(2) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return.

**Commencement Information**

**I46** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**69 Acquisition by bodies established for national purposes**

A land transaction is exempt from charge if the purchaser is any of the following—

- (a) the Historic Buildings and Monuments Commission for England;
- (b) the National Endowment for Science, Technology and the Arts;
- (c) the Trustees of the British Museum;
- (d) the Trustees of the National Heritage Memorial Fund;
- (e) the Trustees of the Natural History Museum.

**Commencement Information**

**I47** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**70 Right to buy transactions, shared ownership leases etc**

Schedule 9 makes provision for relief in the case of right to buy transactions, shared ownership leases and certain related transactions.

**Commencement Information**

**I48** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)



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## 71 Certain acquisitions by registered social landlord

- (1) A land transaction under which the purchaser is a registered social landlord is exempt from charge if—
- (a) the registered social landlord is controlled by its tenants,
  - (b) the vendor is a qualifying body, or
  - (c) the transaction is funded with the assistance of a public subsidy.
- (2) The reference in subsection (1)(a) to a registered social landlord “controlled by its tenants” is to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.
- “Board member”, in relation to a registered social landlord, means—
- (a) if it is a company, a director of the company,
  - (b) if it is a body corporate whose affairs are managed by its members, a member,
  - (c) if it is body of trustees, a trustee,
  - (d) if it is not within paragraphs (a) to (c), a member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord.
- (3) In subsection (1)(b) “qualifying body” means—
- (a) a registered social landlord,
  - (b) a housing action trust established under Part 3 of the Housing Act 1988 (c. 50),
  - (c) a principal council within the meaning of the Local Government Act 1972 (c. 70),
  - (d) the Common Council of the City of London,
  - (e) the Scottish Ministers,
  - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
  - (g) Scottish Homes,
  - (h) the Department for Social Development in Northern Ireland, or
  - (i) the Northern Ireland Housing Executive.
- (4) In subsection (1)(c) “public subsidy” means any grant or other financial assistance—
- (a) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (c. 39) (application of money by distributing bodies),
  - (b) under section 18 of the Housing Act 1996 (c. 52) (social housing grants),
  - (c) under section 126 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) (financial assistance for regeneration and development),
  - (d) under section 2 of the Housing (Scotland) Act 1988 (c. 43) (general functions of the Scottish Ministers), or
  - (e) under Article 33 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)).

### Commencement Information

**I49** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, [Sch. 19 para. 1\(1\)](#)

*Status: Point in time view as at 18/04/2005.*

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### **[<sup>F33</sup>71A Alternative property finance: land sold to financial institution and leased to individual**

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which—
  - (a) the institution purchases a major interest in land or an undivided share of a major interest in land (“the first transaction”),
  - (b) where the interest purchased is an undivided share, the major interest is held on trust for the institution and the individual as beneficial tenants in common,
  - (c) the institution (or the person holding the land on trust as mentioned in paragraph (b)) grants to the individual out of the major interest a lease (if the major interest is freehold) or a sub-lease (if the major interest is leasehold) (“the second transaction”), and
  - (d) the institution and the individual enter into an agreement under which the individual has a right to require the institution or its successor in title to transfer to the individual (in one transaction or a series of transactions) the whole interest purchased by the institution under the first transaction.
- (2) The first transaction is exempt from charge if the vendor is—
  - (a) the individual, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.
- (3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).
- (4) Any transfer to the individual that results from the exercise of the right mentioned in subsection (1)(d) (“a further transaction”) is exempt from charge if—
  - (a) the provisions of this Part relating to the first and second transactions are complied with, and
  - (b) at all times between the second transaction and the further transaction—
    - (i) the interest purchased under the first transaction is held by a financial institution so far as not transferred by a previous further transaction, and
    - (ii) the lease or sub-lease granted under the second transaction is held by the individual.
- (5) The agreement mentioned in subsection (1)(d) is not to be treated—
  - (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 44(5) does not apply), or
  - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if—
  - (a) the individual enters into the arrangement, or holds the lease or sub-lease, as trustee and any beneficiary of the trust is not an individual, or
  - (b) the individual enters into the arrangements, or holds the lease or sub-lease, as partner and any of the other partners is not an individual.
- (7) A further transaction that is exempt from charge by virtue of subsection (4) is not a notifiable transaction unless the transaction involves the transfer to the individual of

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the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

- (8) In this section “financial institution” means—
- (a) a bank within the meaning of section 840A of the Taxes Act 1988,
  - (b) a building society within the meaning of the Building Societies Act 1986, or
  - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b).

For the purposes of paragraph (c) a company is a wholly-owned subsidiary of a bank or building society if it has no members except the parent and the parent's wholly-owned subsidiaries or persons acting on behalf of the parent or the parent's wholly-owned subsidiaries.

- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.
- (10) This section does not apply in relation to land in Scotland.]

#### Textual Amendments

**F33** S. 71A inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 2](#)

## 72 **Alternative property finance [<sup>F34</sup>in Scotland]: land sold to financial institution and leased to individual**

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which the institution—
- (a) purchases a major interest in land (“the first transaction”),
  - (b) grants to the individual out of that interest a lease (if the interest acquired is [<sup>F35</sup>the interest of the owner]) or a sub-lease (if the interest acquired is [<sup>F36</sup>the tenant's right over or interest in a property subject to a lease]) (“the second transaction”), and
  - (c) enters into an agreement under which the individual has a right to require the institution <sup>F37</sup>... to transfer the major interest purchased by the institution under the first transaction.
- (2) The first transaction is exempt from charge if the vendor is—
- (a) the individual, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.
- (3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).
- (4) A transfer to the individual that results from the exercise of the right mentioned in subsection (1)(c) (“the third transaction”) is exempt from charge if—
- (a) the provisions of this Part relating to the first and second transactions are complied with, and
  - (b) at all times between the second and third transactions—

*Status: Point in time view as at 18/04/2005.*

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- (i) the interest purchased under the first transaction is held by a financial institution, and
  - (ii) the lease or sub-lease granted under the second transaction is held by the individual.
- (5) The agreement mentioned in subsection (1)(c) is not to be treated—
- (a) as substantially performed unless and until the third transaction is entered into (and accordingly section 44(5) does not apply), or
  - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if—
- (a) the individual enters into the arrangement, or holds the lease or sub-lease, as trustee and any beneficiary of the trust is not an individual, or
  - (b) the individual enters into the arrangements, or holds the lease or sub-lease, as partner and any of the other partners is not an individual.

[<sup>F38</sup>(7) In this section “financial institution” has the same meaning as in section 71A.]

<sup>F39</sup>(8) .....

- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.

[<sup>F40</sup>(10) This section applies only in relation to land in Scotland.]

#### Textual Amendments

- F34** Words in s. 72 heading inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(6\)](#)
- F35** Words in s. 72(1)(b) substituted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(2\)\(a\)\(i\)](#)
- F36** Words in s. 72(1)(b) substituted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(2\)\(a\)\(ii\)](#)
- F37** Words in s. 72(1)(c) repealed (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(2\)\(b\)](#), [Sch. 11 Pt. 3\(1\)](#)
- F38** S. 72(7) substituted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(3\)](#)
- F39** S. 72(8) repealed (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(4\)](#), [Sch. 11 Pt. 3\(1\)](#)
- F40** S. 72(10) inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 3\(5\)](#)

#### Commencement Information

- I50** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

#### [<sup>F41</sup>72A **Alternative property finance in Scotland: land sold to financial institution and individual in common**

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which—
- (a) the institution and the individual purchase a major interest in land as owners in common (“the first transaction”),

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- (b) the institution and the individual enter into an agreement under which the individual has a right to occupy the land exclusively ( “the second transaction”), and
  - (c) the institution and the individual enter into an agreement under which the individual has a right to require the institution to transfer to the individual (in one transaction or a series of transactions) the whole interest purchased under the first transaction.
- (2) The first transaction is exempt from charge if the vendor is—
  - (a) the individual, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.
- (3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).
- (4) Any transfer to the individual that results from the exercise of the right mentioned in subsection (1)(c) (“a further transaction”) is exempt from charge if—
  - (a) the provisions of this Part relating to the first transaction are complied with, and
  - (b) at all times between the first and the further transaction—
    - (i) the interest purchased under the first transaction is held by a financial institution and the individual as owners in common, and
    - (ii) the land is occupied by the individual under the agreement mentioned in subsection (1)(b).
- (5) The agreement mentioned in subsection (1)(c) is not to be treated—
  - (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 44(5) does not apply), or
  - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if the individual enters into the arrangements, or occupies the land, as partner and any of the other partners is not an individual.
- (7) A further transaction that is exempt from charge by virtue of subsection (4) is not a notifiable transaction unless the transaction involves the transfer to the individual of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.
- (8) In this section “financial institution” has the same meaning as in section 71A.
- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.
- (10) This section applies only in relation to land in Scotland.]

*Status: Point in time view as at 18/04/2005.*

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### Textual Amendments

**F41** S. 72A inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 4](#)

## 73 Alternative property finance: land sold to financial institution and re-sold to individual

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which—
  - (a) the institution—
    - (i) purchases a major interest in land (“the first transaction”), and
    - (ii) sells that interest to the individual (“the second transaction”), and
  - (b) the individual grants the institution a legal mortgage over that interest.
- (2) The first transaction is exempt from charge if the vendor is—
  - (a) the individual concerned, or
  - (b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in [<sup>F42</sup>section 71A(1), 72(1) or 72A(1)] entered into between it and the individual.
- (3) The second transaction is exempt from charge if the financial institution complies with the provisions of this Part relating to the first transaction (including the payment of any tax chargeable).
- (4) This section does not apply if—
  - (a) the individual enters into the arrangements as trustee and any beneficiary of the trust is not an individual, or
  - (b) the individual enters into the arrangements as partner and any of the other partners is not an individual.
- (5) In this section—
  - (a) “financial institution” has the same meaning as in [<sup>F43</sup>section 71A];
  - (b) “legal mortgage”—
    - (i) in relation to land in England or Wales, means a legal mortgage as defined in section 205(1)(xvi) of the Law of Property Act 1925 (c. 20);
    - (ii) in relation to land in Scotland, means a standard security;
    - (iii) in relation to land in Northern Ireland, means a mortgage by conveyance of a legal estate or by demise or sub-demise or a charge by way of legal mortgage.
- (6) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.

### Textual Amendments

**F42** Words in s. 73(2)(b) substituted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 5\(2\)](#)

**F43** Words in s. 73(5)(a) substituted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 5\(3\)](#)

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#### **Commencement Information**

**I51** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### **74 Collective enfranchisement by leaseholders**

- (1) This section applies where a chargeable transaction is entered into by an RTE company in pursuance of a right of collective enfranchisement.
- (2) In that case, the rate of tax is determined by reference to the fraction of the relevant consideration produced by dividing the total amount of that consideration by the number of flats in respect of which the right of collective enfranchisement is being exercised.
- (3) The tax chargeable is then determined by applying that rate to the chargeable consideration for the transaction.
- (4) In this section—
  - (a) “RTE company” has the meaning given by section 4A of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28);
  - (b) “right of collective enfranchisement” means the right exercisable by an RTE company under—
    - (i) Part 1 of the Landlord and Tenant Act 1987 (c. 31), or
    - (ii) Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and
  - (c) “flat” has the same meaning as in the Act conferring the right of collective enfranchisement.
- (5) References in this section to the relevant consideration have the same meaning as in section 55.

#### **Commencement Information**

**I52** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### **75 Crofting community right to buy**

- (1) This section applies where—
  - (a) a chargeable transaction is entered into in pursuance of the crofting community right to buy, and
  - (b) under that transaction two or more crofts are being bought.
- (2) In that case, the rate of tax is determined by reference to the fraction of the relevant consideration produced by dividing the total amount of that consideration by the number of crofts being bought.
- (3) The tax chargeable is then determined by applying that rate to the amount of the chargeable consideration for the transaction in question.
- (4) In this section “crofting community right to buy” means the right exercisable by a crofting community body under Part 3 of the Land Reform (Scotland) Act 2003 (asp 2).

*Status: Point in time view as at 18/04/2005.*

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- (5) References in this section to the relevant consideration have the same meaning as in section 55.

#### Commencement Information

**I53** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### *Returns and other administrative matters*

#### 76 Duty to deliver land transaction return

- (1) In the case of every notifiable transaction the purchaser must deliver a return (a “land transaction return”) to the Inland Revenue before the end of the period of 30 days after the effective date of the transaction.
- (2) The Inland Revenue may by regulations amend subsection (1) so as to require a land transaction return to be delivered before the end of such shorter period after the effective date of the transaction as may be prescribed or, if the regulations so provide, on that date.
- (3) A land transaction return in respect of a chargeable transaction must—
  - (a) include an assessment (a “self-assessment”) of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
  - (b) be accompanied by payment of the amount chargeable.

#### Commencement Information

**I54** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

#### 77 Notifiable transactions

- (1) This section specifies what land transactions are notifiable.
  - (2) The grant of a lease is notifiable if—
    - (a) the lease is for a <sup>F44</sup>... term of seven years or more and is granted for chargeable consideration, or
    - (b) the lease is for a <sup>F45</sup>... term of less than seven years and either—
      - (i) the chargeable consideration consists or includes a premium in respect of which tax is chargeable at a rate of 1% or higher, or
      - (ii) the chargeable consideration consists of or includes rent in respect of which tax is chargeable at a rate of 1% or higher,
 or, in either case, in respect of which tax would be so chargeable but for a relief.
- <sup>F46</sup>(2A) The assignment of a lease is notifiable if—
- (a) the grant of the lease, if occurring at the time of the assignment, would be notifiable, or



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- (b) there is consideration for the assignment that is chargeable at a rate of 1% or higher, or would be so chargeable but for a relief.]
- (3) Any other acquisition of a major interest in land is notifiable [<sup>F47</sup>unless—
- (a) the acquisition is exempt from charge under Schedule 3, or
- (b) the land consists entirely of residential property and the chargeable consideration for the acquisition, together with that of any linked transactions, is less than £1,000].
- (4) An acquisition of a chargeable interest other than a major interest in land is notifiable if there is chargeable consideration in respect of which tax is chargeable at a rate of 1% or higher, or in respect of which tax would be so chargeable but for a relief.
- [<sup>F48</sup>(5) A land transaction that a person is treated as entering into by virtue of subsection (3) of section 44A (contract and conveyance to third party) is notifiable.]
- [<sup>F49</sup>(6) In this section “relief” does not include any exemption from charge under Schedule 3.]

#### Textual Amendments

- F44** Word in s. 77(2)(a) repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F45** Word in s. 77(2)(b) repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F46** S. 77(2A) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 298\(2\)\(a\)](#)
- F47** Words in s. 77(3) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 298\(2\)\(b\)](#)
- F48** S. 77(5) inserted (with effect in accordance with Sch. 39 para. 13(1) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 4\(3\)](#)
- F49** S. 77(6) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 298\(2\)\(c\)](#)

#### Commencement Information

- I55** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 78 Returns, enquiries, assessments and related matters

- (1) Schedule 10 has effect with respect to land transaction returns, assessments and related matters.
- (2) In that Schedule—
- Part 1 contains general provisions about returns;
  - Part 2 imposes a duty to keep and preserve records;
  - Part 3 makes provision for enquiries into returns;
  - Part 4 provides for a Revenue determination if no return is delivered;
  - Part 5 provides for Revenue assessments;
  - Part 6 provides for relief in case of excessive assessment; and
  - Part 7 provides for appeals against Revenue decisions on tax.

*Status: Point in time view as at 18/04/2005.*

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- (3) The Treasury may by regulations make such amendments of that Schedule, and such consequential amendments of any other provisions of this Part, as appear to them to be necessary or expedient from time to time.

#### Commencement Information

**I56** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 79 Registration of land transactions etc

- (1) A land transaction to which this section applies, or (as the case may be) a document effecting or evidencing a land transaction to which this section applies, shall not be registered, recorded or otherwise reflected in an entry made—

- (a) in England and Wales, in the register of title maintained by the Chief Land Registrar,
- (b) in Scotland, in any register maintained by the Keeper of the Registers of Scotland [<sup>F50</sup>(other than the Register of Community Interests in Land)], or
- (c) in Northern Ireland, in any register maintained by the Land Registry of Northern Ireland or in the Registry of Deeds for Northern Ireland,

unless there is produced, together with the relevant application, a certificate as to compliance with the requirements of this Part in relation to the transaction.

This does not apply where the entry is required to be made without any application or so far as the entry relates to an interest or right other than the chargeable interest acquired by the purchaser under the land transaction that gives rise to the application.

- (2) This section applies to every land transaction [<sup>F51</sup>other than a transaction treated as taking place—

- (a) under subsection (4) of section 44 (contract and conveyance) or under that section as it applies [<sup>F52</sup>by virtue of—
  - (i) section 45 (contract and conveyance: effect of transfer of rights), or
  - (ii) paragraph 12B of Schedule 17A (assignment of agreement for lease),]
- (b) under subsection (3) of section 44A (contract providing for conveyance to third party) or under that section as it applies by virtue of section 45A (contract providing for conveyance to third party: effect of transfer of rights).]

- [<sup>F53</sup>(c) under paragraph 12A(2) or 19(3) of Schedule 17A (agreement for lease), or
- (d) under paragraph 13 (increase of rent) or 15A (reduction of rent or term) of that Schedule.]

In this subsection “contract” includes any agreement and “conveyance” includes any instrument.

- [<sup>F54</sup>(2A) Subsection (1), so far as relating to the entry of a notice under section 34 of the Land Registration Act 2002 or section 38 of the Land Registration Act (Northern Ireland) 1970 (notice in respect of interest affecting registered land), does not apply where the land transaction in question is the variation of a lease.]

- (3) The certificate [<sup>F55</sup>referred to in subsection (1)] must be either—

- (a) a certificate by the Inland Revenue (a “Revenue certificate”) that a land transaction return has been delivered in respect of the transaction, or

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- (b) a certificate by the purchaser (a “self-certificate”) that no land transaction return is required in respect of the transaction.
- (4) The Inland Revenue may make provision by regulations about Revenue certificates. The regulations may, in particular—
- (a) make provision as to the conditions to be met before a certificate is issued;
  - (b) prescribe the form and content of the certificate;
  - (c) make provision about the issue of duplicate certificates if the original is lost or destroyed;
  - (d) provide for the issue of multiple certificates where a return is made relating to more than one transaction.
- (5) Schedule 11 makes further provision about self-certificates.
- In that Schedule—
- Part 1 contains general provisions,
  - Part 2 imposes a duty to keep and preserve records, and
  - Part 3 makes provision for enquiries into self-certificates.
- (6) The registrar (in Scotland, the Keeper of the Registers of Scotland)—
- (a) shall allow the Inland Revenue to inspect any certificates or self-certificates produced to him under this section and in his possession, and
  - (b) may enter into arrangements for affording the Inland Revenue other information and facilities for verifying that the requirements of this Part have been complied with.

#### Textual Amendments

- F50** Words in s. 79(1)(b) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 298\(3\)](#)
- F51** Words in s. 79(2) substituted (with effect in accordance with Sch. 39 para. 13 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 39 para. 7](#)
- F52** Words in s. 79(2)(a) substituted (with effect in accordance with s. 297(10) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 297\(5\)\(a\)](#)
- F53** S. 79(2)(c)(d) inserted (with effect in accordance with s. 297(10) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 297\(5\)\(b\)](#)
- F54** S. 79(2A) inserted (with effect in accordance with s. 297(10) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 297\(6\)](#)
- F55** Words in s. 79(3) inserted (with effect in accordance with s. 297(10) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 297\(7\)](#)

#### Commencement Information

- I57** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 80 Adjustment where contingency ceases or consideration is ascertained

- (1) Where section 51 (contingent, uncertain or unascertained consideration) applies in relation to a transaction and—
- (a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or

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- (b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained,
- the following provisions have effect to require or permit reconsideration of how this Part applies to the transaction (and to any transaction in relation to which it is a linked transaction).
- (2) If the effect of the new information is that a transaction becomes notifiable<sup>F56</sup> ..., or that additional tax is payable in respect of a transaction or that tax is payable where none was payable before—
- (a) the purchaser must make a return to the Inland Revenue within 30 days,
  - (b) the return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (3) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this section as they apply to a [<sup>F57</sup>return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date of the event as a result of which the return is required].
- (4) If the effect of the new information is that less tax is payable in respect of a transaction than has already been paid,
- [<sup>F58</sup>(a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
  - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid].
- [<sup>F59</sup>(5) This section does not apply so far as the consideration consists of rent (see paragraph 8 of Schedule 17A).]

#### Textual Amendments

- F56** Words in s. 80(2) repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F57** Words in s. 80(3) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(4\)\(a\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F58** Words in s. 80(4) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 299\(4\)](#)
- F59** S. 80(5) added (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(4\)\(b\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land](#)

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Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816), see Sch. 39 para. 14)

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

**C1** S. 80 excluded (1.12.2003) by [The Stamp Duty Land Tax \(Administration\) Regulations 2003](#) (S.I. 2003/2837), regs. 1, 26

#### Commencement Information

**I58** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 81 Further return where relief withdrawn

(1) Where relief is withdrawn to any extent under—

[<sup>F60</sup>(za) paragraph 11 of Schedule 6A (relief for certain acquisitions of residential property),]

- (a) Part 1 of Schedule 7 (group relief),
- (b) Part 2 of that Schedule (reconstruction or acquisition relief), or
- (c) Schedule 8 (charities relief),

the purchaser must deliver a further return before the end of the period of 30 days after the date on which the disqualifying event occurred.

(2) The return must—

- (a) include a self-assessment of the amount of tax chargeable, and
- (b) be accompanied by payment of the tax chargeable.

(3) The provisions of Schedule 10 (returns, assessments and other matters) apply to a return under this section as they apply to a [<sup>F61</sup>return under section 76 (general requirement to deliver land transaction return)], with the following adaptations—

- (a) references to the transaction to which the return relates shall be read as references to the disqualifying event;
- (b) references to the effective date of the transaction shall be read as references to the date on which the disqualifying event occurs.

(4) In this section “the disqualifying event” means—

[<sup>F62</sup>(za) in relation to the withdrawal of relief under Schedule 6A, an event mentioned in paragraph (a), (b) or (c) of paragraph 11(2), (3), (4) or (5) of that Schedule;]

- (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor within the meaning of Part 1 of Schedule 7;
- (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of Schedule 7 or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;
- (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 2(3) [<sup>F63</sup>or 3(2)] of Schedule 8.

#### Textual Amendments

**F60** S. 81(1)(za) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004](#) (c. 12), [Sch. 39 para. 17\(3\)\(a\)](#) (which amending provision re-enacts, subject to certain

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changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

**F61** Words in s. 81(3) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 19\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

**F62** S. 81(4)(za) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 17\(3\)\(b\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

**F63** Words in s. 81(4)(c) inserted (with effect in accordance with s. 302(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 302\(5\)](#)

#### Commencement Information

**I59** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### [<sup>F64</sup>81A Return or further return in consequence of later linked transaction

- (1) Where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that the earlier transaction becomes notifiable, or that additional tax is payable in respect of the earlier transaction or that tax is payable in respect of the earlier transaction where none was payable before—
  - (a) the purchaser under the earlier transaction must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the effective date of the later transaction,
  - (b) the return must include a self-assessment of the amount of tax chargeable as a result of the later transaction,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the earlier transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (2) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this section as they apply to a return under section 76 (general requirement to deliver land transaction return), with the following adaptations—
  - (a) in paragraph 5 (formal notice to deliver return), the requirement in subparagraph (2)(a) that the notice specify the transaction to which it relates shall be read as requiring both the earlier and later transactions to be specified;
  - (b) references to the effective date of the transaction to which the return relates shall be read as references to the effective date of the later transaction.
- (3) This section does not affect any requirement to make a return under section 76 in respect of the later transaction.]

#### Textual Amendments

**F64** S. 81A inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 19\(1\)](#) (which amending provision re-enacts, subject to certain changes, a

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corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

## **[<sup>F65</sup>81B Declaration by person authorised to act on behalf of individual**

- (1) This section applies to the declaration mentioned in paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is correct and complete).
- (2) The requirement that an individual make such a declaration (alone or jointly with others) is treated as met if a declaration to that effect is made by a person authorised to act on behalf of that individual in relation to the matters to which the return or certificate relates.
- (3) For the purposes of this section a person is not regarded as authorised to act on behalf of an individual unless he is so authorised by a power of attorney in writing, signed by that individual.

In this subsection as it applies in Scotland “power of attorney” includes factory and commission.

- (4) Nothing in this section affects the making of a declaration in accordance with—
  - (a) section 100(2) (persons through whom a company acts), or
  - (b) section 106 (1) or (2) (person authorised to act on behalf of incapacitated person or minor).]

### **Textual Amendments**

**F65** S. 81B inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 20](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

## **82 Loss or destruction of, or damage to, return etc**

- (1) This section applies where—
  - (a) a return delivered to the Inland Revenue, or
  - (b) any other document relating to tax made by or provided to the Inland Revenue, has been lost or destroyed, or been so defaced or damaged as to be illegible or otherwise useless.
- (2) The Inland Revenue may treat the return as not having been delivered or the document as not having been made or provided.
- (3) Anything done on that basis shall be as valid and effective for all purposes as it would have been if the return had not been made or the document had not been made or provided.
- (4) But if as a result a person is charged with tax and he proves to the satisfaction of the General or Special Commissioners having jurisdiction in the case that he has already paid tax in respect of the transaction in question, relief shall be given, by reducing the charge or by repayment as the case may require.

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#### Commencement Information

**I60** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### [<sup>F66</sup>82A Claims not included in returns

Schedule 11A has effect with respect to claims not included in returns.]

#### Textual Amendments

**F66** S. 82A inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. 299(2)

### 83 Formal requirements as to assessments, penalty determinations etc

- (1) An assessment, determination, notice or other document required to be used in assessing, charging, collecting and levying tax or determining a penalty under this Part must be in accordance with the forms prescribed from time to time by the Board and a document in the form so prescribed and supplied or approved by the Board is valid and effective.
- (2) Any such assessment, determination, notice or other document purporting to be made under this Part is not ineffective—
  - (a) for want of form, or
  - (b) by reason of any mistake, defect or omission in it,
 if it is substantially in conformity with this Part and its intended effect is reasonably ascertainable by the person to whom it is directed.
- (3) The validity of an assessment or determination is not affected—
  - (a) by any mistake in it as to—
    - (i) the name of a person liable, or
    - (ii) the amount of the tax charged, or
  - (b) by reason of any variance between the notice of assessment or determination and the assessment or determination itself.

#### Commencement Information

**I61** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 84 Delivery and service of documents

- (1) A notice or other document to be served under this Part on a person may be delivered to him or left at his usual or last known place of abode.
- (2) A notice or other document to be given, served or delivered under this Part may be served by post.
- (3) For the purposes of section 7 of the Interpretation Act 1978 (c. 30) (general provisions as to service by post) any such notice or other document to be given or delivered to, or served on, any person by the Inland Revenue is properly addressed if it is addressed to that person—



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- (a) in the case of an individual, at his usual or last known place of residence or his place of business;
- (b) in the case of a company—
  - (i) at its principal place of business,
  - (ii) if a liquidator has been appointed, at his address for the purposes of the liquidation, or
  - (iii) at any place prescribed by regulations made by the Inland Revenue.

**Commencement Information**

**I62** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Liability for and payment of tax*

**85 Liability for tax**

- (1) The purchaser is liable to pay the tax in respect of a chargeable transaction.
- (2) As to the liability of purchasers acting jointly see—
  - section 103(2)(c) (joint purchasers);
  - Part 2 of Schedule 15 (partners); and
  - paragraph 5 of Schedule 16 (trustees).

**Commencement Information**

**I63** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**86 Payment of tax**

- (1) Tax payable in respect of a land transaction must be paid at the same time that a land transaction return is made in respect of the transaction.
- (2) Tax payable as a result of the withdrawal of relief under—
  - (a) Part 1 of Schedule 7 (group relief),
  - (b) Part 2 of that Schedule (reconstruction or acquisition relief), or
  - (c) Schedule 8 (charities relief),must be paid at the same time that a return is made in respect of the withdrawal (see section 81).
- (3) Tax payable as a result of the amendment of a return must be paid forthwith or, if the amendment is made before the filing date for the return, not later than that date.
- (4) Tax payable in accordance with a determination or assessment by the Inland Revenue must be paid within 30 days after the determination or assessment is issued.
- (5) The above provisions are subject to—
  - (a) section 90 (application to defer payment of tax in case of contingent or uncertain consideration), and
  - (b) paragraphs 39 and 40 of Schedule 10 (postponement of payment pending determination of appeal).

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- (6) This section does not affect the date from which interest is payable (as to which, see section 87).

#### Commencement Information

**I64** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 87 Interest on unpaid tax

- (1) Interest is payable on the amount of any unpaid tax from the end of the period of 30 days after the relevant date until the tax is paid.
- (2) The Inland Revenue may by regulations amend subsection (1) so as to make interest run from the end of such shorter period after the relevant date as may be prescribed or, if the regulations so provide, from that date.
- (3) For the purposes of this section “the relevant date” is—
- (a) in the case of an amount payable because relief is withdrawn under—
    - [<sup>F67</sup>(ia) Schedule 6A (relief for certain acquisitions of residential property),]
    - (i) Part 1 of Schedule 7 (group relief),
    - (ii) Part 2 of that Schedule (reconstruction or acquisition relief), or
    - (iii) Schedule 8 (charities relief),
 the date of the disqualifying event;
  - [<sup>F68</sup>(aa) in the case of an amount payable under section 81A in respect of an earlier transaction because of the effect of a later linked transaction, the effective date of the later transaction;]
  - [<sup>F69</sup>(ab) in the case of an amount payable under paragraph 3(3) or 4(3) of Schedule 17A (leases that continue after a fixed term and treatment of leases for an indefinite term), the day on which the lease becomes treated as being for a longer fixed term;]
  - (b) in the case of a deferred payment under section 90, the date when the deferred payment is due;
  - (c) in any other case, the effective date of the transaction.
- (4) In subsection (3)(a) “the disqualifying event” means—
- [<sup>F70</sup>(za) in relation to the withdrawal of relief under Schedule 6A an event mentioned in paragraph (a), (b) or (c) of paragraph 11(2), (3), (4) or (5) of that Schedule;]
  - (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Part 1 of Schedule 7);
  - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of that Schedule or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;
  - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 2(3) [<sup>F71</sup>or 3(2)] of Schedule 8.
- (5) Subsection (3)(c) applies in a case within section 51 (contingent, uncertain or unascertained consideration) if payment is not deferred under section 90, with the

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result that interest on any tax payable under section 80 (adjustment where contingency ceases or consideration is ascertained) runs from the effective date of the transaction.

- (6) If an amount is lodged with the Inland Revenue in respect of the tax, the amount on which interest is payable is reduced by that amount.
- (7) Interest is calculated at the rate applicable under section 178 of the Finance Act 1989 (c. 26) (power of Treasury to prescribe rates of interest).

#### Textual Amendments

- F67** S. 87(3)(a)(ia) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 17\(4\)\(a\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F68** S. 87(3)(aa) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 19\(3\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F69** S. 87(3)(ab) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(5\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F70** S. 87(4)(za) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 17\(4\)\(b\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F71** Words in s. 87(4)(c) inserted (with effect in accordance with s. 302(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 302\(6\)](#)

#### Commencement Information

- I65** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 88 Interest on penalties

A penalty under this Part shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date it is determined until payment.

#### Commencement Information

- I66** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 89 Interest on repayment of tax overpaid etc

- (1) A repayment by the Inland Revenue to which this section applies shall be made with interest at the rate applicable under section 178 of the Finance Act 1989 for the period between the relevant time (as defined below) and the date when the order for repayment is issued.
- (2) This section applies to—

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- (a) any repayment of tax, and
- (b) any repayment of a penalty under this Part.

In that case the relevant time is the date on which the payment of tax or penalty was made.

- (3) This section also applies to a repayment by the Inland Revenue of an amount lodged with them in respect of the tax payable in respect of a transaction. In that case the relevant time is the date on which the amount was lodged with them.
- (4) No interest is payable under this section in respect of a payment made in consequence of an order or judgment of a court having power to allow interest on the payment.
- (5) Interest paid to any person under this section is not income of that person for any tax purposes.

#### **Commencement Information**

**I67** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## **90 Application to defer payment in case of contingent or uncertain consideration**

- (1) The purchaser may apply to the Inland Revenue to defer payment of tax in a case where the amount payable depends on the amount or value of chargeable consideration that—
  - (a) at the effective date of the transaction is contingent or uncertain, and
  - (b) falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than six months after the effective date of the transaction.
- (2) The Inland Revenue may make provision by regulations for carrying this section into effect.
- (3) The regulations may in particular—
  - (a) specify when an application is to be made;
  - (b) impose requirements as to the form and contents of an application;
  - (c) require the applicant to provide such information as the Inland Revenue may reasonably require for the purposes of determining whether to accept an application;
  - (d) specify the grounds on which an application may be refused;
  - (e) specify the procedure for reaching a decision on an application;
  - (f) make provision for postponing payment of tax when an application has been made;
  - (g) provide for an appeal to the General or Special Commissioners against a refusal to accept an application, and make provision in relation to such an appeal corresponding to any provision made in relation to appeals under Part 7 of Schedule 10 (appeals against Revenue decisions on tax);
  - (h) provide for the effect of accepting an application;
  - (i) require the purchaser to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.

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- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this section as they apply to a land transaction return.
- (5) An application under this section does not affect the purchaser's obligations as regards payment of tax in respect of chargeable consideration that has already been paid or provided or is not contingent and whose amount is ascertained or ascertainable at the time the application is made.

This applies as regards both the time of payment and the calculation of the amount payable.

- (6) Regulations under this section may provide that where—
  - (a) a payment is made as mentioned in subsection (5), and
  - (b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment,section 80 (adjustment where contingency ceases or consideration is ascertained) does not apply in relation to the payment and, instead, any necessary adjustment shall be made in accordance with the regulations.

[<sup>F72</sup>(7) This section does not apply so far as the consideration consists of rent.]

#### Textual Amendments

**F72** S. 90(7) added (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(6\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

#### Commencement Information

**I68** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 91 Collection and recovery of tax etc

- (1) The provisions of Schedule 12 have effect with respect to the collection and recovery of tax.

In that Schedule—

Part 1 contains general provisions, and  
Part 2 relates to court proceedings.

- (2) The provisions of that Schedule have effect in relation to the collection and recovery of any unpaid amount by way of—
  - (a) penalty under this Part, or
  - (b) interest under this Part (on unpaid tax or penalty),as if it were an amount of unpaid tax.

#### Commencement Information

**I69** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

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## 92 Payment by cheque

For the purposes of this Part where—

- (a) payment to the Inland Revenue is made by cheque, and
- (b) the cheque is paid on its first presentation to the banker on whom it is drawn, the payment is treated as made on the day on which the cheque was received by the Inland Revenue.

### Commencement Information

**I70** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## Compliance

## 93 Information powers

- (1) Schedule 13 has effect with respect to the powers of the Inland Revenue to call for documents and information for the purposes of stamp duty land tax.
- (2) In that Schedule—
  - Part 1 confers power on an authorised officer to call for documents or information from the taxpayer;
  - Part 2 confers power on an authorised officer to call for documents from a third party;
  - Part 3 confers power on an authorised officer to call for the papers of a tax accountant;
  - Part 4 imposes restrictions on the powers under Parts 1 to 3;
  - Part 5 confers powers on the Board to call for documents or information;
  - Part 6 provides for an order of a judicial authority for the delivery of documents;
  - Part 7 provides for entry with a warrant to obtain evidence of an offence;
  - Part 8 relates to falsification etc of documents.
- (3) A person who is required by a notice under Part 1, 2 or 3 of Schedule 13 to deliver a document or to provide information, or to make a document available for inspection, and who fails to comply with the notice is liable to a penalty not exceeding £300.
- (4) If the failure continues after a penalty has been imposed under subsection (3), he is liable to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that subsection was imposed (but excluding any day for which a penalty under this subsection has already been imposed).
- (5) No penalty shall be imposed under subsection (3) or (4) in respect of a failure at any time after the failure has been remedied.
- (6) A person who is required by a notice under Part 1, 2 or 3 of Schedule 13 to deliver a document or to provide information, or to make a document available for inspection, and who fraudulently or negligently delivers, provides or makes available any incorrect document or information is liable to a penalty not exceeding £3,000.

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**Commencement Information**

**I71** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**94 Power to inspect premises**

- (1) If for the purposes of this Part the Board authorise an officer of theirs to inspect any property for the purpose of ascertaining its market value, or any other matter relevant for the purposes of this Part, the person having custody or possession of the property shall permit the officer so authorised to inspect it at such reasonable times as the Board may consider necessary.
- (2) A person who wilfully delays or obstructs an officer of the Board acting in pursuance of this section commits an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

**Commencement Information**

**I72** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**95 Offence of fraudulent evasion of tax**

- (1) A person commits an offence if he is knowingly concerned in the fraudulent evasion of tax by him or any other person.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.

**Commencement Information**

**I73** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**96 Penalty for assisting in preparation of incorrect return etc**

A person who assists in or induces the preparation or delivery of any information, return or other document that—

- (a) he knows will be, or is likely to be, used for any purpose of tax, and
- (b) he knows to be incorrect,

is liable to a penalty not exceeding £3,000.

**Commencement Information**

**I74** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

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## 97 Power to allow further time and reasonable excuse for failure

- (1) For the purposes of this Part a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Inland Revenue may allow.
- (2) Where a person had a reasonable excuse for not doing anything required to be done for the purposes of this Part—
  - (a) he shall be deemed not to have failed to do it unless the excuse ceased, and
  - (b) after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonably delay after the excuse had ceased.

### Commencement Information

**I75** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 98 Admissibility of evidence not affected by offer of settlement etc

- (1) Statements made or documents produced by or on behalf of a person are not inadmissible in proceedings to which this section applies by reason only that it has been drawn to his attention—
  - (a) that where serious tax fraud has been committed the Board may accept a money settlement and that the Board will accept such a settlement, and will not pursue a criminal prosecution, if he makes a full confession of all tax irregularities, or
  - (b) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty,
 and that he was or may have been induced thereby to make the statements or produce the documents.
- (2) The proceedings to which this section applies are—
  - (a) any criminal proceedings against the person in question for any form of fraudulent conduct in connection with or in relation to tax;
  - (b) any proceedings against him for the recovery of any tax due from him;
  - (c) any proceedings for a penalty or on appeal against the determination of a penalty.

### Commencement Information

**I76** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 99 General provisions about penalties

- (1) Schedule 14 has effect with respect to the determination of penalties under this Part and related appeals.
- (2) The Board may in their discretion mitigate a penalty under this Part, or stay or compound any proceedings for the recovery of such a penalty.  
They may also, after judgment, further mitigate or entirely remit the penalty.



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[<sup>F73</sup>(2A) Where a person is liable to more than one tax-related penalty in respect of the same land transaction, each penalty after the first shall be reduced so that his liability to such penalties, in total, does not exceed the amount of whichever is (or, but for this subsection, would be) the greatest one.]

(3) Nothing in the provisions of this Part relating to penalties affects any criminal proceedings for an offence.

#### Textual Amendments

**F73** S. 99(2A) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. 298(4)

#### Commencement Information

**I77** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### *Application of provisions*

## 100 Companies

(1) In this Part “company”, except as otherwise expressly provided, means any body corporate or unincorporated association, but does not include a partnership.

(2) Everything to be done by a company under this Part shall be done by the company acting through—

- (a) the proper officer of the company, or
- (b) another person having for the time being having the express, implied or apparent authority of the company to act on its behalf for the purpose.

Paragraph (b) does not apply where a liquidator has been appointed for the company.

(3) Service on a company of any document under or in pursuance of this Part may be effected by serving it on the proper officer.

(4) Tax due from a company that—

- (a) is not a body corporate, or
- (b) is incorporated under the law of a country or territory outside the United Kingdom,

may, without prejudice to any other method of recovery, be recovered from the proper officer of the company.

(5) The proper officer may retain out of any money coming into his hands on behalf of the company sufficient sums to pay that tax and, so far as he is not so reimbursed, he is entitled to be indemnified by the company in respect of the liability imposed on him.

(6) For the purposes of this Part—

- (a) the proper officer of a body corporate is the secretary, or person acting as secretary, of the company, and
- (b) the proper officer of an unincorporated association, or of a body corporate that does not have a proper officer within paragraph (a), is the treasurer, or person acting as treasurer, of the company.

This subsection does not apply if a liquidator or administrator has been appointed for the company.

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- (7) If a liquidator or administrator has been appointed for the company, then, for the purposes of this Part—
- (a) the liquidator or, as the case may be, the administrator is the proper officer, and
  - (b) if two or more persons are appointed to act jointly or concurrently as the administrator of the company, the proper officer is—
    - (i) such one of them as is specified in a notice given to the Inland Revenue by those persons for the purposes of this section, or
    - (ii) where the Inland Revenue is not so notified, such one or more of those persons as the Inland Revenue may designate as the proper officer for those purposes.

#### Commencement Information

**I78** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 101 Unit trust schemes

- (1) This Part (with the exception of the provisions mentioned in subsection (7) below) applies in relation to a unit trust scheme as if—
  - (a) the trustees were a company, and
  - (b) the rights of the unit holders were shares in the company.
- (2) Each of the parts of an umbrella scheme is regarded for the purposes of this Part as a separate unit trust scheme and the scheme as a whole is not so regarded.
- (3) An “umbrella scheme” means a unit trust scheme—
  - (a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another.

A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.
- (4) In this Part, subject to any regulations under subsection (5)—
 

“unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c. 8), and

“unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme.
- (5) The Treasury may by regulations provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Part.
 

Any such regulations may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.
- (6) Section 469A of the Taxes Act 1988 (court common investment funds treated as authorised unit trusts) applies for the purposes of this Part as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.

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- (7) An unit trust scheme is not to be treated as a company for the purposes of—  
section 53 (deemed market value rule for transactions with connected companies),  
or  
Schedule 7 (group relief, reconstruction relief or acquisition relief).

#### **Commencement Information**

**I79** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## **102 Open-ended investment companies**

- (1) The Treasury may by regulations make such provision as they consider appropriate for securing that the provisions of this Part have effect in relation to—
- (a) open-ended investment companies of such description as may be prescribed in the regulations, and
  - (b) transactions involving such companies,
- in a manner corresponding, subject to such modifications as the Treasury consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.
- (2) The regulations may, in particular, make provision—
- (a) modifying the operation of any prescribed provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme;
  - (b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Part.
- (3) Regulations under this section may—
- (a) make different provision for different cases, and
  - (b) contain such incidental, supplementary, consequential and transitional provision as the Treasury think fit.
- (4) In this section—
- “open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c. 8);
  - “prescribed” means prescribed by regulations under this section; and
  - “unit trust scheme” and “umbrella scheme” have the same meaning as in section 101.

#### **Commencement Information**

**I80** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Status: Point in time view as at 18/04/2005.*

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### 103 Joint purchasers

- (1) This section applies to a land transaction where there are two or more purchasers who are or will be jointly entitled to the interest acquired.
- (2) The general rules are that—
  - (a) any obligation of the purchaser under this Part in relation to the transaction is an obligation of the purchasers jointly but may be discharged by any of them,
  - (b) anything required or authorised by this Part to be done in relation to the purchaser must be done by or in relation to all of them, and
  - (c) any liability of the purchaser under this Part in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the purchasers.

These rules are subject to the following provisions.

- (3) If the transaction is a notifiable transaction, a single land transaction return is required.
- (4) The declaration required by paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is complete and correct) must be made by all the purchasers.
- (5) If the Inland Revenue give notice of an enquiry into the return or self-certificate—
  - (a) the notice must be given to each of the purchasers,
  - (b) the powers of the Inland Revenue as to the production of documents and provision of information for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the purchasers,
  - (c) any of the purchasers may apply for a direction that a closure notice be given (and all of them are entitled to appear and be heard on the application), and
  - (d) the closure notice must be given to each of the purchasers.
- (6) A Revenue determination or discovery assessment relating to the transaction must be made against all the purchasers and is not effective against any of them unless notice of it is given to each of them whose identity is known to the Inland Revenue.
- (7) In the case of an appeal arising from proceedings under this Part relating to the transaction—
  - (a) the appeal may be brought by any of the purchasers,
  - (b) notice of the appeal must be given to any of them by whom it is not brought,
  - (c) the agreement of all the purchasers is required if the appeal is to be settled by agreement,
  - (d) if it is not settled, any of them are entitled to appear and be heard, and
  - (e) the decision on the appeal binds all of them.
- (8) This section has effect subject to—
  - the provisions of Schedule 15 relating to partnerships, and
  - the provisions of Schedule 16 relating to trustees.

#### Commencement Information

**181** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

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## 104 Partnerships

- (1) Schedule 15 has effect with respect to the application of this Part in relation to partnerships.
- (2) In that Schedule—
  - Part 1 defines “partnership” and contains other general provisions, and
  - Part 2 deals with ordinary partnership transactions, and
  - Part 3 [<sup>F74</sup> makes special provision for certain transactions].

### Textual Amendments

**F74** Words in s. 104(2) substituted (with effect in accordance with Sch. 41 para. 3 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 41 para. 2\(a\)](#)

### Commencement Information

**I82** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 105 Trustees

Schedule 16 has effect with respect to the application of this Part in relation to trustees.

### Commencement Information

**I83** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 106 Persons acting in a representative capacity etc

- (1) The person having the direction, management or control of the property of an incapacitated person—
  - (a) is responsible for discharging any obligations under this Part, in relation to a transaction affecting that property, to which the incapacitated person would be subject if he were not incapacitated, and
  - (b) may retain out of money coming into his hands on behalf of the incapacitated person sums sufficient to meet any payment he is liable to make under this Part, and, so far as he is not so reimbursed, is entitled to be indemnified in respect of any such payment.
- (2) The parent or guardian of a minor is responsible for discharging any obligations of the minor under this Part that are not discharged by the minor himself.
- (3) The personal representatives of a person who is the purchaser under a land transaction—
  - (a) are responsible for discharging the obligations of the purchaser under this Part in relation to the transaction, and
  - (b) may deduct any payment made by them under this Part out of the assets and effects of the deceased person.
- (4) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Part

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in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

#### Commencement Information

**I84** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 107 Crown application

[<sup>F75</sup>(1) This Part binds the Crown, subject to the following provisions of this section.]

- (2) A land transaction under which the purchaser is any of the following is exempt from charge:

#### *Government*

A Minister of the Crown

The Scottish Ministers

A Northern Ireland department

#### *Parliament etc*

The Corporate Officer of the House of Lords

The Corporate Officer of the House of Commons

The Scottish Parliamentary Corporate Body

The Northern Ireland Assembly Commission

The National Assembly for Wales

- (3) The powers conferred by Part 7 of Schedule 13 (entry with warrant to obtain information) are not exercisable in relation to premises occupied for the purposes of the Crown.

[<sup>F76</sup>(4) Nothing in this section shall be read as making the Crown liable to prosecution for an offence.]

#### Textual Amendments

**F75** S. 107(1) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 21\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

**F76** S. 107(4) added (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 21\(3\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

#### Commencement Information

**I85** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

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### *Supplementary provisions*

#### **108 Linked transactions**

- (1) Transactions are “linked” for the purposes of this Part if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them.

Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this subsection

- (2) Where there are two or more linked transactions with the same effective date, the purchaser, or all of the purchasers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.
- (3) Where two or more purchasers make a single return in respect of linked transactions, section 103 (joint purchasers) applies as if—
- (a) the transactions in question were a single transaction, and
  - (b) those purchasers were purchasers acting jointly.

#### **Commencement Information**

**I86** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**I87** S. 108(1) has effect as specified by [The Stamp Duty Land Tax \(Appointment of the Implementation Date\) Order 2003 \(S.I. 2003/2899\)](#), [art. 2](#)

#### **109 General power to vary this Part by regulations**

- (1) The Treasury may if they consider it expedient in the public interest make provision by regulations for the variation of this Part in its application to land transactions of any description.
- (2) The power conferred by this section includes, in particular, power to alter—
- (a) the descriptions of land transaction that are chargeable or notifiable;
  - (b) the descriptions of land transaction in respect of which tax is chargeable at any existing rate or amount.
- (3) The power conferred by this section does not, except as mentioned in subsection (2) (b), include power to vary any threshold, rate or amount specified in—
- (a) section 55 (amount of tax chargeable: general), or
  - (b) Schedule 5 (amount of tax chargeable: rent).
- (4) This section has effect subject to section 110 (approval of regulations by House of Commons).
- (5) Regulations under this section do not apply in relation to any transaction of which the effective date is after the end of—
- (a) the period of 18 months beginning with the day on which the regulations were made, or
  - (b) such shorter period as may be specified in the regulations.

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This does not affect the power to make further provision by regulations under this section to the same or similar effect.

- (6) Regulations under this section may include such supplementary, transitional and incidental provision as appears to the Treasury to be necessary or expedient.
- (7) The power conferred by this section may be exercised at any time after the passing of this Act.

#### Commencement Information

**I88** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 110 Approval of regulations under general power

- (1) An instrument containing regulations under section 109 (general power to vary this Part by regulations) must be laid before the House of Commons after being made.
- (2) If the regulations are not approved by the House of Commons before the end of the period of 28 days beginning with the day on which they are made, they shall cease to have effect at the end of that period (if they have not already ceased to have effect under subsection (3)).
- (3) If on any day during that period of 28 days the House of Commons, in proceedings on a motion that (or to the effect that) the regulations be approved, comes to a decision rejecting the regulations, they shall cease to have effect at the end of that day.
- (4) In reckoning any such period of 28 days take no account of any time during which—
  - (a) Parliament is prorogued or dissolved, or
  - (b) the House of Commons is adjourned for more than four days.
- (5) Where regulations cease to have effect under this section, their ceasing to have effect is without prejudice to anything done in reliance on them.

As to claims for repayment, see section 111.

#### Commencement Information

**I89** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 111 Claim for repayment if regulations under general power not approved

- (1) Where regulations cease to have effect under section 110, [<sup>F77</sup>a claim may be made to the Inland Revenue for repayment of any tax, interest or penalty that would not have been payable but for the regulations].
- (2) Section 89 (interest on repayment of tax overpaid etc) applies to a repayment under this section.
- (3) A claim for repayment must be made within two years after the effective date of the transaction in question.
- (4) The Inland Revenue may make provision by regulations—



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- (a) for varying the time limit for making a claim;
- (b) as to any other conditions that must be met before repayment is made.

#### Textual Amendments

**F77** Words in s. 111(1) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(5\)](#)

#### Commencement Information

**I90** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 112 Power to amend certain provisions before implementation

- (1) The Treasury may by regulations amend the following provisions of this Part—
  - (a) Schedule 5 (amount of tax chargeable: rent);
  - (b) subsection (2) of section 55 (amount of tax chargeable: general) so far as relating to the thresholds at which different rates of tax become payable.
- (2) The regulations may make such consequential amendments of Schedule 6 (disadvantaged areas relief) as appear to the Treasury to be appropriate.
- (3) A statutory instrument containing regulations under this section shall not be made unless a draft of the instrument has been laid before and approved by resolution of the House of Commons.
- (4) The power conferred by this section is not exercisable after the implementation date.

#### Commencement Information

**I91** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 113 Functions conferred on “the Inland Revenue”

- (1) References in this Part to “the Inland Revenue” are to any officer of the Board, except as otherwise provided.
  - (2) Any power of the Inland Revenue to make regulations is exercisable only by the Board.
  - (3) In Schedule 10 (returns, assessments and other administrative matters)—
    - (a) functions of the Inland Revenue under these provisions are exercisable by the Board or an officer of the Board—
      - (i) paragraph 28 (discovery assessment),
      - (ii) paragraph 29 (assessment to recover excessive repayment);
    - (b) functions of the Inland Revenue under these provisions are functions of the Board—
      - (i) paragraph 33 (relief in case of double assessment),
      - (ii) paragraph 34 (relief in case of mistake in return).
- [<sup>F78</sup>(3A) The following functions of the Inland Revenue under Schedule 11A (claims not included in returns) are functions of the Board—
- (a) functions under paragraph 2(1) (form of claims),
  - (b) functions relating to a claim made to the Board.]

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- (4) Nothing in this section affects any provision of this Part that expressly confers functions on the Board, an officer of the Board, a collector or a specific officer of the Board.

#### Textual Amendments

**F78** S. 113(3A) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(6\)](#)

#### Commencement Information

**I92** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 114 Orders and regulations made by the Treasury or the Inland Revenue

- (1) Except as otherwise provided, any power of the Treasury or the Inland Revenue to make an order or regulations under this Part, or under any other enactments relating to stamp duty land tax (including enactments passed after this Act), is exercisable by statutory instrument.
- (2) Subsection (1) does not apply in relation to the power conferred by—  
paragraph 8 of Schedule 5 to this Act (tax chargeable in respect of rent: power to prescribe temporal discount rate),  
section 178(5) of the Finance Act 1989 (c. 26) (power to prescribe rates of interest).
- (3) Except as otherwise provided, a statutory instrument containing any order or regulations made by the Treasury or the Inland Revenue under this Part, or under any other enactments relating to stamp duty land tax (including enactments passed after this Act), shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Subsection (3) does not apply to a statutory instrument made under the power conferred by—  
section 61(3) (compliance with planning obligations: power to add to list of public authorities);  
paragraph 1(3) of Schedule 9 (right to buy transactions: power to add to list of relevant public sector bodies);  
paragraph 2(2) of Schedule 19 (commencement and transitional provisions: power to appoint implementation date).

#### Commencement Information

**I93** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 115 General and Special Commissioners, appeals and other proceedings

Schedule 17 makes provision about the General and Special Commissioners, appeals and other proceedings before the Commissioners and related matters.

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### Commencement Information

**194** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### *Interpretation etc*

## **116 Meaning of “residential property”**

- (1) In this Part “residential property” means—
- (a) a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use, and
  - (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land), or
  - (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b);
- and “non-residential property” means any property that is not residential property.
- This is subject to the rule in subsection (7) in the case of a transaction involving six or more dwellings.
- (2) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—
- (a) residential accommodation for school pupils;
  - (b) residential accommodation for students, other than accommodation falling within subsection (3)(b);
  - (c) residential accommodation for members of the armed forces;
  - (d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (3).
- (3) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—
- (a) a home or other institution providing residential accommodation for children;
  - (b) a hall of residence for students in further or higher education;
  - (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;
  - (d) a hospital or hospice;
  - (e) a prison or similar establishment;
  - (f) a hotel or inn or similar establishment.
- (4) Where a building is used for a purpose specified in subsection (3), no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use.
- (5) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (2) and at least one of those specified in subsection (3)—
- (a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same sub-paragraph, no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use,

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- (b) otherwise, the building shall be treated for those purposes as suitable for use as a dwelling.
- (6) In this section “building” includes part of a building.
- (7) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Part as it applies in relation to that transaction, those dwellings are treated as not being residential property.
- (8) The Treasury may by order—
- (a) amend subsections (2) and (3) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1);
  - (b) amend or repeal subsection (7) and the reference to that subsection in subsection (1).

Any such order may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

#### Commencement Information

**I95** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

### 117 Meaning of “major interest” in land

- (1) References in this Part to a “major interest” in land shall be construed as follows.
- (2) In relation to land in England or Wales, the references are to—
- (a) an estate in fee simple absolute, or
  - (b) a term of years absolute,
- whether subsisting at law or in equity.

- (3) In relation to land in Scotland, the references are to—
- (a) the interest of an owner of land, or
  - (b) the tenant’s right over or interest in a property subject to a lease.

Until the appointed day for the purposes of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), the reference in paragraph (a) to the interest of the owner shall be read, in relation to feudal property, as a reference to the estate or interest of the proprietor of the *dominium utile*.

- (4) In relation to land in Northern Ireland, the references are to—
- (a) any freehold estate, or
  - (b) any leasehold estate,
- whether subsisting at law or in equity.

#### Commencement Information

**I96** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

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## 118 Meaning of “market value”

For the purposes of this Part “market value” shall be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c. 12) (see sections 272 to 274 of that Act).

### Commencement Information

**I97** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 119 Meaning of “effective date” of a transaction

- (1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Part is the date of completion.
- (2) Other provision as to the effective date of certain descriptions of land transaction is made by—
  - section 44(4) (contract and conveyance: contract substantially performed without having been completed),<sup>F79</sup>...
  - [<sup>F80</sup>section 44A(3) (contract providing for conveyance to third party),
  - section 45A(8) (contract providing for conveyance to third party: effect of transfer of rights),]
  - section 46(3) (options and rights of pre-emption).
  - [<sup>F81</sup>paragraph 12A(2) of Schedule 17A (agreement for lease followed by substantial performance),
  - paragraph 12B(3) of that Schedule (assignment of agreement for lease occurring after agreement substantially performed), and
  - paragraph 19(3) of that Schedule (missives of let etc in Scotland followed by substantial performance).]

### Textual Amendments

- F79** Word in s. 119(2) repealed (with effect in accordance with Sch. 39 para. 13 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#)
- F80** Words in s. 119(2) inserted (with effect in accordance with Sch. 39 para. 13 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 8\(a\)](#)
- F81** Words in s. 119(2) inserted (with effect in accordance with Sch. 39 para. 13 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 8\(b\)](#)

### Commencement Information

**I98** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## [<sup>F82</sup>120 Further provisions relating to leases

Schedule 17A contains further provisions relating to leases.]

### Textual Amendments

- F82** S. 120 substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(1\)](#) (which amending provision re-enacts, subject to certain changes,

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a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

## 121 Minor definitions

In this Part—

“assignment”, in Scotland, means assignation;

“completion”, in Scotland, means—

- (a) in relation to a lease, when it is executed by the parties (that is to say, by signing) or constituted by any means;
  - (b) in relation to any other transaction, the settlement of the transaction;
- “employee” includes an office-holder and related expressions have a corresponding meaning;

“jointly entitled” means—

- (a) in England and Wales, beneficially entitled as joint tenants or tenants in common,
- (b) in Scotland, entitled as joint owners or owners in common,
- (c) in Northern Ireland, beneficially entitled as joint tenants, tenants in common or coparceners;

“land” includes—

- (a) buildings and structures, and
- (b) land covered by water;

“registered social landlord” means—

- (a) in relation to England and Wales, a body registered as a social landlord in a register maintained under section 1(1) of the Housing Act 1996 (c. 52);
- (b) in relation to Scotland, a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001 (asp 10);
- (c) in relation to Northern Ireland, a housing association registered in the register maintained under Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));

“standard security” has the meaning given by the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35);

“statutory provision” means any provision made by or under an Act of Parliament, an Act of the Scottish Parliament or any Northern Ireland legislation;

“surrender”, in Scotland, means renunciation;

“tax”, unless the context otherwise requires, means tax under this Part.

### Commencement Information

**199** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

## 122 Index of defined expressions

In this Part the expressions listed below are defined or otherwise explained by the provisions indicated—

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acquisition relief	Schedule 7, paragraph 8(1)
assignment (in Scotland)	section 121
bare trust	Schedule 16, paragraph 1(2)
the Board (in relation to the Inland Revenue)	section 42(3)
chargeable consideration	section 50 and Schedule 4
chargeable interest	section 48(1)
chargeable transaction	section 49
charities relief	Schedule 8, paragraph 1(1)
closure notice	Schedule 10, paragraph 23(1) (in relation to a land transaction return); Schedule 11, paragraph 16(1) (in relation to a self-certificate)
company	section 100 (except as otherwise expressly provided)
completion (in Scotland)	section 121
contingent (in relation to consideration)	section 51(3)
delivery (in relation to a land transaction return)	Schedule 10, paragraph 2(2)
discovery assessment	Schedule 10, paragraph 28(1)
effective date (in relation to a land transaction)	section 119
employee	section 121
exempt interest	section 48(2) to (5)
filing date (in relation to a land transaction return)	Schedule 10, paragraph 2(1)
implementation date	Schedule 19, paragraph 2(2)
the Inland Revenue	section 113
jointly entitled	section 121
land	section 121
land transaction	section 43(1)
land transaction return	section 76(1)
lease (and related expressions)	[ <sup>F83</sup> Schedule 17A]
linked transactions	section 108
main subject-matter (in relation to a land transaction)	section 43(6)
major interest (in relation to land)	section 117

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market value	section 118
notice of enquiry	Schedule 10, paragraph 12(1) (in relation to a land transaction return); Schedule 11, paragraph 7(1) (in relation to a self-certificate)
notifiable (in relation to a land transaction)	section 77 [ <sup>F84</sup> (see too sections 71A(7) and 72A(7))]
partnership (and related expressions)	Schedule 15, paragraphs 1 to 4
purchaser	section 43(4)
rate of tax	section 55(7)
reconstruction relief	Schedule 7, paragraph 7(1)
registered social landlord	section 121
residential property	section 116
[ <sup>F85</sup> Revenue certificate	section 79(3)(a)]
Revenue determination	Schedule 10, paragraph 25(1)
self-assessment	section 76(3)(a)
self-certificate	section 79(3)(b)
settlement	Schedule 16, paragraph 1(1)
standard security	section 121
statutory provision	section 121
subject-matter (in relation to a land transaction)	section 43(6)
substantial performance (in relation to a contract)	section 44(5) to (7)
surrender (in Scotland)	section 121
tax	section 121
uncertain (in relation to consideration)	section 51(3)
unit holder	section 101(4)
unit trust scheme	section 101(4)
vendor	section 43(4) [ <sup>F86</sup> (see too sections 45(5A) and 45A(9))]

### Textual Amendments

**F83** Words in s. 122 substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(7\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

**F84** Words in s. 122 inserted (with effect in accordance with Sch. 8 para. 7 of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 8 para. 6](#)



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- F85** Words in s. 122 inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 25\(4\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F86** Words in s. 122 inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 5\(6\)](#)

**Commencement Information**

- I100** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Final provisions*

**123 Consequential amendments**

- (1) Schedule 18 contains certain amendments consequential on the provisions of this Part.
- (2) The Treasury may by regulations make such other amendments and repeals as appear to them appropriate in consequence of the provisions of this Part.
- (3) The regulations may, in particular, make such provision as the Treasury think fit for reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty.

**Commencement Information**

- I101** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**124 Commencement and transitional provisions**

Schedule 19 makes provision for and in connection with the coming into force of the provisions of this Part.

**Commencement Information**

- I102** Pt. 4 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

**PART 5**

STAMP DUTY

**125 Abolition of stamp duty except on instruments relating to stock or marketable securities**

- (1) Stamp duty is chargeable under Schedule 13 of the Finance Act 1999 (c. 16) only on instruments relating to stock or marketable securities.

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- (2) Section 12 of the Finance Act 1895 (c. 16) (collection of stamp duty in cases of property vested by Act or purchased under statutory powers) does not apply to property other than stock or marketable securities.
- (3) This section shall be construed as one with the Stamp Act 1891 (c. 39).
- (4) Part 1 of Schedule 20 to this Act contains provisions supplementing this section and Part 2 of that Schedule provides for consequential amendments and repeals.
- (5) This section and that Schedule have effect—
- (a) in relation to an instrument effecting a land transaction [<sup>F87</sup>(or any duplicate or counterpart of such an instrument)], if the transaction—
    - (i) is an SDLT transaction within the meaning of Schedule 19 to this Act (stamp duty land tax: commencement and transitional provisions), or
    - (ii) would be such a transaction but for an exemption or relief from stamp duty land tax;
  - (b) in relation to an instrument effecting a transaction other than a land transaction [<sup>F88</sup>(or any duplicate or counterpart of such an instrument)], if the instrument is executed on or after the implementation date for the purposes of stamp duty land tax (see paragraph 2(2) of that Schedule).
- For this purpose an instrument effecting both a land transaction and a transaction other than a land transaction [<sup>F89</sup>(or any duplicate or counterpart of such an instrument)] is treated as if it were two instruments to which paragraph (a) and paragraph (b) above respectively applied.
- (6) Where in the case of an instrument effecting both a land transaction and a transaction other than a land transaction the result of applying subsection (5) is that stamp duty is chargeable on either or both of the deemed instruments, the enactments relating to stamp duty have effect as if—
- (a) there were two instruments as mentioned in the closing words of that subsection,
  - (b) the consideration had been apportioned between them in a just and reasonable manner, and
  - (c) the amount found on that apportionment to be attributable to the chargeable instrument, or (as the case may be) to each of them, had been set forth distinctly in that instrument.
- (7) In subsections (5) and (6) “land transaction” has the same meaning as in Part 4 of this Act.
- (8) This section and Schedule 20 have effect subject to [<sup>F90</sup>paragraph 31] of Schedule 15 to this Act (continued application of stamp duty in relation to certain partnership transactions).

#### Textual Amendments

**F87** Words in s. 125(5)(a) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 23\(a\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

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- F88** Words in s. 125(5)(b) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 23(b)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816), see Sch. 39 para. 14)
- F89** Words in s. 125(5) inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 23(c)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816), see Sch. 39 para. 14)
- F90** Words in s. 125(8) substituted (with effect in accordance with Sch. 41 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 41 para. 2(b)**

## 126 Circumstances in which group relief withdrawn

- (1) Section 111 of the Finance Act 2002 (c. 23) (stamp duty: withdrawal of group relief) is amended as follows.
- (2) In subsection (1)(b) (circumstances in which relief withdrawn: transferee company ceasing to be member of group within two years) for “two years” substitute “ three years ”.
- (3) In subsection (1)(c) (circumstances in which relief withdrawn: transferee company holding estate or interest when it ceases to be member of group)—
  - (a) in the opening words—
    - (i) for “it ceases” substitute “ the transferee company ceases ”, and
    - (ii) for “it holds” substitute “ it or a relevant associated company holds ”;
  - (b) in sub-paragraph (i) for “to it” substitute “ to the transferee company ”; and
  - (c) for the closing words substitute “ and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which group relief was not claimed ”.
- (4) In subsection (3)—
  - (a) after “transferred” insert “ to the transferee company ”, and
  - (b) for “what the transferee company holds at the time it ceases to be a member” substitute “ what is held by that company or, as the case may be, that company and any relevant associated companies, at the time it or they cease to be members ”.
- (5) After subsection (4) insert—

“(4A) In this section “relevant associated company”, in relation to the transferee company, means a company that—

  - (a) is a member of the same group as the transferee company immediately before that company ceases to be a member of the same group as the transferor company, and
  - (b) ceases to be a member of the same group as the transferor company in consequence of the transferee company so ceasing.”.
- (6) In paragraph 4(3) of Schedule 34 to the Finance Act 2002 (c. 23) (withdrawal of group relief: supplementary provisions), in paragraph (b)—
  - (a) in the opening words—

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- (i) for “it ceases” substitute “ the transferee company ceases ”, and
  - (ii) for “it holds” substitute “ it or a relevant associated company (as defined in sub-paragraph (4) below) holds ”;
  - (b) in sub-paragraph (i) for “to it” substitute “ to the transferee company ”; and
  - (c) for the closing words substitute “ and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which group relief was not claimed ”.
- (7) In the closing words of that sub-paragraph, for the words from “as if” to the end substitute “ as if the transferee had then ceased to be a member of the same group as the transferor company and had then held the estate or interest referred to in paragraph (b). ”.
- (8) After that sub-paragraph insert—
- “(4) In sub-paragraph (3)(b) “relevant associated company”, in relation to the transferee company, means a company that is in the same group as the transferee company immediately before the transferee company ceases to be a member of the new group and which ceases to be a member of the new group in consequence of the transferee company so ceasing.”.
- (9) This section applies to instruments executed after 14th April 2003.
- (10) But this section does not apply to an instrument giving effect to a contract made on or before 9th April 2003, unless—
- (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (11) This section shall be deemed to have come into force on 15th April 2003.

## **127 Circumstances in which relief for company acquisitions withdrawn**

- (1) Section 113 of the Finance Act 2002 (c. 23) (stamp duty: withdrawal of relief for company acquisitions) is amended as follows.
- (2) In subsection (1)(b) (circumstances in which relief withdrawn: change of control of acquiring company within two years) for “two years” substitute “ three years ”.
- (3) In subsection (1)(c) (circumstances in which relief withdrawn: acquiring company holding estate or interest when control changes)—
- (a) in the opening words, after “the acquiring company” insert “ or a relevant associated company ”;
  - (b) in sub-paragraph (i) for “to it” substitute “ to the acquiring company ”; and
  - (c) for the closing words substitute “ and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which section 76 relief was not claimed ”.
- (4) In subsection (3) for “what the acquiring company holds” substitute “ what is held by that company or, as the case may be, by that company and any relevant associated companies ”.

*Status: Point in time view as at 18/04/2005.*

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- (5) After subsection (3) insert—
- “(3A) In this section “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.”.

(6) In Schedule 35 to the Finance Act 2002 (withdrawal of relief for company acquisitions: supplementary provisions), in paragraphs 3(3)(b) and 4(3)(b) (withdrawal of relief on later change of control)—

    - (a) in the opening words, after “the acquiring company” insert “ or a relevant associated company ”,
    - (b) in sub-paragraph (i) for “to it” substitute “ to the acquiring company ”, and
    - (c) for the closing words substitute “ and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which section 76 relief was not claimed ”.

(7) This section applies to instruments executed after 14th April 2003.

(8) But this section does not apply to an instrument giving effect to a contract made on or before 9th April 2003, unless—

    - (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
    - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.

(9) This section shall be deemed to have come into force on 15th April 2003.

## **128 Exemption of certain leases granted by registered social landlords**

- (1) No stamp duty is chargeable under Part 2 of Schedule 13 to the Finance Act 1999 (c. 16) on a lease of a dwelling granted by a registered social landlord to one or more individuals in accordance with arrangements to which this section applies if the lease is for an indefinite term or is terminable by notice of a month or less.
- (2) “Registered social landlord” means—
- (a) in relation to England and Wales, a body registered in the register maintained under section 1(1) of the Housing Act 1996 (c. 52);
  - (b) in relation to Scotland, a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001 (asp 10);
  - (c) in relation to Northern Ireland, a housing association registered in the register maintained under Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)).
- (3) This section applies to arrangements between a registered social landlord and a housing authority under which the landlord provides, for individuals nominated by the authority in pursuance of its statutory housing functions, temporary rented accommodation which the landlord itself has obtained on a short-term basis.

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The reference above to accommodation obtained by the landlord “on a short-term basis” is to accommodation leased to the landlord for a term of five years or less.

- (4) A “housing authority” means—
- (a) in relation to England and Wales—
    - (i) a principal council within the meaning of the Local Government Act 1972 (c. 70), or
    - (ii) the Common Council of the City of London;
  - (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
  - (c) in relation to Northern Ireland—
    - (i) the Department for Social Development in Northern Ireland, or
    - (ii) the Northern Ireland Housing Executive.
- (5) An instrument on which stamp duty is not chargeable by virtue only of this section shall not be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would be liable but for this section, or
  - (b) it has, in accordance with section 12 of the Stamp Act 1891 (c. 39), been stamped with a particular stamp denoting that it is not chargeable with any duty.
- (6) This section shall be construed as one with the Stamp Act 1891.
- (7) This section applies to instruments executed after the day on which this Act is passed.

## **129 Relief for certain leases granted before section 128 has effect**

- (1) This section applies to instruments that—
- (a) are executed in the period beginning with 1 January 2000 and ending with the day on which this Act is passed, and
  - (b) are instruments to which section 128 (exemption of certain leases granted by registered social landlords) would have applied if that provision had been in force when the instrument was executed.
- (2) If the instrument is not stamped until after the day on which this Act is passed, the law in force at the time of its execution shall be deemed for stamp duty purposes to be what it would have been if section 128 had been in force at that time.
- (3) If the Commissioners are satisfied that—
- (a) the instrument was stamped on or before the day on which this Act is passed,
  - (b) stamp duty was chargeable in respect of it, and
  - (c) had it been stamped after that day stamp duty would, by virtue of section 128, not have been chargeable,
- they shall pay to such person as they consider appropriate an amount equal to the duty (and any interest or penalty) that would not have been payable if that section had been in force at the time the instrument was executed.
- (4) Any such payment must be claimed before 1st January 2004.
- (5) Entitlement to a payment is subject to compliance with such conditions as the Commissioners may determine with respect to the production of the instrument, to

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its being stamped so as to indicate that it has been produced under this section or to other matters.

- (6) For the purposes of [F91 section 44 of the Commissioners for Revenue and Customs Act 2005 (payment into Consolidated Fund)] any amount paid under this section is a repayment.
- (7) This section shall be construed as one with the Stamp Act 1891.
- (8) For the purposes of this section as it applies in relation to instruments executed before the coming into force of section 57 of the Housing (Scotland) Act 2001 (asp 10), the references in section 128 to a registered social landlord shall be read in relation to Scotland as references to—
  - (a) a housing association registered in the register maintained under section 3(1) of the Housing Associations Act 1985 (c. 69) by Scottish Homes, or
  - (b) a body corporate whose objects corresponded to those of a housing association and which, pursuant to a contract with Scottish Homes, was registered in a register kept for the purpose by Scottish Homes.

#### Textual Amendments

**F91** Words in s. 129(6) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), s. 53(1), [Sch. 4 para. 126](#); S.I. 2005/1126, art. 2(2)(h)

### 130 Registered social landlords: treatment of certain leases granted between 1st January 1990 and 27 March 2000

- (1) This section applies to a lease in relation to which the following conditions are met—
  - (a) it is a lease of a dwelling to one or more individuals;
  - (b) it is for an indefinite term or is terminable by notice of a month or less;
  - (c) it was executed on or after 1st January 1990 and before 28th March 2000;
  - (d) at the time it was executed the rate or average rate of the rent (whether reserved as a yearly rent or not) was £5,000 a year or less; and
  - (e) the landlord's interest has at any time before 26th June 2003 been held by a registered social landlord.
- (2) A lease to which this section applies (whether or not presented for stamping) shall be treated—
  - (a) for the purposes of section 14 of the Stamp Act 1891 (c. 39) (production of instrument in evidence) as it applies in relation to proceedings begun after the day on which this Act is passed, and
  - (b) for the purposes of section 17 of that Act (enrolment etc of instrument) as it applies to any act done after that day,as if it had been duly stamped in accordance with the law in force at the time when it was executed.
- (3) If in the case of a lease to which this section applies the Commissioners are satisfied—
  - (a) that the instrument was stamped on or before the day on which this Act is passed, and
  - (b) that stamp duty was charged in respect of it,

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they shall pay to such person as they consider appropriate an amount equal to the duty (and any interest or penalty) so charged.

- (4) Any such payment must be claimed before 1st January 2004.
- (5) Entitlement to a payment under subsection (3) is subject to compliance with such conditions as the Commissioners may determine with respect to the production of the instrument, to its being stamped so as to indicate that it has been produced under this section or to other matters.
- (6) For the purposes of [F92section 44 of the Commissioners for Revenue and Customs Act 2005 (payment into Consolidated Fund)] any amount paid under subsection (3) above is a repayment.
- (7) This section shall be construed as one with the Stamp Act 1891.
- (8) The reference in subsection (1) above to the landlord's interest being held by a "registered social landlord" is to its being held by a body that—
  - (a) is registered in a register maintained under—
    - (i) Article 124 of the Housing (Northern Ireland) Order 1981 (S.I. 1981/156 (N.I. 3)),
    - (ii) section 3(1) of the Housing Associations Act 1985 (c. 69),
    - (iii) Article 14 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15)),
    - (iv) section 1(1) of the Housing Act 1996 (c. 52), or
    - (v) section 57 of the Housing (Scotland) Act 2001 (asp 10), or
  - (b) is a body corporate whose objects correspond to those of a housing association and which, pursuant to a contract with Scottish Homes, is registered in a register kept for the purposes by Scottish Homes.
- (9) Section 129 of this Act (relief for certain leases granted on or after 1st January 2000) does not apply to a lease to which this section applies.

#### Textual Amendments

**F92** Words in s. 130(6) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005](#) (c. 11), s. 53(1), [Sch. 4 para. 127](#); S.I. 2005/1126, art. 2(2)(h)

## PART 6

### INCOME TAX AND CORPORATION TAX: CHARGE AND RATE BANDS

#### *Income tax*

#### 131 Charge and rates for 2003-04

Income tax shall be charged for the year 2003-04, and for that year—

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



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### **132 Indexed rate bands for 2003-04: PAYE deductions etc**

For the year 2003-04, section 1(5A) of the Taxes Act 1988 (which provides that statutory inflation-linked changes to income tax rate bands for a year of assessment do not require changes to be made to PAYE deductions or repayments until 18th May in that year) shall have effect as if “14th June” were substituted for “17th May”.

#### *Corporation tax*

### **133 Charge and main rate for financial year 2004**

Corporation tax shall be charged for the financial year 2004 at the rate of 30%.

### **134 Small companies' rate and fraction for financial year 2003**

For the financial year 2003—

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

### **135 Corporation tax starting rate and fraction for financial year 2003**

For the financial year 2003—

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

## **PART 7**

### **INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX: GENERAL**

#### *Employment income and related matters*

### **136 Provision of services through intermediary**

- (1) Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (provision of services through an intermediary) is amended as follows.
- (2) In section 49(1)(a) (services to which the Chapter applies), for “for the purposes of a business carried on by another person” substitute “for another person”.
- (3) In consequence of the above amendment—
  - (a) omit section 49(2) of that Act, and
  - (b) in section 56(7) of that Act—
    - (i) at the end of paragraph (a) insert “, and”, and
    - (ii) omit paragraph (c) and the word “and” preceding it.
- (4) This section applies in relation to services performed or due to be performed on or after 10th April 2003.

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### 137 Exemption where homeworker's additional expenses met by employer

- (1) In Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (employment income: exemptions), after section 316 insert—

#### **“316A Homeworker's additional household expenses**

- (1) This section applies where an employer makes a payment to an employee in respect of reasonable additional household expenses which the employee incurs in carrying out duties of the employment at home under homeworking arrangements.
- (2) No liability to income tax arises in respect of the payment.
- (3) In this section, in relation to an employee—
- “homeworking arrangements” means arrangements between the employee and the employer under which the employee regularly performs some or all of the duties of the employment at home; and
- “household expenses” means expenses connected with the day to day running of the employee's home.”
- (2) This section applies to payments which the employer makes on or after 6th April 2003 in respect of expenses which the employee incurs on or after that date.

### 138 Taxable benefits: lower threshold for cars with a CO<sub>2</sub> emissions figure

- (1) In section 139 of the Income Tax (Earnings and Pensions) Act 2003 (cash equivalent of the benefit of a car: calculation of the appropriate percentage for a year for cars with a CO<sub>2</sub> emissions figure) the table in subsection (4) (which specifies the lower threshold for each year for the purposes of that calculation) is amended as follows.
- (2) In the entry relating to 2004-05 and subsequent tax years omit “and subsequent tax years”.
- (3) After that entry insert—

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“2005-06 and subsequent tax years	140”.
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- (4) In section 170(3) of that Act (power to provide by order for a lower threshold different from that specified in the table in section 139(4) to apply for tax years beginning on or after 6th April 2005) for “6th April 2005” substitute “ 6th April 2006 ”.

### 139 Approved share plans and schemes

Schedule 21 to this Act (which contains amendments relating to share incentive plans, SAYE option schemes and CSOP schemes) has effect.

### 140 Employee securities and options

Schedule 22 to this Act (which makes provision about securities, and options to acquire securities, acquired by reason of employment) has effect.

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#### **141 Corporation tax relief for employee share acquisitions**

Schedule 23 to this Act has effect with respect to deductions allowable for corporation tax purposes in respect of employee share acquisitions.

#### **142 Ending of relief for contributions to QUESTS**

- (1) Section 67 of the Finance Act 1989 (c. 26) (tax relief for contributions to trustees of qualifying employee share ownership trust) does not apply in relation to sums expended by a company in an accounting period of the company beginning on or after 1st January 2003.
- (2) In section 69 of that Act (chargeable events)—
  - (a) the definitions in subsections (3AC) and (3AD) (by virtue of which certain transfers of shares by trustees of an employee share ownership trust to a SIP trust are not chargeable events) have effect in relation to 26th November 2002 as they had effect in relation to 20th March 2000;
  - (b) in relation to shares that are relevant shares by virtue of paragraph (a) above, subsection (3AB) (deemed order of disposal of shares) has effect as if the reference there to 21st March 2000 were to 27th November 2002; and
  - (c) the other provisions of that section have effect accordingly.
- (3) In consequence of subsection (2), in paragraph 78(2)(b) of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (reference to section 69(3AA) of the Finance Act 1989) after “21st March 2000” insert “ or, by virtue of section 142(2) of the Finance Act 2003, 27th November 2002 ”.

#### **143 Restriction of deductions for employee benefit contributions**

Schedule 24 to this Act (which makes provision restricting deductions for contributions by employers to third parties for the benefit of employees) has effect.

#### **144 PAYE on notional payments: reimbursement period**

- (1) In section 222(1)(c) of the Income Tax (Earnings and Pensions) Act 2003 (period within which employee must reimburse employer for amount to be accounted for to Inland Revenue in respect of income tax on notional payment), for “30 days” substitute “ 90 days ”.
- (2) This section has effect in relation to payments of income treated as made on or after 9th April 2003.

#### **145 PAYE: regulations and notional payments**

- (1) In the list in subsection (2) of section 684 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (PAYE regulations)—
  - (a) for item 2 substitute—

“1A  
Provision—

- (a) for deductions to be made, if and to the extent that the payee does not object, with a view to securing that income tax

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payable in respect of any income of a payee for a tax year which is not PAYE income is deducted from PAYE income of the payee paid during that year; and

- (b) as to the circumstances and manner in which a payee may object to the making of deductions.

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Provision—

- (a) for repayments or deductions to be made, if and to the extent that the payee does not object, in respect of any amounts overpaid or remaining unpaid (or treated as overpaid or remaining unpaid) on account of—

(i) income tax in respect of income for a previous tax year, or

(ii) capital gains tax in respect of chargeable gains for such a year; and

- (b) as to the circumstances in which repayments or deductions may be made, and the circumstances and manner in which a payee may object to the making of repayments or deductions.”;

- (b) after item 4 insert —

“4A

Provision authorising the recovery from the payee rather than the payer of any amount that the Inland Revenue considers should have been deducted by the payer.”;

- (c) for item 8 substitute as items 7A and 8—

“7A

Provision for excluding payments of such description as may be specified from the operation of the regulations in such circumstances as may be specified.

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Provision for the making of decisions by the Board or the Inland Revenue as to any matter required to be decided for the purposes of the regulations and for appeals against such decisions.”.

- (2) After subsection (7) of that section insert—

“(7A) Nothing in PAYE regulations may be read—

- (a) as preventing the making of arrangements for the collection of tax in such manner as may be agreed by, or on behalf of, the payer and the Inland Revenue, or
- (b) as requiring the payer to comply with the regulations in circumstances in which the Inland Revenue is satisfied that it is unnecessary or not appropriate for the payer to do so.

- (7B) References in this section and section 685 to income tax in respect of PAYE income are references to income tax in respect of that income if reasonable assumptions are (when necessary) made about other income.

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(7C) In this section and section 685—

“payer” means any person paying PAYE income and “payee” means any person in receipt of such income;

“specified” means specified in PAYE regulations.”.

(3) In subsection (2) of section 685 of that Act (tax tables), for paragraph (b) substitute—

“(b) subject to an adjustment in respect of amounts required to be deducted or repaid by PAYE regulations made under item 1A or 2 in the list in section 684(2).”.

(4) After subsection (3) of that section insert—

“(4) PAYE regulations may make provision, where it appears to the Inland Revenue that it is impracticable for a payer to deduct tax by reference to tax tables—

- (a) for deductions to be made by the payer in accordance with other arrangements agreed as mentioned in section 684(7A)(a), or
- (b) for the payee to be required to keep records and make payments and returns as if he were the payer.”.

(5) In section 707 of that Act (interpretation of Chapter 5 of Part 11), in the definition of “employment”, for “this section” substitute “ this Chapter ”.

(6) In section 710 of that Act (notional payments: accounting for tax)—

- (a) in subsections (1) and (4), after “must” insert “ , subject to and in accordance with PAYE regulations, ”;
- (b) in subsection (5)(b) and (c), for “accounted for” substitute “ deducted or accounted for (or required to be deducted or accounted for) ”; and
- (c) in subsection (6), for “an amount which” substitute “ an amount of tax which ” and for “is paid by the employee” substitute “ is deducted ”.

(7) Substitute “ PAYE regulations ”

- (a) for “the said section 203” in subsection (8) of section 59A of the Taxes Management Act 1970 (c. 9) (payments on account of income tax); and
- (b) for “that section” in subsection (10) of that section and subsections (2) and (8) of section 59B of that Act (payments of income tax and capital gains tax).

#### **146 Payroll giving: extension of 10% supplement to 5th April 2004**

In section 38 of the Finance Act 2000 (c. 17) (which provides for a 10% supplement on donations under the payroll deduction scheme), in subsection (6) (which limits the provision by reference to sums withheld by employers before 6th April 2003, and requires claims for reimbursement to be made before 6th April 2004)—

- (a) for “6th April 2003” substitute “ 6th April 2004 ”; and
- (b) for “6th April 2004” substitute “ 6th April 2005 ”.

#### **147 Sub-contractor deductions etc: interest on late payment or repayment**

<sup>F93</sup>(1).....

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- (2) In the Social Security Contributions and Benefits Act 1992 (c. 4) and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), in paragraph 6 of Schedule 1 (power to combine collection of national insurance contributions with tax) after sub-paragraph (4A) insert—
- “(4B) Interest required to be paid, by virtue of sub-paragraph (2)(a) or (b) above, by regulations under sub-paragraph (1) above shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.”.
- (3) In section 22 of the Teaching and Higher Education Act 1998 (c. 30) (student loans), after subsection (9) insert—
- “(10) Interest required to be paid, by virtue of subsection (5)(d), by regulations under this section shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.”.
- (4) In Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760 (N.I. 14)) (student loans), after paragraph (9) insert—
- “(10) Interest required to be paid, by virtue of paragraph (5)(d), by regulations under this Article shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.”.
- (5) In its application to the computation of income, profits or losses for an accounting period (in the case of a company) or a year of assessment (in the case of a person who is not a company), this section has effect in relation to—
- (a) accounting periods ending on or after 9th April 2003, or
  - (b) 2003-04 and subsequent years of assessment.

#### **Textual Amendments**

**F93** S. 147(1) repealed (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(7\)](#)

### *Taxation of non-resident companies and related matters*

#### **148 Meaning of “permanent establishment”**

- (1) For the purposes of the Tax Acts a company has a permanent establishment in a territory if, and only if—
- (a) it has a fixed place of business there through which the business of the company is wholly or partly carried on, or
  - (b) an agent acting on behalf of the company has and habitually exercises there authority to do business on behalf of the company.

This general definition is subject to the following provisions.

- (2) For this purpose a “fixed place of business” includes (without prejudice to the generality of that expression)—
- (a) a place of management;

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- (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) an installation or structure for the exploration of natural resources;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (h) a building site or construction or installation project.
- (3) A company is not regarded as having a permanent establishment in a territory by reason of the fact that it carries on business there through an agent of independent status acting in the ordinary course of his business.
- (4) A company is not regarded as having a permanent establishment in a territory by reason of the fact that—
- (a) a fixed place of business is maintained there for the purpose of carrying on activities for the company, or
  - (b) an agent carries on activities there for and on behalf of the company,
- if, in relation to the business of the company as a whole, the activities carried on are only of a preparatory or auxiliary character.
- (5) For this purpose “activities of a preparatory or auxiliary character” include (without prejudice to the generality of that expression)—
- (a) the use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the company;
  - (b) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the company for the purpose of processing by another person;
  - (d) purchasing goods or merchandise, or collecting information, for the company.
- [<sup>F94</sup>(5A) Where alternative finance return as defined by subsection (5) of section 47 of the Finance Act 2005 is paid to a company that is not resident in the United Kingdom, the company is not regarded as having a permanent establishment in the United Kingdom merely by virtue of anything done for the purposes of the arrangements falling within that section by the other party to the arrangements or by any other person acting for the company in relation to the arrangements.]
- (6) In section 832(1) of the Taxes Act 1988 (interpretation of the Tax Acts), at the appropriate place insert—
- ““permanent establishment”, in relation to a company, has the meaning given by section 148 of the Finance Act 2003;”.
- (7) In section 288(1) of the Taxation of Chargeable Gains Act 1992 (c. 12) (interpretation), at the appropriate place insert—
- ““permanent establishment”, in relation to a company, has the meaning given by section 148 of the Finance Act 2003;”.

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### Textual Amendments

**F94** S. 148(5A) inserted (with effect in accordance with s. 56 of the amending Act) by [Finance Act 2005](#) (c. 7), s. 48(2)

## 149 Non-resident companies: basis of charge to corporation tax

(1) In section 11 of the Taxes Act 1988 (corporation tax: companies not resident in the United Kingdom), for subsections (1) and (2) (basis of taxation) substitute—

“(1) A company not resident in the United Kingdom is within the charge to corporation tax if, and only if, it carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

(2) If it does so, it is chargeable to corporation tax, subject to any exceptions provided for by the Corporation Tax Acts, on all profits, wherever arising, that are attributable to its permanent establishment in the United Kingdom.

These profits, and these only, are the company’s “chargeable profits” for the purposes of corporation tax.

(2A) The profits attributable to a permanent establishment for the purposes of corporation tax are—

- (a) trading income arising directly or indirectly through or from the establishment,
- (b) income from property or rights used by, or held by or for, the establishment, and
- (c) chargeable gains falling within section 10B of the 1992 Act—
  - (i) by virtue of assets being used in or for the purposes of the trade carried on by the company through the establishment, or
  - (ii) by virtue of assets being used or held for the purposes of the establishment or being acquired for use by or for the purposes of the establishment.”.

(2) After that section insert—

### “11AA Determination of profits attributable to permanent establishment

(1) This section provides for determining for the purposes of corporation tax the amount of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom (“the non-resident company”).

(2) There shall be attributed to the permanent establishment the profits it would have made if it were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

(3) In applying subsection (2)—

- (a) it shall be assumed that the permanent establishment has the same credit rating as the non-resident company, and



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- (b) it shall also be assumed that the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.

No deduction may be made in respect of costs in excess of those that would have been incurred on those assumptions.

- (4) There shall be allowed as deductions any allowable expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the United Kingdom or elsewhere.

“Allowable expenses” means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a company resident in the United Kingdom.

- (5) The Board may by regulations make provision as to the application of subsection (2) in relation to insurance companies.

The regulations may, in particular, make provision in place of subsection (3) (b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom. In this subsection “insurance company” has the meaning given by section 431(2).

- (6) Schedule A1 to this Act contains provisions supplementing the provisions of this section.”.

- (3) At the beginning of the Schedules to the Taxes Act 1988 insert as Schedule A1 the Schedule set out in Schedule 25 to this Act.

- (4) After section 10A of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

**“10B Non-resident company with United Kingdom permanent establishment**

- (1) Subject to any exceptions provided by this Act, the chargeable profits for the purposes of corporation tax of a company not resident in the United Kingdom but carrying on a trade in the United Kingdom through a permanent establishment there include chargeable gains accruing to the company on the disposal of—

- (a) assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time the gain accrued, or
- (b) assets situated in the United Kingdom and used or held for the purposes of the permanent establishment at or before the time the gain accrued or acquired for use by or for the purposes of the permanent establishment.

- (2) Subsection (1) does not apply unless the disposal is made at a time when the company is carrying on a trade in the United Kingdom through a permanent establishment there.

- (3) This section does not apply to a company that, by virtue of Part 18 of the Taxes Act (double taxation relief arrangements), is exempt from corporation tax for the chargeable period in respect of the profits of the permanent establishment.

- (4) In this section “trade” has the meaning given by section 6(4)(b) of the Taxes Act.”.

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- (5) In section 834(1) of the Taxes Act 1988 (interpretation of the Corporation Tax Acts), at the appropriate place insert—
- ““chargeable profits”, in relation to a company that is not resident in the United Kingdom—
- (a) for corporation tax purposes generally, has the meaning given by section 11(2), and
- (b) for the purposes of Chapter 4 of Part 17 (controlled foreign companies), has the meaning given by section 747(6);”.
- (6) This section has effect in relation to accounting periods (of the non-resident company) beginning on or after 1st January 2003, and regulations under section 11AA(5) of the Taxes Act 1988 (inserted by subsection (2) above) may be made so as to have effect from that date.

### **150 Non-resident companies: assessment, collection and recovery of corporation tax**

- (1) The enactments relating to corporation tax, so far as they make provision for or in connection with the assessment, collection and recovery of tax, or of interest on tax, have effect, in accordance with this section, as if the obligations and liabilities of a non-resident company were also obligations and liabilities of its UK representative.
- (2) For this purpose a permanent establishment in the United Kingdom through which a non-resident company carries on a trade—
- (a) is the UK representative of the company in relation to chargeable profits of the company attributable to that establishment,
- (b) continues to be the company’s UK representative in relation to those profits even after ceasing to be a permanent establishment through which the company carries on a trade, and
- (c) shall be treated, if it would not otherwise be so treated, as a distinct and separate person from the non-resident company.

As to the chargeable profits attributable to a permanent establishment, see section 11(2A) of the Taxes Act 1988.

- (3) Subject to the following provisions of this section—
- (a) the discharge by the UK representative of a non-resident company, or by the company itself, of an obligation or liability that corresponds to one to which the other is subject discharges the corresponding obligation or liability of the other, and
- (b) a non-resident company is bound, as if they were its own, by acts or omissions of its UK representative in the discharge of the obligations and liabilities imposed on the representative by this section.
- (4) An obligation or liability attaching to a non-resident company—
- (a) by reason of its having been given or served with a notice or other document, or
- (b) by reason of its having received a request or demand,
- does not also attach to its UK representative unless the notice or document, or a copy of it, has been given to or served on the representative or, as the case may be, unless the representative has been notified of the request or demand.

*Status: Point in time view as at 18/04/2005.*

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- (5) A non-resident company is not bound by mistakes in information provided by its UK representative in pursuance of an obligation imposed on the representative by this section, unless the mistake is the result of an act or omission of the company itself, or to which the company consented or in which it connived.
- (6) The UK representative of a non-resident company is not by virtue of this section liable to be proceeded against for a criminal offence unless the representative committed the offence itself, or consented to or connived in its commission.
- (7) In this section—
- “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30);
  - “information” includes anything contained in a return, self-assessment, account, statement or report required to be provided to the Board or any officer of the Board;
  - “non-resident company” means a company that is not resident in the United Kingdom; and
  - “trade” has the meaning given by section 6(4)(b) of the Taxes Act 1988.
- (8) This section has effect for accounting periods (of the non-resident company) beginning on or after 1st January 2003.

## **151 Non-resident companies: extent of charge to income tax**

- (1) The income tax chargeable for a year of assessment on the total income of a company that is not resident in the United Kingdom is limited to the sum of the following amounts—
- (a) the amount of tax that, apart from this section, would be chargeable on that total income if—
    - (i) the amount of that income were reduced by the amount of any income to which this section applies, and
    - (ii) there were disregarded any relief to which that company is entitled by virtue of arrangements having effect under section 788 of the Taxes Act 1988 (double taxation relief), and
  - (b) the amount of tax deducted from so much of any income to which this section applies as is income the tax on which is deducted at source.
- (2) The income to which this section applies is—
- [<sup>F95</sup>(a) income (other than relevant foreign income) chargeable to tax under—
    - (i) Chapter 2, 7, 8, 10 or 11 of Part 4 of the Income Tax (Trading and Other Income) Act 2005 (interest, purchased life annuity payments, profits from deeply discounted securities, distributions from unauthorised unit trusts and transactions in deposits),
    - (ii) section 579 of that Act so far as it relates to annual payments (royalties etc. from intellectual property),
    - (iii) Chapter 4 of Part 5 of that Act so far as it relates to annual payments (certain telecommunication rights: non-trading income), or
    - (iv) Chapter 7 of Part 5 of that Act (annual payments not otherwise charged),
  - (aa) income chargeable to tax under Chapter 3 of Part 4 of that Act (dividends etc. from UK resident companies etc.),]

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- <sup>F96</sup>(b) .....
- (c) income arising from a transaction carried out through a broker or investment manager in the United Kingdom acting as an agent of independent status in the ordinary course of his business; or
- (d) income of such other description as the Treasury may by regulations designate for the purposes of this subsection.

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

- (3) In subsection (1)(b) above—
- (a) the reference to tax deducted at source is to tax that is or is treated as deducted, or is treated as paid, or in respect of which there is a tax credit, and
- (b) the reference to the amount of tax deducted at source is to the amount that is or is treated as deducted, or is treated as paid, or, as the case may be, to the amount of that credit.
- (4) This section does not apply to the income tax chargeable for a year of assessment on income of a company as a trustee.
- (5) This section applies—
- (a) in relation to the year 2002-03, as regards income arising on or after 1st January 2003, and
- (b) in relation to the year 2003-04 and subsequent years of assessment.

#### Textual Amendments

- F95** S. 151(2)(a)(aa) substituted for s. 151(2)(a) (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 622\(a\)](#) (with Sch. 2)
- F96** S. 151(2)(b) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 622\(b\)](#), [Sch. 3](#) (with Sch. 2)

### 152 Non-resident companies: transactions carried out through broker, investment manager or Lloyd’s agent

Schedule 26 to this Act contains provisions supplementing—

- (a) section 148(3) (meaning of “permanent establishment”: not to include independent agent), and
- (b) section 151(2)(c) (limit on income tax chargeable on non-resident company: income arising from transactions carried out through independent agent),

as regards transactions carried out through a broker, investment manager or Lloyd’s agent.

### 153 General replacement of references to branch or agency of company

- (1) In the following provisions (which relate only to companies) for “branch or agency” or “branches or agencies”, wherever occurring, substitute “permanent establishment” or “permanent establishments”.

The provisions are—

- (a) in the Taxes Act 1988, sections 115(4)(b), 338B(2)(d) and (4)(b), 349B(2)(b) and (7)(b)(ii), 402(3B), 403E(1)(a), (2), (4), (5) and (6), 442(1), 444BB(3)

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- (b), <sup>F97</sup> ..., 748A(1)(c) and (2), 790(6A)(b), 801(1A)(b), 804A(1)(a), 806L(1), (2), (4), and (5), 806M(2) to (5) and 815A(6); in Schedule 15, paragraphs 17(3)(c) and 25(2)(c); in Schedule 19AA, paragraph 5(5)(c); in Schedule 24, paragraphs 1 and 8; and in Schedule 25, paragraphs 6(2A) and (2C), 8 and 11(3);
- (b) in the Taxation of Chargeable Gains Act 1992 (c. 12), sections 140(1), 140C(1)(a), 173(3)(b), 175(1A)(b), 185(4) and 213(5A);
- (c) in the Finance Act 2000 (c. 17), section 107(7);
- (d) in the Capital Allowances Act 2001 (c. 2), sections 560(2) and 561(1)(c);
- (e) in the Finance Act 2002 (c. 23), in Schedule 22, paragraph 10(1)(b)(ii); and in Schedule 29, paragraphs 66(5) and (8)(b), 68(2)(b), 86(1)(a), 87(1)(a), 109(1)(b) and 110(1)(b).
- (2) In the following provisions (which relate to companies and other persons), any reference to a branch or agency shall be read, in relation to a company, as a reference to a permanent establishment.
- The provisions are—
- (a) in the Taxes Act 1988, sections 606(13), 794(2)(bb), 806K(1), 814(1) and 830(4), and in Schedule 23A, paragraphs 3 and 4;
- (b) in the Taxation of Chargeable Gains Act 1992, sections 25(2), (3) and (5), 80(4)(a) and (b) and (7)(b), 199(2) and (4) and 276(7);
- (c) in the Finance Act 1999 (c. 16), section 85(2)(a);
- (d) in the Finance Act 2002, in Schedule 26, paragraph 31(6)(a).
- (3) Any reference to a branch or agency—
- (a) in subordinate legislation made under an enactment contained in the Tax Acts or relating to chargeable gains, or
- (b) that is to be construed as having the same meaning as in any such enactment, shall be read, in relation to a company, as a reference to a permanent establishment.
- “Subordinate legislation” here has the same meaning as in the Interpretation Act 1978 (c. 30).
- (4) This section has effect in relation to accounting periods beginning on or after 1st January 2003.

#### Textual Amendments

**F97** Word in s. 153(1)(a) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

### 154 Double taxation relief: profits attributable to overseas permanent establishment

- (1) In Part 18 of the Taxes Act 1988 (double taxation relief), section 797 (limits on credit: corporation tax) is amended as follows.
- (2) In subsection (1) for “subsections (2) and (3)” substitute “ the following provisions of this section ”.
- (3) In subsection (2) for “subsection (3)” substitute “ subsections (2A) and (3) ”.
- (4) After subsection (2) insert—

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“(2A) The provisions of section 11AA (profits attributable to permanent establishment), and of any regulations made under that section, apply, with the necessary modifications, in determining for the purposes of this section how much of the chargeable profits of a company resident in the United Kingdom is attributable to a permanent establishment of the company outside the United Kingdom.”.

- (5) The amendments in this section have effect in relation to accounting periods beginning on or after 1st January 2003.

### **155 Consequential amendments**

- (1) Schedule 27 to this Act provides for amendments consequential on the provisions of sections 148 to 153.
- (2) The amendments made by that Schedule have effect in relation to accounting periods beginning on or after 1st January 2003.

### **156 Overseas life insurance companies**

- (1) The enactments relating to corporation tax have effect in relation to overseas life insurance companies subject to such modifications and exceptions as the Treasury may prescribe by regulations.
- (2) The power to make regulations under this section includes power to make provision in place of, and in consequence to repeal or revoke, all or any of the enactments relating to corporation tax that on the passing of this Act make provision in relation to overseas life insurance companies.
- (3) Regulations under this section—
- (a) may make different provision for different cases, and
  - (b) may make such consequential amendments of other enactments as appear to the Treasury to be necessary or expedient.
- (4) Regulations under this section providing for the application to overseas life insurance companies of sections 148 to 154 of this Act, Schedules 26 and 27 to this Act or any enactment amended by those sections or Schedules may be made so as to have effect from 1st January 2003.
- (5) In this section—
- “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (c. 30), and
- “overseas life insurance company” means an insurance company (as defined in section 431(2) of the Taxes Act 1988) that is not resident in the United Kingdom but carrying on life assurance business (as so defined) through a permanent establishment in the United Kingdom.

### *Chargeable gains*

### **157 Life insurance policies and deferred annuity contracts**

- (1) For section 210 of the Taxation of Chargeable Gains Act 1992 (c. 12) substitute—

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## **“210 Life insurance and deferred annuities**

- (1) This section has effect in relation to any policy of insurance or contract for a deferred annuity on the life of any person.
- (2) A gain accruing on a disposal of, or of an interest in, the rights conferred by the policy of insurance or contract for a deferred annuity is not a chargeable gain unless subsection (3) below applies.
- (3) This subsection applies if—
  - (a) (in the case of a disposal of the rights) the rights or any interest in the rights, or
  - (b) (in the case of a disposal of an interest in the rights) the rights, the interest or any interest from which the interest directly or indirectly derives (in whole or in part),have or has at any time been acquired by any person for actual consideration (as opposed to consideration deemed to be given by any enactment relating to the taxation of chargeable gains).
- (4) For the purposes of subsection (3) above —
  - (a) (in the case of a policy of insurance) amounts paid under the policy by way of premiums, and
  - (b) (in the case of a contract for a deferred annuity) amounts paid under the contract, whether by way of premiums or as lump sum consideration,do not constitute actual consideration.
- (5) And for those purposes actual consideration for—
  - (a) a disposal which is made by one spouse to the other or is an approved post-marriage disposal, or
  - (b) a disposal to which section 171(1) applies,is to be treated as not constituting actual consideration.
- (6) For the purposes of subsection (5)(a) above a disposal is an approved post-marriage disposal if—
  - (a) it is made in consequence of the dissolution or annulment of a marriage by one person who was a party to the marriage to the other,
  - (b) it is made with the approval, agreement or authority of a court (or other person or body) having jurisdiction under the law of any country or territory or pursuant to an order of such a court (or other person or body), and
  - (c) the rights disposed of were, or the interest disposed of was, held by the person by whom the disposal is made immediately before the marriage was dissolved or annulled.
- (7) Subsection (8) below applies for the purposes of tax on chargeable gains where—
  - (a) (if that subsection did not apply) a loss would accrue on a disposal of, or of an interest in, the rights conferred by the policy of insurance or contract for a deferred annuity, but

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- (b) if sections 37 and 39 were disregarded, there would accrue on the disposal a loss of a smaller amount, a gain or neither a loss nor a gain.
- (8) If (disregarding those sections) a loss of a smaller amount would accrue, that smaller amount is to be taken to be the amount of the loss accruing on the disposal; and in any other case, neither a loss nor a gain is to be taken to accrue on the disposal.
- (9) But subsection (8) above does not affect the treatment for the purposes of tax on chargeable gains of the person who acquired rights, or an interest in rights, on the disposal.
- (10) The occasion of—
- (a) the receipt of the sum or sums assured by the policy of insurance,
  - (b) the transfer of investments or other assets to the owner of the policy of insurance in accordance with the policy, or
  - (c) the surrender of the policy of insurance,
- is for the purposes of tax on chargeable gains an occasion of a disposal of the rights (or of all of the interests in the rights) conferred by the policy of insurance.
- (11) The occasion of—
- (a) the receipt of the first instalment of the annuity under the contract for a deferred annuity, or
  - (b) the surrender of the rights conferred by the contract for a deferred annuity,
- is for the purposes of tax on chargeable gains an occasion of a disposal of the rights (or of all of the interests in the rights) conferred by the contract for a deferred annuity.
- (12) Where there is a disposal on the occasion of the receipt of the first instalment of the annuity under the contract for a deferred annuity—
- (a) in the case of a disposal of the rights conferred by the contract, the consideration for the disposal is the aggregate of the amount or value of the first instalment and the market value at the time of the disposal of the right to receive the further instalments of the annuity, and
  - (b) in the case of a disposal of an interest in the rights, the consideration for the disposal is such proportion of that aggregate as is just and reasonable;
- and no gain accruing on any subsequent disposal of, or of any interest in, the rights is a chargeable gain (even if subsection (3) above applies).
- (13) In this section “interest”, in relation to rights conferred by a policy of insurance or contract for a deferred annuity, means an interest as a co-owner of the rights (whether the rights are owned jointly or in common and whether or not the interests of the co-owners are equal).”
- (2) This section has effect in relation to disposals on or after 9th April 2003.



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## **158 Application of market value rule in case of exercise of option**

- (1) In Chapter 3 of Part 4 of the Taxation of Chargeable Gains Act 1992 (c. 12) (miscellaneous provisions relating to options and other matters), after section 144 insert—

### **“144ZA Application of market value rule in case of exercise of option**

- (1) This section applies where—
- (a) an option is exercised, so that by virtue of section 144(2) or (3) the grant or acquisition of the option and the transaction resulting from its exercise are treated as a single transaction, and
  - (b) section 17(1) (“the market value rule”) applies, or would apply but for this section, in relation to—
    - (i) the grant of the option,
    - (ii) the acquisition of the option (whether directly from the grantor or not) by the person exercising it, or
    - (iii) the transaction resulting from its exercise.
- (2) If the option binds the grantor to sell—
- (a) the market value rule does not apply for determining the consideration for the sale, except, where the rule applies for determining the consideration for the option, to that extent (in accordance with section 144(2)(a));
  - (b) the market value rule does not apply for determining the cost to the person exercising the option of acquiring what is sold, except, where the rule applies for determining the cost of acquiring the option, to that extent (in accordance with section 144(3)(a)).
- (3) If the option binds the grantor to buy—
- (a) the market value rule does not apply for determining the cost of acquisition incurred by the grantor, but without prejudice to its application (in accordance with section 144(2)(b)) where the rule applies for determining the consideration for the option;
  - (b) the market value rule does not apply for determining the consideration for the disposal of what is bought, but without prejudice to its application (in accordance with section 144(3)(b)) where the rule applies for determining the cost of the option.
- (4) To the extent that, by virtue of this section, the market value rule does not apply for determining an amount or value, the amount or value to be taken into account is (subject to section 120) the actual amount or value.
- (5) In this section “option” has the same meaning as in section 144.”.
- (2) This section applies in relation to the exercise of an option on or after 10th April 2003.

## **159 Reporting limits and annual exempt amount**

- (1) The Taxation of Chargeable Gains Act 1992 (c. 12) is amended in accordance with Schedule 28 to this Act.
- (2) In that Schedule—

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Part 1 makes provision as to the cases in which a return of information about chargeable gains is required,

Part 2 contains minor and consequential amendments of the provisions relating to the annual exempt amount, and

Part 3 provides for commencement.

## **160 Taper relief: assets qualifying as business assets**

(1) In Schedule A1 to the Taxation of Chargeable Gains Act 1992 (taper relief), paragraph 5 (conditions for assets other than shares to qualify as business assets) is amended as follows.

(2) In sub-paragraph (1) (application of paragraph), after “in the case of the disposal of any asset” insert “ by an individual, the trustees of a settlement or an individual’s personal representatives ”.

(3) For sub-paragraphs (2) to (5) substitute—

“(1A) The asset was a business asset at that time if at that time it was being used, wholly or partly, for the purposes of a trade carried on by—

(a) an individual or a partnership of which an individual was at that time a member, or

(b) the trustees of a settlement or a partnership whose members at that time included—

(i) the trustees of a settlement, or

(ii) any one or more of the persons who at that time were the trustees of a settlement (so far as acting in their capacity as trustees), or

(c) the personal representatives of a deceased person or a partnership whose members at that time included—

(i) the personal representatives of a deceased person, or

(ii) any one or more of the persons who at that time were the personal representatives of a deceased person (so far as acting in their capacity as personal representatives).

(2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time it was being used, wholly or partly, for the purposes of a trade carried on by—

(a) a company which at that time was a qualifying company by reference to that individual,

(b) a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to that individual, or

(c) a partnership whose members at that time included a company within paragraph (a) or (b),

or for the purposes of any office or employment held by that individual with a person carrying on a trade.

(3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time it was being used, wholly or partly, for the purposes of a trade carried on by—

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- (a) a company which at that time was a qualifying company by reference to the trustees of the settlement or an eligible beneficiary,
  - (b) a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the trustees of the settlement or an eligible beneficiary, or
  - (c) a partnership whose members at that time included a company within paragraph (a) or (b),
- or for the purposes of any office or employment held by an eligible beneficiary with a person carrying on a trade.
- (4) Where the disposal is made by an individual's personal representatives, the asset was a business asset at that time if at that time it was being used, wholly or partly, for the purposes of a trade carried on by—
    - (a) a company which at that time was a qualifying company by reference to the deceased's personal representatives,
    - (b) a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the deceased's personal representatives, or
    - (c) a partnership whose members at that time included a company within paragraph (a) or (b).
  - (5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64), the asset shall be taken to have been a business asset at that time if at that time it was—
    - (a) being held by the personal representatives of the deceased, and
    - (b) being used, wholly or partly, for the purposes of a trade carried on by—
      - (i) a company which at that time was a qualifying company by reference to the deceased's personal representatives,
      - (ii) a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the deceased's personal representatives, or
      - (iii) a partnership whose members at that time included a company within sub-paragraph (i) or (ii)."
- (4) The following amendments in Schedule A1 to the Taxation of Chargeable Gains Act 1992 (c. 12) are consequential on those above—
    - (a) in paragraphs 9(1)(a) and 19(1) for "paragraph 5(2) to (5)" substitute " any provision of paragraph 5 ";
    - (b) in paragraph 15(4)(a) for "paragraph 5(2)" substitute " paragraph 5(1) and (2) "
  - (5) The amendments in this section apply to disposals on or after 6th April 2004 and as they so apply have effect in relation to periods of ownership on or after that date.

## **161 Earn-out rights to be treated as securities unless contrary election**

- (1) Section 138A of the Taxation of Chargeable Gains Act 1992 (c. 12) (use of earn-out rights for exchange of securities) is amended as follows.

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- (2) In subsection (2) (seller’s right to elect for earn-out right to be treated as security of new company)—
- (a) at the end of paragraph (a) insert “ and ”; and
  - (b) omit paragraph (c) (the seller’s right of election) and the word “and” immediately preceding it.
- (3) After subsection (2) insert—
- “(2A) Subsection (2) above does not have effect if the seller elects under this section for the earn-out right not to be treated as a security of the new company.”.
- (4) In subsection (4) (election for corresponding treatment where old right extinguished in consideration of new right)—
- (a) at the end of paragraph (c) insert “ and ”;
  - (b) omit paragraph (e) (right of election of person on whom the new right is conferred) and the word “and” immediately preceding it; and
  - (c) in the closing words, for “that person” substitute “ the person on whom the new right is conferred ”.
- (5) After subsection (4) insert—
- “(4A) Subsection (4) above does not have effect if the person on whom the new right is conferred elects under this section for it not to be treated as a security of the new company.”.
- (6) The amendments made by this section have effect in relation to rights conferred on or after 10th April 2003.

## **162 Deferred unascertainable consideration: election for treatment of loss**

- (1) After section 279 of the Taxation of Chargeable Gains Act 1992 insert—

### **“279A Deferred unascertainable consideration: election for treatment of loss**

- (1) Where—
- (a) a person (“the taxpayer”) makes a disposal of a right to which this section applies (see subsection (2) below),
  - (b) on that disposal an allowable loss (“the relevant loss”) would, apart from section 279C, accrue to him in any year (“the year of the loss”), and
  - (c) the year of the loss is a year in which the taxpayer is within the charge to capital gains tax (see section 279B(1)),
- the taxpayer may make an election under this section for the relevant loss to be treated as accruing in an earlier year in accordance with section 279C if condition 1 in subsection (3) below and condition 2 in subsection (5) below are satisfied.
- (2) This section applies to a right if each of the following conditions is satisfied—
- (a) the right was, in whole or in part, acquired by the taxpayer as the whole or part of the consideration for a disposal (the “original disposal”) by him of another asset (the “original asset”),

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- (b) the original disposal was made in a year (“the year of the original disposal”) earlier than the year in which the disposal mentioned in subsection (1)(a) above is made (“the year of the right’s disposal”),
  - (c) where the right was acquired by the taxpayer as the whole or part of the consideration for two or more disposals (each of which is accordingly an “original disposal”), the condition in paragraph (b) above is satisfied with respect to each of those disposals (the “original disposals”),
  - (d) on the taxpayer’s acquisition of the right, there was no corresponding disposal of it,
  - (e) the right is a right to unascertainable consideration (see section 279B(2) to (6)).
- (3) Condition 1 for making an election in relation to the relevant loss is that a chargeable gain accrued to the taxpayer on any one or more of the following events—
  - (a) the original disposal,
  - (b) an earlier disposal of the original asset by the taxpayer in the year of the original disposal,
  - (c) a later disposal of the original asset by the taxpayer in a year earlier than the year of the right’s disposal,or would have so accrued but for paragraph 2(2)(a) of Schedule 5B or 5C (postponement of original gain). This subsection is subject to subsection (4) below.
- (4) If the right to which this section applies was acquired by the taxpayer as the whole or part of the consideration for two or more original disposals (including cases where there are two or more original assets (the “original assets”))—
  - (a) any reference in subsection (3) above to the original disposal is a reference to any of the original disposals,
  - (b) any reference in that subsection to the original asset is a reference to the asset which is the original asset in relation to that original disposal, and
  - (c) any reference in that subsection to the year of the original disposal shall be construed accordingly.
- (5) Condition 2 for making an election in relation to the relevant loss is that there is a year (an “eligible year”)—
  - (a) which is earlier than the year of the loss but not earlier than the year 1992-93,
  - (b) in which a chargeable gain falling within subsection (3) above or subsection (6) below accrued to the taxpayer, and
  - (c) for which, immediately before the election, there remains a relevant amount on which capital gains tax is chargeable (see subsection (7) below).
- (6) A chargeable gain falling within this subsection accrues to the taxpayer in a year if—
  - (a) in that year a chargeable gain (the “revived gain”) is treated as accruing to the taxpayer in accordance with paragraphs 4 and 5 of

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- Schedule 5B or 5C (chargeable gain accruing to person on chargeable event), and
- (b) the gain which, in determining the amount of the revived gain in accordance with those paragraphs, is the original gain consists of or represents the whole or some part of a gain that would have accrued as mentioned in subsection (3) above but for paragraph 2(2)(a) of Schedule 5B or 5C.
- (7) For the purposes of subsection (5)(c) above, a year is one for which, immediately before an election, there remains a relevant amount on which capital gains tax is chargeable if, immediately before the making of that election, there remains an amount in respect of which the taxpayer is chargeable to capital gains tax for the year—
- (a) after taking account of any previous elections made by the taxpayer under this section,
- (b) after excluding any amounts that fall to be brought into account for that year under section 2(4)(b) by virtue of section 2(5)(b), and
- (c) on the assumption that no part of the relevant loss (or of any other loss in respect of which an election under this section may be, but has not been, made) falls to be deducted in consequence of an election under this section from the chargeable gains accruing to the taxpayer in that year.
- (8) In this section “year” means year of assessment.
- (9) This section and sections 279B to 279D are to be construed as one.

### **279B Provisions supplementary to section 279A**

- (1) For the purposes of section 279A(1)(c) a person is within the charge to capital gains tax in any year if—
- (a) he is chargeable to capital gains tax in respect of chargeable gains accruing to him in that year, or
- (b) on the assumption that there accrue to him in that year any chargeable gains (excluding amounts in relation to which section 2(4)(a) applies), he would be so chargeable apart from—
- (i) any deductions that fall to be made from the total amount referred to in section 2(2), and
- (ii) section 3 (annual exempt amount).
- (2) Subsections (3) to (6) below have effect for the purposes of section 279A(2) (e) (right to unascertainable consideration).
- (3) A right is a right to unascertainable consideration if, and only if,—
- (a) it is a right to consideration the amount or value of which is unascertainable at the time when the right is conferred, and
- (b) that amount or value is unascertainable at that time on account of its being referable, in whole or in part, to matters which are uncertain at that time because they have not yet occurred.

This subsection is subject to subsections (4) to (6) below.

- (4) The amount or value of any consideration is not to be regarded as being unascertainable by reason only—

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- (a) that the right to receive the whole or any part of the consideration is postponed or contingent, if the consideration or, as the case may be, that part of it is, in accordance with section 48, brought into account in the computation of the gain accruing to the taxpayer on the disposal of an asset, or
  - (b) in a case where the right to receive the whole or any part of the consideration is postponed and is to be, or may be, to any extent satisfied by the receipt of property of one description or property of some other description, that some person has a right to select the property, or the description of property, that is to be received.
- (5) A right is not to be taken to be a right to unascertainable consideration by reason only that either the amount or the value of the consideration has not been fixed, if—
- (a) the amount will be fixed by reference to the value, and the value is ascertainable, or
  - (b) the value will be fixed by reference to the amount, and the amount is ascertainable.
- (6) A right which is by virtue of subsection (2) or (4) of section 138A (use of earn-out rights for exchange of securities) assumed in accordance with subsection (3)(a) of that section to be a security, within the definition in section 132, is not to be regarded as a right to unascertainable consideration.
- (7) For the purposes of section 279A, any question as to—
- (a) whether a chargeable gain or a loss is one that accrues (or would, apart from any particular provision, accrue) on a particular disposal or a disposal of any particular description, or
  - (b) the time at which, or year in which, any particular disposal takes place, is to be determined without regard to section 10A(2) (chargeable gains and losses accruing during temporary non-residence to be treated as accruing in year of return). This subsection is subject to subsection (8) below.
- (8) Subsection (7) above does not affect the determination of any question—
- (a) as to the year in which the chargeable gain or loss is, by virtue of section 10A(2), to be treated as accruing (apart from section 279C), or
  - (b) where (apart from section 279C) a loss is to be treated by virtue of section 10A(2) as accruing in a particular year, whether the loss is an allowable loss.

### **279C Effect of election under section 279A**

- (1) This section applies where an election is made under section 279A by the taxpayer for the relevant loss to be treated as accruing in an earlier year in accordance with this section.
- (2) Where this section applies, the relevant loss shall be treated for the purposes of capital gains tax as if it were a loss accruing to the taxpayer in the earliest year which is an eligible year (the “first eligible year”), instead of in the year of the loss (but subject to, and in accordance with, the following provisions of this section).

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- (3) The amount of the relevant loss that falls to be deducted from chargeable gains of the first eligible year in accordance with section 2(2)(a) is limited to the amount (the “first year limit”) found by taking the following steps—

*Step 1:* take the total amount of chargeable gains accruing to the taxpayer in the first eligible year,

*Step 2:* exclude from that amount any amounts that fall to be disregarded in accordance with section 2(4)(a) for that year,

*Step 3:* deduct from the amount remaining any amounts in respect of allowable losses (other than the relevant loss or any part of it) that fall to be deducted from that amount in accordance with section 2(2) otherwise than by virtue of section 2(5)(aa)(i) (taking account of any previous elections under section 279A).

The amount so found is the first year limit, unless the first eligible year is a year in relation to which section 2(5)(aa) has effect, in which case the further steps in subsection (4) below must also be taken.

- (4) Those further steps are—

*Step 4:* add to the amount found by taking steps 1 to 3 in subsection (3) above every amount which is treated by virtue of section 77 or 86 as an amount of chargeable gains accruing to the taxpayer for the first eligible year (the “attributed amounts”),

*Step 5:* deduct from the resulting amount any amounts (other than the relevant loss or any part of it) that fall to be deducted from the attributed amounts in accordance with section 2(5)(aa)(i) (taking account of any previous elections under section 279A).

The amount so found is the first year limit in a case where section 2(5)(aa) applies in relation to the first eligible year.

- (5) As respects any later year before the year of the loss, the relevant loss (so far as not previously allowed as a deduction from chargeable gains accruing in any previous year) falls to be deducted in accordance with section 2(2)(b) only if that later year is an eligible year.
- (6) The amount of the relevant loss that falls to be deducted from chargeable gains of that later eligible year in accordance with section 2(2)(b) is limited to the amount (the “later year limit”) in respect of which the taxpayer would be chargeable to capital gains tax for that later year—
- (a) on the assumption in subsection (7) below,
  - (b) taking account of any previous elections under section 279A, and
  - (c) apart from the provisions specified in subsection (8) below.
- (7) The assumption is that no part of—
- (a) the relevant loss, or
  - (b) any loss in respect of which an election under section 279A may be, but has not been, made,

falls to be deducted, in consequence of an election under section 279A, from any chargeable gains accruing to the taxpayer in that later eligible year.

The assumption falls to be made immediately after the making of the election in respect of the relevant loss.



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- (8) The provisions are—
- (a) section 2(5)(a)(ii) (taper relief),
  - (b) section 2(5)(aa)(ii) (taper relief),
  - (c) section 2(5)(b) (addition of certain amounts treated as amounts of chargeable gains), and
  - (d) section 2A (taper relief),
- except that paragraphs (b) and (d) above are not to affect the operation of section 2(7) for the purposes of subsection (6) above.
- (9) All such adjustments shall be made, whether by discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to the election under section 279A made by the taxpayer for the relevant loss to be treated as accruing in an earlier year in accordance with this section.
- (10) Any reference in this section or section 279D to deduction in accordance with section 2(2)(a), section 2(2)(b) or section 2(2) includes a reference to such deduction by virtue of section 2(5)(a)(i) or (aa)(i).

#### **279D Elections under section 279A**

- (1) An election under section 279A is irrevocable.
- (2) Any election under that section must be made by giving a notice in accordance with this section.
- (3) The notice must be given to an officer of the Board.
- (4) Subsections (5) to (8) below have effect in relation to the notice given by the taxpayer in respect of the relevant loss.
- (5) The notice must specify each of the following—
- (a) the amount of the relevant loss;
  - (b) the right disposed of;
  - (c) the year of the right's disposal;
  - (d) the year of the loss (if different from the year of the right's disposal);
  - (e) the year in which the right was acquired;
  - (f) the original asset or assets.
- (6) The notice must also specify each of the following—
- (a) the eligible year in which the relevant loss is to be treated in accordance with section 279C(2) as accruing to the taxpayer;
  - (b) the first year limit (see section 279C(3) and (4));
  - (c) how much of the relevant loss falls to be deducted in accordance with section 2(2)(a) from chargeable gains accruing to the taxpayer in that year.
- (7) If, in accordance with section 279C, any part of the relevant loss falls to be deducted in accordance with section 2(2)(b) from chargeable gains accruing to the taxpayer in any later eligible year, the notice must also specify—
- (a) each such year;
  - (b) in the case of each such year, the later year limit (see section 279C(6));

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- (c) how much of the relevant loss falls to be deducted in accordance with section 2(2)(b) in each such year from chargeable gains accruing to the taxpayer in that year.
- (8) The notice must be given on or before the first anniversary of the 31st January next following the year of the loss.
- (9) An election under section 279A is made on the date on which the notice of the election is given.
- (10) Different notices must be given in respect of different losses.
- (11) Where a person makes two or more elections under section 279A on the same day, the notices must specify the order in which the elections are made.
- (12) For the purposes of any provisions of sections 279A to 279C whose operation is affected by the order in which any elections under section 279A are made, elections made by a person on the same day shall be treated as made at different times and in the order specified in accordance with subsection (11) above.”.
- (2) Where—
- (a) on the disposal of a right to which section 279A of the Taxation of Chargeable Gains Act 1992 (c. 12) applies, an allowable loss would, apart from section 279C of that Act, accrue to a person in any year of assessment,
- (b) an election is made under section 279A of that Act for the loss to be treated as accruing in an earlier year in accordance with section 279C, and
- (c) the right is an earn-out right, within the meaning of section 138A of that Act, which was conferred before 10th April 2003,
- no election may be made under section 138A of that Act (election for earn-out right to be treated as security etc) in respect of the right, whether at the same time as the election under section 279A or subsequently.
- (3) The amendment made by subsection (1) has effect in relation to allowable losses that would, apart from that amendment, accrue on or after 10th April 2003.
- For this purpose, losses that would, apart from that amendment, be treated by virtue of section 10A of the Taxation of Chargeable Gains Act 1992 as accruing in the year 2003-04 shall be treated as so accruing on or after 10th April 2003.
- (4) Subsection (2) shall be deemed to have come into force on 10th April 2003.

## 163 Transfers of value: attribution of gains to beneficiaries

- (1) For section 85A of the Taxation of Chargeable Gains Act 1992 (c. 12) substitute—

**“85A Transfers of value: attribution of gains to beneficiaries and treatment of losses**

- (1) Schedule 4C to this Act has effect with respect to the attribution of gains to beneficiaries where there has been a transfer of value to which Schedule 4B applies.
- (2) Sections 86A to 95 have effect subject to the provisions of Schedule 4C.

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- (3) No account shall be taken of any chargeable gains or allowable losses accruing by virtue of Schedule 4B in computing the trust gains for a year of assessment in accordance with sections 87 to 89, except in computing for the purposes of paragraph 7A(2) of Schedule 4C the amount on which the trustees would have been chargeable to tax under section 2(2) if they had been resident or ordinarily resident in the United Kingdom.
- (4) No account shall be taken of any chargeable gains or allowable losses to which sections 87 to 89 apply in computing the gains or losses accruing by virtue of Schedule 4B.”
- (2) Schedule 4C to that Act (transfers of value: attribution of gains to beneficiaries) is amended in accordance with Schedule 29 to this Act.
- (3) In section 90 of that Act (transfers between settlements), for subsection (5) substitute—
  - “(5) This section does not apply—
    - (a) to a transfer to which Schedule 4B applies, or
    - (b) to gains to which Schedule 4C applies (that is, to “Schedule 4C gains” within the meaning of that Schedule).”
- (4) The following provisions have effect with respect to the coming into force of the amendments made by this section and Schedule 29—
  - (a) the amendments apply where the trustees of a settlement have made a transfer to which Schedule 4B applies at any time on or after 21st March 2000;
  - (b) where there has been a transfer of value to which Schedule 4B applies before 9th April 2003, the transferor settlement shall be treated as having a Schedule 4C pool as from that date containing such Schedule 4C gains as would fall to be included in the pool if—
    - (i) a year of assessment had ended with 8th April 2003, and
    - (ii) the reference in paragraph 1(2)(b) of Schedule 4C as amended to the end of the year of assessment in which the transfer of value was made were to that date;
  - (c) where a transferor settlement ceased to exist on or after 21st March 2000 and before 9th April 2003, Schedule 4C as amended applies as if it had ceased to exist on 8th April 2003 (so that paragraph (b) above applies);
  - (d) so much of Schedule 4C as amended as provides—
    - (i) that gains treated as accruing to beneficiaries who are not chargeable to tax are treated as outstanding section 87/89 gains, or
    - (ii) that gains in a settlement’s Schedule 4C pool are not to be treated as accruing to such beneficiaries,applies only in relation to capital payments made on or after 9th April 2003;
  - (e) gains included in a settlement’s Schedule 4C pool by virtue of paragraph 1(2)(b) of that Schedule as amended shall only be attributed in accordance with the provisions of that Schedule to beneficiaries who receive capital payments on or after 9th April 2003.
- (5) Paragraph 8A(3) and (4) of Schedule 4C, inserted by paragraph 4 of Schedule 29 to this Act, applies only where the transfer referred to in that provision occurs on or after 9th April 2003.

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- (6) Expressions used in subsection (4) that are defined for the purposes of Schedule 4C to the Taxation of Chargeable Gains Act 1992 (c. 12) as amended by Schedule 29 to this Act have the same meaning as in that Schedule.

### *Capital allowances and related matters*

#### **164 Avoidance affecting proceeds of balancing event**

- (1) In Chapter 5 of Part 12 of the Capital Allowances Act 2001 (c. 2) (miscellaneous supplementary provisions), after section 570 insert—

#### *“Anti-avoidance*

##### **570A Avoidance affecting proceeds of balancing event**

- (1) This section applies where an event occurs in relation to an asset (a “balancing event”) as a result of which a balancing allowance would (but for this section) fall to be made to a person (“the taxpayer”) under Part 3, 4, 4A, 5 or 10.
- (2) The taxpayer is not entitled to any balancing allowance if, as a result of a tax avoidance scheme, the amount to be brought into account as the proceeds from the event is less than it would otherwise have been.
- (3) In subsection (2) a “tax avoidance scheme” means a scheme or arrangement the main purpose, or one of the main purposes, of which is the obtaining of a tax advantage by the taxpayer.
- (4) Where this section applies to deny a balancing allowance, the residue of qualifying expenditure immediately after the balancing event is nevertheless calculated as if the balancing allowance had been made.
- (5) In this section as it applies for the purposes of Part 5 (mineral extraction allowances)—
  - (a) the references to the proceeds from the balancing event that are to be brought into account shall be read as references to the disposal value to be brought into account, and
  - (b) the reference to the residue of qualifying expenditure shall be read as a reference to the unrelieved qualifying expenditure.”.
- (2) This section applies in relation to any balancing event (within the meaning of section 570A, inserted by subsection (1) above) occurring on or after 27th November 2002, except where the event—
  - (a) occurs in pursuance of a contract entered into before that date, and
  - (b) does not occur in consequence of the exercise on or after that date of an option, right of pre-emption or similar right.

#### **165 Extension of first-year allowances for ICT expenditure by small enterprises**

In section 45(1) of the Capital Allowances Act 2001 (c. 2) (ICT expenditure incurred by small enterprises: first-year qualifying expenditure), in paragraph (a) (under which the expenditure must be incurred on or before 31st March 2003) for “31st March 2003” substitute “ 31st March 2004 ”.

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## **166 Expenditure on software for sub-licensing**

- (1) Section 45 of the Capital Allowances Act 2001 (first-year allowances for ICT expenditure incurred by small enterprises) is amended as follows.
- (2) In subsection (1)(d) (expenditure must not be excluded by general exclusions in section 46) at the end insert “ or subsection (4) below ”.
- (3) After subsection (3) insert—
  - “(4) Expenditure on an item within Class C is not first-year qualifying expenditure under this section if the person incurring it does so with a view to granting to another person a right to use or otherwise deal with any of the software in question.”.
- (4) This section applies in relation to expenditure incurred on or after 26th March 2003.

## **167 First-year allowances for expenditure on environmentally beneficial plant or machinery**

Schedule 30 to this Act (first-year allowances for expenditure on environmentally beneficial plant or machinery) has effect in relation to expenditure incurred on or after 1st April 2003.

## **168 Relief for research and development**

- (1) Schedule 31 to this Act (which makes amendments relating to relief for expenditure on research and development) shall have effect.
- (2) In that Schedule—
  - Part 1 amends Schedule 20 to the Finance Act 2000 (c. 17) (relief for small and medium-sized enterprises);
  - Part 2 amends Part 1 of Schedule 12 to the Finance Act 2002 (c. 23) (relief for large companies);
  - Part 3 amends Part 2 of that Schedule (work sub-contracted to small or medium-sized enterprise);
  - Part 4 inserts a new Part 2A into that Schedule (entitlement of small or medium-sized enterprise to additional relief available to large companies in respect of subsidised expenditure);
  - Part 5 makes supplementary amendments to Parts 3 to 6 of that Schedule; and
  - Part 6 amends Schedule 13 to the Finance Act 2002 (expenditure on vaccine research etc).
- (3) Except as provided by subsection (4)—
  - (a) the amendments made by Parts 1 and 6 of Schedule 31 have effect in relation to expenditure incurred on or after the appointed day, and
  - (b) the amendments made by Parts 2 to 5 of that Schedule have effect in relation to expenditure incurred on or after 9th April 2003.
- (4) The exceptions are that—
  - (a) the amendments made by paragraphs 2 and 3 in Part 1 have effect for accounting periods beginning on or after the appointed day;

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- (b) in the application of paragraph 5 of Schedule 20 to the Finance Act 2000 (c. 17) (staffing costs) for any purpose of Schedule 12 to the Finance Act 2002 (c. 23) by virtue of paragraph 17(b) of that Schedule (meaning of “staffing costs”), the amendments made by paragraph 5 in Part 1 of Schedule 31 to this Act (persons partly engaged directly and actively in R&D) have effect in relation to expenditure incurred on or after 9th April 2003;
  - (c) the amendments made by paragraph 6 in Part 1 (qualifying expenditure on externally provided workers), in their application by virtue of paragraph 19 in Part 5 (application for purposes of Schedule 12 to the Finance Act 2002 (c. 23)), have effect in relation to expenditure incurred on or after 9th April 2003;
  - (d) the amendments made by—
    - (i) paragraph 9 in Part 2,
    - (ii) paragraphs 12 and 13 in Part 3, and
    - (iii) paragraph 15 in Part 4,
 have effect for accounting periods beginning on or after 9th April 2003;
  - (e) the amendments made by paragraph 21 in Part 6 (reduction of company’s required minimum qualifying expenditure in an accounting period from £25,000 etc to £10,000 etc) have effect for accounting periods beginning on or after the appointed day.
- (5) In this section the “appointed day” means such day as the Treasury may by order appoint; and different days may be so appointed for different provisions or different purposes.

### **169 Tonnage tax: extension of capital allowance restrictions on lessors of ships**

Schedule 32 to this Act (tonnage tax: restrictions on capital allowances for lessors of ships) has effect.

#### *Life insurance and pensions*

### **170 Insurance companies**

Schedule 33 to this Act (which makes provision about the taxation of insurance companies, including companies which have ceased to be insurance companies after a transfer of business) has effect.

### **171 Policies of life insurance etc: miscellaneous amendments**

- (1) Schedule 34 to this Act (which makes provision relating to Chapter 2 of Part 13 of the Taxes Act 1988) has effect.
- (2) In that Schedule—
  - Part 1 relates to group life policies;
  - Part 2 relates to charitable and non-charitable trusts;
  - Part 3 restricts the meaning of “life annuity”; and
  - Part 4 makes provision for and in connection with the repeal of section 540(2) of the Taxes Act 1988 (rollover of gain on maturity into new policy).

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- (3) This section and that Schedule shall be deemed to have come into force on 9th April 2003.

## **172 Charges under life insurance policies for exceptional risk of disability**

- (1) In Schedule 15 to the Taxes Act 1988 (provisions for determining whether an insurance policy is a “qualifying policy”)—
- (a) in paragraph 12(a) (disregard of so much of premium as is charged on the grounds of exceptional risk of death), and
  - (b) in paragraph 12(b) (disregard of provision in policy charging, on those grounds, a sum as a debt against capital sum guaranteed on death),
- after “death” insert “ or disability ”.
- (2) Accordingly, in the heading before paragraph 12 of that Schedule, for “mortality risk” substitute “ risk of death or disability ”.
- (3) In paragraph 3 of that Schedule (friendly society policies), omit paragraphs (b)(iii) and (c) of sub-paragraph (8) (which make provision corresponding to paragraph 12(a) and (b) but are unnecessary).
- (4) In paragraph 18 of that Schedule (rules about substituted policies applied where policies are varied) insert after sub-paragraph (3)—
- “(4) For the purposes of this paragraph there is no variation in the terms of a policy where—
  - (a) an amount of premium chargeable on the grounds that an exceptional risk of death or disability is involved becomes or ceases to be payable, or
  - (b) the policy is amended by the insertion, variation or removal of a provision under which, on those grounds, any sum may become chargeable as a debt against the capital sum guaranteed by the policy on death or disability.”.
- (5) In section 460 of that Act (registered friendly societies: exemption from tax in respect of life or endowment business), in subsection (3)(b) (which makes provision corresponding to paragraph 12(a) of Schedule 15) after “death” insert “ or disability ”.
- (6) The amendments made by this section shall be deemed always to have had effect; but this section shall be disregarded to the extent that it would prevent a policy from being a qualifying policy at any time before 9th April 2003.

## **173 Gains on policies of life insurance etc: rate of tax**

- (1) Schedule 35 to this Act (which makes provision for and in connection with charging certain gains on policies of life insurance etc at the lower rate) has effect.
- (2) The amendments made by that Schedule have effect in relation to gains treated as arising under Chapter 2 of Part 13 of the Taxes Act 1988 on the happening of chargeable events on or after 6th April 2004.

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## 174 Personal pension arrangements: limit on contributions

- (1) In section 640A(1) of the Taxes Act 1988 (personal pension arrangements: the earnings cap), for “for the purposes of section 640 above” substitute “ for the purposes of section 638 or 640 above ”.
- (2) In determining “the permitted maximum” for the purposes of any provision of an existing approved scheme designed to meet the requirements of section 638(3) of that Act (maximum annual amount of contributions), a member’s net relevant earnings for the year shall be taken to be the amount of his net relevant earnings after applying section 640A (the earnings cap).  
  
An “existing approved scheme” means a personal pension scheme approved under Chapter 4 of Part 14 of that Act before 9th April 2003.
- (3) In section 641A(1) of that Act (election for contributions to be treated as paid in previous year), for “A person who pays a contribution under approved personal pension arrangements” substitute “ An individual who under approved personal pension arrangements made by him pays a contribution ”.
- (4) This section has effect in relation to contributions paid on or after 9th April 2003.

### *Miscellaneous*

## <sup>F98</sup> 175 Payments to adopters

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### Textual Amendments

**F98** S. 175 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

## <sup>F99</sup> 176 Foster carers

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### Textual Amendments

**F99** S. 176 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1](#) para. 623, [Sch. 3](#) (with [Sch. 2](#))

## 177 Currency contracts and currency options

- (1) This section applies in any case where at any time on or after 30th September 2002—
  - (a) a qualifying company becomes party to a qualifying contract which is a currency contract or currency option, or
  - (b) the terms of such a qualifying contract held by such a company are varied, and the conditions in subsection (2) are, or subsequently become, satisfied.
- (2) The conditions are that—



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- (a) in accordance with generally accepted accounting practice, the company in preparing its statutory accounts uses the exchange rate implied by the qualifying contract (“the accounting rate”);
  - (b) there is a difference between the accounting rate and the final payment rate; and
  - (c) the difference between those exchange rates is more than 1 per cent of the final payment rate.
- (3) In subsection (2) “the final payment rate” means the exchange rate found by reference only to the amounts which fall or would, apart from this section and the provisions specified in subsection (4), fall to be regarded for the purposes of subsection (2) or, as the case may be, (7) of section 150 of the Finance Act 1994 (c. 9) as the amounts of the currency to be received, and the currency to be paid in exchange, under the qualifying contract as mentioned in that subsection.
- (4) Where this section first applies in relation to the qualifying contract in an accounting period of the company which begins before 1st October 2002 (“the relevant contract period”), the following provisions of the Finance Act 2002 (c. 23), namely—
- (a) section 79(1)(b) (repeal of forex),
  - (b) section 80 and Schedule 24 (corporation tax: currency), and
  - (c) section 83 and Schedules 26 and 27 (derivative contracts),
- shall be taken to have effect in the case of the company, so far as relating to that contract, in relation to that accounting period and any subsequent accounting periods.
- (5) Where—
- (a) the qualifying contract is a currency contract which arises from the exercise of a currency option which is or was itself a qualifying contract (or a series of such currency options), and
  - (b) that currency option was entered into or varied on or after 30th September 2002 (or, in the case of a series of currency options, any of them was entered into or varied on or after that date),
- the provisions specified in subsection (4) shall be taken to have effect in the case of the company, so far as relating to the currency option (or, in the case of a series of currency options, each of the options entered into or varied on or after 30th September 2002), in relation to the earliest accounting period (“the relevant options period”) in which the option (or any of the options) was so entered into or varied and any subsequent accounting periods.
- (6) Where the provisions specified in subsection (4) have effect by virtue of this section in relation to a currency contract or currency option the following provisions of the Finance Act 2002, namely—
- (a) section 81 (transitional provision), so far as relating to section 80 and Schedule 24, and
  - (b) Schedule 28 (derivative contracts: transitional provisions etc),
- shall have effect accordingly.
- (7) In the application of Schedule 28 to the Finance Act 2002 by virtue of this section, any reference to the company’s commencement day is to be taken—
- (a) in the case of a currency contract, as a reference to the first day of the relevant contract period; or
  - (b) in the case of a currency option, as a reference to the first day of the relevant options period.

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- (8) This section does not apply in relation to any contract entered into or varied in an accounting period beginning on or after 1st October 2002 unless the contract arises from the exercise of a currency option which was entered into or varied on or after 30th September 2002 and in an accounting period beginning on or before that date.
- (9) In this section the following expressions, namely—
- (a) qualifying company,
  - (b) qualifying contract,
  - (c) currency contract,
  - (d) currency option,
- have the same meaning as in Chapter 2 of Part 4 of the Finance Act 1994 (c. 9), (disregarding for this purpose the provisions specified in subsection (4)) and references to the exercise of an option shall be construed accordingly.
- (10) In this section “statutory accounts” has the meaning given by paragraph 52 of Schedule 26 to the Finance Act 2002 (c. 23).
- (11) This section shall be deemed to have come into force on 30th September 2002.

#### **178 Loan relationships: amendments**

Schedule 37 to this Act (which makes amendments in relation to loan relationships) has effect.

#### **179 Derivative contracts: transactions within groups**

- (1) In paragraph 28 of Schedule 26 to the Finance Act 2002 (c. 23), in sub-paragraph (3) (a) (credits and debits to be brought into account: disregard of the transaction or series of transactions except for certain purposes) after “except” insert—
- “(i) for the purpose of determining the credits and debits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, or
  - (ii) ”.
- (2) In sub-paragraph (3)(b) of that paragraph (transferor and transferee deemed to be the same person, except for that purpose) for “that purpose” substitute “those purposes”.
- (3) For sub-paragraph (4) of that paragraph substitute—
- “(4) References in this paragraph to one company replacing another as party to a derivative contract shall include references to a company becoming party to any derivative contract which—
- (a) confers rights or imposes liabilities, or
  - (b) both confers rights and imposes liabilities,
- where those rights or liabilities, or rights and liabilities, are equivalent to those of the other company under a derivative contract to which that other company has previously ceased to be party.”.
- (4) For paragraph 30 of that Schedule (amount to be brought into account on transaction within a group where transferor uses mark to market basis of accounting) substitute—

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- “30 (1) Paragraph 28 does not apply where the transferor company uses an authorised mark to market basis of accounting as respects the derivative contract in question, but in any such case—
- (a) the amount to be brought into account by the transferor company in respect of the transaction referred to in that paragraph, or in respect of the series of transactions there referred to, taken together, must be the fair value of the derivative contract as at the date of transfer to the transferee company; and
  - (b) the amount to be brought into account by the transferee company in respect of the transaction referred to in that paragraph, or in respect of the series of transactions there referred to, taken together, must be the same as the amount brought into account by the transferor company in respect of that transaction or, as the case may be, that series of transactions, taken together.
- (2) In this paragraph “transferor company” and “transferee company” have the same meaning as in paragraph 28.”
- (5) The amendments made by this section have effect where the date of transfer to the transferee company falls on or after 9th April 2003.

## **180 Contributions to urban regeneration companies**

- (1) After section 79A of the Taxes Act 1988 (contributions to training and enterprise councils and local enterprise companies) insert—

### **“79B Contributions to urban regeneration companies**

- (1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a person carrying on a trade, profession or vocation makes any contribution (whether in cash or in kind) to a designated urban regeneration company, any expenditure incurred by him in making the contribution may be deducted as an expense in computing the profits of the trade, profession or vocation if it would not otherwise be so deductible.
- (2) Where any such contribution is made by an investment company, any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.
- (3) Subsection (1) above does not apply in relation to a contribution made by any person if either he or any person connected with him receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the urban regeneration company concerned or from any other person.
- (4) In any case where—
  - (a) relief has been given under subsection (1) above in respect of a contribution, and
  - (b) any benefit received in any chargeable period by the contributor or any person connected with him is in any way attributable to that contribution,

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the contributor shall in respect of that chargeable period be charged to tax under Case I or Case II of Schedule D or, if he is not chargeable to tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

- (5) In this section “urban regeneration company” means any body of persons (whether corporate or unincorporate) which the Treasury by order designates as an urban regeneration company for the purposes of this section.
  - (6) The Treasury may only make an order under subsection (5) above designating a body as an urban regeneration company for the purposes of this section if they consider that each of the criteria in subsection (7) below is satisfied in the case of the body.
  - (7) The criteria are that—
    - (a) the sole or main function of the body is to co-ordinate the regeneration of a specific urban area in the United Kingdom;
    - (b) the body is expected to seek to perform that function by creating a plan for the development of that area and endeavouring to secure that the plan is carried into effect;
    - (c) in co-ordinating the regeneration of that area, the body is expected to work together with some or all of the public or local authorities which exercise functions in relation to the whole or part of that area.
  - (8) An order under subsection (5) above may be framed so as to take effect on a date earlier than the making of the order, but not earlier than—
    - (a) 1st April 2003, in the case of the first order under that subsection, or
    - (b) three months before the date on which the order is made, in the case of any subsequent order.
  - (9) Section 839 (connected persons) applies for the purposes of this section.
  - (10) This section applies to contributions made on or after 1st April 2003.”.
- (2) In section 828(4) of the Taxes Act 1988 (orders or regulations under specified provisions not to be subject to Commons negative resolution parliamentary procedure) after “section 1(6),” insert “ 79B(5), ”.

### **181 Repos etc**

Schedule 38 to this Act (which contains amendments relating to arrangements for the sale and repurchase of securities etc) has effect.

### **182 Relevant discounted securities: withdrawal of relief for costs and losses, etc**

Schedule 39 to this Act (relevant discounted securities: withdrawal of relief for costs and losses, and extension of definition of “strip”) has effect.

### **183 Court common investment funds**

- (1) Section 469A of the Taxes Act 1988 (court common investment funds) is amended as follows.

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- (2) In paragraph (c) of subsection (1) (persons entitled as against the Accountant General to share in fund's investments treated as unit holders in authorised unit trust) for "the persons whose interests entitle them, as against the Accountant General, to share in the fund's investments" substitute "the persons with qualifying interests".
- (3) After that subsection insert—
  - "(1A) For the purposes of subsection (1)(c) above, the persons with qualifying interests are—
    - (a) in relation to shares in the fund held by the Accountant General, the persons whose interests entitle them, as against him, to share in the fund's investments;
    - (b) in relation to shares in the fund held by any other person authorised by the Lord Chancellor to hold such shares on behalf of others (an "authorised person")—
      - (i) if there are persons whose interests entitle them, as against the authorised person, to share in the fund's investments, those persons;
      - (ii) if not, the authorised person;
    - (c) in relation to shares in the fund held by persons authorised by the Lord Chancellor to hold such shares on their own behalf, those persons."
- (4) This section has effect in relation to income arising to a common investment fund on or after 6th April 2003.
- (5) In this section "common investment fund" means a common investment fund established under section 42 of the Administration of Justice Act 1982 (c. 53).

## **184 Intangible fixed assets: tax avoidance arrangements and related parties**

- (1) Schedule 29 to the Finance Act 2002 (c. 23) (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 111 (tax avoidance arrangements to be disregarded)—
  - (a) in sub-paragraph (1) for the words following "in determining" substitute "whether a debit or credit is to be brought into account under this Schedule or the amount of any such debit or credit", and
  - (b) in sub-paragraph (2)—
    - (i) for "under paragraph 9" in paragraph (a), and
    - (ii) for "under Part 4" in paragraph (b),substitute "under this Schedule".
- (3) In paragraph 95(1) (cases in which persons are "related parties") at the end add—

**"Case Four**

P is a company and C is another company in the same group."
- (4) The amendments in this section—
  - (a) have effect in relation to the debits or credits to be brought into account for accounting periods beginning on or after 20th June 2003, and
  - (b) in relation to the debits or credits to be brought into account for any such period shall be deemed always to have had effect.

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- (5) For this purpose an accounting period beginning before, and ending on or after, that date is treated as if so much of that period as falls before that date, and so much of that period as falls on or after that date, were separate accounting periods.

## PART 8

### OTHER TAXES

#### *Inheritance tax*

#### **185 Gifts with reservation**

- (1) Section 102 of the Finance Act 1986 (c. 41) (gifts with reservation) is amended as follows.
- (2) In subsection (5) (section not to apply where disposal is an exempt transfer by virtue of any of the provisions of the Inheritance Tax Act 1984 specified in the paragraphs of that subsection) at the end of paragraph (a) (section 18: transfers between spouses) insert “, except as provided by subsections (5A) and (5B) below”.
- (3) After subsection (5) insert—
- “(5A) Subsection (5)(a) above does not prevent this section from applying if or, as the case may be, to the extent that—
- (a) the property becomes settled property by virtue of the gift,
  - (b) by reason of the donor’s spouse (“the relevant beneficiary”) becoming beneficially entitled to an interest in possession in the settled property, the disposal is or, as the case may be, is to any extent an exempt transfer by virtue of section 18 of the 1984 Act in consequence of the operation of section 49 of that Act (treatment of interests in possession),
  - (c) at some time after the disposal, but before the death of the donor, the relevant beneficiary’s interest in possession comes to an end, and
  - (d) on the occasion on which that interest comes to an end, the relevant beneficiary does not become beneficially entitled to the settled property or to another interest in possession in the settled property.
- (5B) If or, as the case may be, to the extent that this section applies by virtue of subsection (5A) above, it has effect as if the disposal by way of gift had been made immediately after the relevant beneficiary’s interest in possession came to an end.
- (5C) For the purposes of subsections (5A) and (5B) above—
- (a) section 51(1)(b) of the 1984 Act (disposal of interest in possession treated as coming to end of interest) applies as it applies for the purposes of Chapter 2 of Part 3 of that Act; and
  - (b) references to any property or to an interest in any property include references to part of any property or interest.”.

(4) The amendments made by this section have effect in relation to disposals made on or after 20th June 2003.

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## **186 Authorised unit trusts, OEICs and common investment funds**

- (1) The Inheritance Tax Act 1984 (c. 51) is amended as follows.
- (2) In section 6 (excluded property), after subsection (1) insert—
  - “(1A) A holding in an authorised unit trust and a share in an open-ended investment company is excluded property if the person beneficially entitled to it is an individual domiciled outside the United Kingdom.”.
- (3) In section 48 (settlements: excluded property), after subsection (3) insert—
  - “(3A) Where property comprised in a settlement is a holding in an authorised unit trust or a share in an open-ended investment company—
    - (a) the property (but not a reversionary interest in the property) is excluded property unless the settlor was domiciled in the United Kingdom at the time the settlement was made, and
    - (b) section 6(1A) above applies to a reversionary interest in the property but does not otherwise apply in relation to the property.”.
- (4) In section 178(1) (sale of shares etc from deceased’s estate: preliminary)—
  - (a) in the definition of “qualifying investments”, after “authorised unit trust” insert “ , shares in an open-ended investment company ”, and
  - (b) for “section 1 of the Administration of Justice Act 1965” substitute “ section 42 of the Administration of Justice Act 1982 ”.
- (5) Section 272 (general interpretation) is amended as follows.
- (6) After the definition of “amount” insert—

““authorised unit trust” means a scheme which is a unit trust scheme for the purposes of section 469 of the Taxes Act 1988 (see subsection (7) of that section) and in the case of which an order under section 243 of the Financial Services and Markets Act 2000 is in force;”.
- (7) After the definition of “mortgage” insert—

““open-ended investment company” means an open-ended investment company within the meaning given by section 236 of the Financial Services and Markets Act 2000 which is incorporated in the United Kingdom;”.
- (8) This section has effect in relation to transfers of value or other events occurring on or after 16th October 2002.

### *Landfill tax*

## **187 Rate of landfill tax**

In section 42 of the Finance Act 1996 (c. 8) (amount of landfill tax), for the amount specified in subsection (1)(a), and the corresponding amount in subsection (2), substitute—

- (a) “£14” in relation to taxable disposals made, or treated as made, on or after 1st April 2003 and before 1st April 2004;
- (b) “£15” in relation to taxable disposals made, or treated as made, on or after 1st April 2004.

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### *Climate change levy*

#### **188 Exemption for fuel used in recycling processes**

- (1) In Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy), after paragraph 18 insert—

##### **“Exemption: supply for use in recycling processes**

- 18A (1) A supply of a taxable commodity is exempt from the levy if the person to whom the supply is made intends to cause the commodity to be used as fuel in a prescribed recycling process falling within sub-paragraph (2).
- (2) A recycling process falls within this sub-paragraph if there is another process (“the competing process”) that—
- (a) is not a recycling process,
  - (b) uses taxable commodities otherwise than as fuel,
  - (c) produces a product of the same kind as one produced by the recycling process,
  - (d) uses a greater amount of energy than the recycling process to produce a given quantity of that product, and
  - (e) involves a lesser charge to levy for a given quantity of that product than would, but for this paragraph, be the case for the recycling process.
- (3) For the purposes of sub-paragraph (2)(b) taxable commodities are used “otherwise than as fuel” only if the supplies of those commodities to the person using them are exempted from the levy by virtue of paragraph 18.
- (4) Sub-paragraphs (5) and (6) apply where the recycling process or the competing process, as well as producing a product that is of the same kind as one produced by the other process (“the corresponding product”), also produces one or more products that are not (“different products”).
- (5) If the production of the different products is merely incidental to the production of the corresponding product, the different products shall be treated for the purposes of sub-paragraph (2)(d) and (e) as being of the same kind as the corresponding product.
- (6) If the production of the different products is not merely incidental to the production of the corresponding product—
- (a) the amounts of energy referred to in sub-paragraph (2)(d), and the amounts of the charge to levy referred to in sub-paragraph (2)(e), shall be determined on a just and reasonable apportionment;
  - (b) the exemption conferred by sub-paragraph (1) shall be restricted to the proportion of the supply that is the same as the proportion of the energy used by the recycling process to produce the corresponding product (as determined for the purposes of paragraph (a)).
- (7) In this paragraph “prescribed” means prescribed by regulations made by the Treasury.”



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- (2) The following amendments to that Schedule are consequential on that made by subsection (1)—
- (a) in paragraph 14(3A)(a) (use of electricity in an “exemption-retaining” way) for “and 18” substitute “, 18 and 18A ”;
  - (b) in paragraph 101(2)(a)(ii) (penalty for incorrect exemption notification) after “18” insert “, 18A ”;
  - (c) in paragraph 146(3) (regulations subject to affirmative resolution procedure) after “18(2),” insert “ 18A, ”;
  - (d) in paragraph 147 (interpretation), in the definition of “prescribed”, after “16(3)” insert “, 18A ”.

### **189 CHP exemption to be based on current efficiency**

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.
- (2) In paragraph 15 (exemption for supplies to combined heat and power stations)—
- (a) for paragraph (b) of sub-paragraph (4) substitute—
    - “(b) the “efficiency percentage” for a combined heat and power station shall be determined in accordance with regulations under paragraph 149.”;
  - (b) omit sub-paragraph (5).
- (3) In paragraph 148 (meaning of “combined heat and power station” etc)—
- (a) in sub-paragraphs (2)(c) and (3)(c), for “complying with sub-paragraph (6) and (so far as applicable)” substitute “ complying (so far as applicable) with ”;
  - (b) omit sub-paragraph (6) (efficiency percentage to be stated on certificate of full or partial exemption).
- (4) In paragraph 149(1) (determination of efficiency percentages for combined heat and power stations) omit “the percentage that is to be stated in a certificate under paragraph 148 as”.
- (5) This section has effect in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint.

### **190 Supplies not known to be taxable when made, etc**

- (1) In Schedule 6 to the Finance Act 2000 (climate change levy), paragraph 24 (deemed supply: change of circumstances or intentions) is amended as follows.
- (2) In the heading, for “*change of circumstances or intentions*” substitute “ *change of circumstances etc* ”.
- (3) For sub-paragraphs (1) and (2) substitute—
- “(1) This paragraph applies in the following cases.
  - (1A) The first case is where—
    - (a) a supply of a taxable commodity has been made,
    - (b) the supply was not a taxable supply, and

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- (c) there is such a change in circumstances or any person's intentions that, if the changed circumstances or intentions had existed at the time the supply was made, the supply would have been a taxable supply.
- (1B) The second case is where—
- (a) a supply of a taxable commodity has been made,
  - (b) the supply was made on the basis that it was not a taxable supply, and
  - (c) it is later determined that the supply was (to any extent) a taxable supply.
- (2) This paragraph does not apply where the reason that—
- (a) the supply was not a taxable supply, or
  - (b) the supply was made on the basis that it was not a taxable supply,
- is that it was, or was thought to be, exempt from the levy under paragraph 19 or 20A (exemption for supply of electricity produced from renewable sources or in combined heat and power stations) (but see paragraph 20 or 20B).”
- (4) In sub-paragraph (3), at the beginning insert “ Where this paragraph applies, ”.
- (5) After that sub-paragraph insert—
- “(3A) Where—
- (a) had matters been as mentioned in sub-paragraph (1A)(c), only part of the supply would have been a taxable supply, or
  - (b) the determination referred to in sub-paragraph (1B)(c) is that only part of the supply was a taxable supply,
- the reference in sub-paragraph (3) to the commodity shall be read as a reference to a corresponding part of it.”
- (6) In sub-paragraph (5) for “sub-paragraph (1)(c)” substitute “ sub-paragraph (1A)(c) ”.
- (7) In paragraph 34(3) of that Act (time when deemed supply under paragraph 24 treated as made) at the end insert “ or, as the case may be, upon the later determination ”.
- (8) This section has effect in relation to supplies made on or after such day as the Treasury may by order made by statutory instrument appoint.

## **191 Deemed supplies**

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.
- (2) In paragraph 5(3) (levy chargeable on deemed supply of electricity) for “paragraph 23(3)” substitute “ paragraph 20(6)(a), 20B(6)(a), 23(3) or 24 ”.
- (3) In paragraph 6 (supplies of gas)—
  - (a) after sub-paragraph (2) insert—
 

“(2A) Levy is chargeable on a supply of gas that is deemed to be made under paragraph 24.”;
  - (b) in sub-paragraph (3) for “sub-paragraphs (1) and (2)” substitute “ sub-paragraph (1), (2) or (2A) ”.

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- (4) Subsection (2) has effect in relation to supplies deemed to be made on or after 31st March 2003, and subsection (3) in relation to supplies deemed to be made on or after the day on which this Act is passed.

## **192 Amendments about registration, payment etc**

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.

- (2) In paragraph 41 (returns and payment of levy)—

- (a) for paragraph (a) of sub-paragraph (1) (liability to account for levy by reference to accounting periods) substitute—

“(a) for persons liable to account for levy to do so—

- (i) by reference to such periods (“accounting periods”) as may be determined by or under the regulations, or  
(ii) in such other way as may be so determined;”;

- (b) in sub-paragraph (1)(c) (liability to pay) omit “for any period”;

- (c) after sub-paragraph (2) insert—

“(2A) Paragraph 91(5) provides for the application of Part 7 of this Schedule (recovery and interest) in relation to cases where, by virtue of regulations under sub-paragraph (1)(a)(ii) above, a person is liable to account for levy otherwise than by reference to accounting periods.

(2B) Regulations under this paragraph may provide for the application of any provision of this Schedule in relation to such cases.”.

- (3) In paragraph 53 (requirement to be registered), after sub-paragraph (3) insert—

“(4) Regulations made by the Commissioners may provide that, in such cases or circumstances and subject to such conditions or requirements as may be prescribed in the regulations, the Commissioners may exempt a person from the requirement to be registered.”.

- (4) In paragraph 62(2)(b) (provision in regulations about bringing tax credit into account) for “levy due from him for such accounting period or periods” substitute “such levy due from him”.

- (5) In paragraph 78 (assessments of amounts of levy due), after sub-paragraph (1) insert—

“(1A) Where it appears to the Commissioners—

- (a) that any levy for which a person is liable to account otherwise than by reference to an accounting period has become due, and  
(b) that there has been a default by that person that falls within sub-paragraph (2),

they may assess the amount of that levy to the best of their judgement and notify it to him.”.

- (6) In paragraph 91 (interpretation etc of Part 7) at the end insert—

“(5) In relation to cases where, by virtue of regulations under paragraph 41(1)(a)(ii), a person is liable to account for levy otherwise than by reference to accounting periods, this Part of this Schedule shall have effect as if—

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- (a) references to levy due for “an” or “any” accounting period were references simply to levy due;
  - (b) references to levy due for a specified accounting period were references to the levy in question;
  - (c) references to an assessment for a specified accounting period were references to an assessment in respect of the levy in question;
  - (d) any time limit framed by reference to the end of the accounting period for which levy is due were framed by reference to the date on which payment of the levy is due;
  - (e) references to the making of a return for an accounting period were references to the payment of the levy in question;
  - (f) references to the amount shown in such a return were references to the amount of levy paid;
  - (g) paragraph 88(8) and (9) were omitted.”.
- (7) In paragraph 93(4) (criminal penalty for false return)—
- (a) in paragraph (a) after “return” insert “ or other notification ”;
  - (b) in paragraph (b), and in the words after that paragraph, after “return” insert “ or notification ”.
- (8) In paragraph 100(1) (civil penalty for misdeclaration)—
- (a) omit “for an accounting period”;
  - (b) in paragraph (a) after “return” insert “ or other notification ”.
- (9) In paragraph 125(1) (obligation to keep records) for “persons who are, or are required to be, registered” substitute “persons who—
- (a) are registered,
  - (b) are required to be registered, or
  - (c) are exempted from the requirement to be registered by regulations under paragraph 53(4)”.
- (10) In paragraph 135(1)(c) (Commissioners' certificate as evidence of non-payment of levy shown as due in a return) after “return” insert “ or other notification ”.

### **193 Electricity from renewable sources etc**

- (1) Schedule 6 to the Finance Act 2000 (c. 17) (climate change levy) is amended as follows.
- (2) In paragraph 20 (exemption under paragraph 19: averaging periods) for sub-paragraphs (6) to (8) substitute—
- “(6) If the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a), then—
- (a) in a case where, at the time when the balancing period ends, an averaging period also ends because of sub-paragraph (2)(f) or (g), the supplier is for the purposes of this Schedule deemed to make at that time a taxable supply of a quantity of electricity equal to the excess;
  - (b) in any other case, a balancing debit equal to the excess is carried forward to the next balancing period.”.

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- (3) In paragraph 20B (exemption under paragraph 20A: averaging periods) for sub-paragraphs (6) to (8) substitute—
- “(6) If the total mentioned in sub-paragraph (3)(b) exceeds that mentioned in sub-paragraph (3)(a), then—
- (a) in a case where, at the time when the balancing period ends, an averaging period also ends because of sub-paragraph (2)(f) or (g), the supplier is for the purposes of this Schedule deemed to make at that time a taxable supply of a quantity of electricity equal to the excess;
- (b) in any other case, a balancing debit equal to the excess is carried forward to the next balancing period.”
- (4) The amendment made by subsection (2) has effect where the end of the balancing period referred to in paragraph (a) of the sub-paragraph (6) substituted by that subsection falls on or after 31st March 2003.
- (5) The amendment made by subsection (3) has effect where the end of the balancing period referred to in paragraph (a) of the sub-paragraph (6) substituted by that subsection falls on or after 1st April 2003.

#### *Insurance premium tax*

### **194 Higher rate of tax: divided companies**

- (1) In Schedule 6A to the Finance Act 1994 (c. 9) (insurance premium tax: premiums liable to tax at higher rate), insert after paragraph 3—

#### **“Insurance provided by divided company**

- 3A (1) A premium under a taxable insurance contract relating to a motor car or motor cycle also falls within paragraph 2 above if—
- (a) the insurance to be provided under the contract is provided by a divided company, and
- (b) any division of that company would, if it were a separate company, be a person connected with a supplier of motor cars or motor cycles.
- (2) A premium under a taxable insurance contract relating to relevant goods also falls within paragraph 3 above if—
- (a) the insurance to be provided under the contract is provided by a divided company, and
- (b) any division of that company would, if it were a separate company, be a person connected with a supplier of relevant goods.
- (3) Sub-paragraph (1) or (2) above does not apply if the insurance is provided to the insured free of charge.
- (4) A premium falls within paragraph 2 above by virtue of this paragraph only to the extent that it is attributable to cover for a risk which relates to a motor car or motor cycle supplied by a supplier of motor cars or motor cycles with whom the division in question would, if it were a separate company, be connected.

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- (5) A premium falls within paragraph 3 above by virtue of this paragraph only to the extent that it is attributable to cover for a risk which relates to relevant goods supplied by a supplier of relevant goods with whom the division would, if it were a separate company, be connected.
- (6) For the purposes of this paragraph—
- (a) a company is a “divided company” if under the law under which the company is formed, under the company’s constitution or under arrangements entered into by or in relation to the company—
- (i) some or all of the assets of the company are available primarily, or only, to meet particular liabilities of the company, and
- (ii) some or all of the members of the company, and some or all of its creditors, have rights primarily, or only, in relation to particular assets of the company;
- (b) a “division” of such a company means an identifiable part of it (by whatever name known) that carries on distinct business activities and to which particular assets and liabilities of the company are primarily or wholly attributable.
- (7) In this paragraph “provided to the insured free of charge” has the meaning given by sub-paragraph (5) of paragraph 2 or 3 above.
- In determining for this purpose whether a divided company by whom insurance is provided is a person falling within sub-paragraph (2) of paragraph 2 or 3 above, the company shall be treated as connected with any person with whom a division of that company would be connected if it were a separate company.
- (8) Other expressions defined for the purposes of paragraph 2 or 3 above have the same meaning in this paragraph.”.
- (2) Subsection (1) applies in relation to a premium that falls to be regarded for the purposes of Part 3 of the Finance Act 1994 (c. 9) (insurance premium tax) as received under a taxable insurance contract by an insurer on or after the day on which this Act is passed.

## PART 9

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### *Provisions consequential on changes to company law*

#### **195 Companies acquiring their own shares**

- (1) This section applies for the purposes of the Taxes Acts and the Inheritance Tax Act 1984 (c. 51) where a company acquires any of its own shares (whether by purchase, the issuing of bonus shares or otherwise).
- (2) The acquisition of any of those shares by the company is not to be treated as the acquisition of an asset.

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- (3) The company is not, by virtue of the acquisition or holding of any of those shares or its being entered in the company's register of members in respect of any of them, to be treated as a member of itself.
- (4) Subject to subsection (5)—
  - (a) the company's issued share capital is to be treated as if it had been reduced by the nominal value of the shares acquired,
  - (b) such of those shares as are not cancelled on acquisition are to be treated as if they had been so cancelled, and
  - (c) any subsequent cancellation by the company of any of those shares is to be disregarded (and, accordingly, is not the disposal of an asset and does not give rise to an allowable loss within the meaning of the Taxation of Chargeable Gains Act 1992 (c. 12)).
- (5) Where the shares are issued to the company as bonus shares, subsection (4)(a) and (b) does not apply and the shares are to be treated as if they had not been issued.
- (6) Where, disregarding subsections (2) to (5)—
  - (a) a company holds any of its own shares, and
  - (b) the company issues bonus shares in respect of those shares or any class of those shares ("the existing shares"),nothing in this section prevents the existing shares being the company's holding of shares for the purposes of the application of section 126 of the Taxation of Chargeable Gains Act 1992 (application of sections 127 to 131 of that Act (company reorganisations etc)).
- (7) In subsection (6) the reference to the application of section 126 of the Taxation of Chargeable Gains Act 1992 does not include a reference to the application of that section in a modified form by virtue of any enactment relating to chargeable gains.
- (8) Where a company disposes of any of its own shares to a person in circumstances where, but for subsections (2) to (5), it would be regarded as holding the shares immediately before the disposal—
  - (a) subsections (4)(b) and (c) and (5) cease to apply in relation to the shares disposed of ("the relevant shares"),
  - (b) the relevant shares are to be treated as having been issued as new shares to that person by the company at the time of the disposal (and not as having been disposed of by the company at that time),
  - (c) that person is to be treated as having subscribed for the relevant shares,
  - (d) an amount equal to the amount or value of the consideration (if any) payable for the disposal of the relevant shares is to be treated as the amount subscribed for those shares,
  - (e) if the amount or value of that consideration does not exceed the nominal value of those shares, the share capital of those shares is to be treated for the purposes of Part 6 of the Taxes Act 1988 as if it were an amount equal to the amount or value of that consideration, and
  - (f) if the amount or value of that consideration exceeds their nominal value, the relevant shares are to be treated as if they had been issued at a premium representing that excess.
- (9) Where—
  - (a) a company purchases its own shares, and

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- (b) the price payable by a company for the shares is taken into account in computing the profits of the company which are chargeable to tax in accordance with the provisions of the Taxes Act 1988 applicable to Case I or II of Schedule D,  
subsections (2) to (7) do not apply and subsection (8) does not apply in relation to any disposal by the company of any of the shares.
- (10) Schedule 40 to this Act (which makes amendments relating to the acquisition and disposal by a company of its own shares) has effect.
- (11) For the purposes of this section—
- (a) a company issues “bonus shares” if it issues share capital as paid up otherwise than by the receipt of new consideration (within the meaning of section 254 of the Taxes Act 1988), and
  - (b) “the Taxes Acts” has the same meaning as in the Taxes Management Act 1970 (c. 9),
- and in this section references to a “company” are to a company with a share capital.
- (12) The preceding provisions of this section and the provisions of Schedule 40 to this Act have effect in relation to any acquisition of shares by a company on or after such day as the Treasury may by order made by statutory instrument appoint.

#### **Commencement Information**

**I103** S. 195 has effect as specified by [The Finance Act 2003, Section 195 and Schedule 40 \(Appointed Day\) Order 2003 \(S.I. 2003/3077\)](#), [art. 2](#)

## **196 Companies in administration**

Schedule 41 to this Act (provisions relating to the treatment, for tax purposes, of companies in administration) has effect.

### *International matters*

## **197 Exchange of information between tax authorities of member States**

- (1) No obligation as to secrecy imposed by statute or otherwise precludes the Commissioners or an authorised officer of the Commissioners from disclosing to the competent authorities of another member State any information required to be so disclosed by virtue of the Mutual Assistance Directive.
- (2) Neither the Commissioners nor an authorised officer shall disclose any information in pursuance of the Mutual Assistance Directive unless satisfied that the competent authorities of the other State are bound by, or have undertaken to observe, rules of confidentiality with respect to the information that are not less strict than those applying to it in the United Kingdom.
- (3) Nothing in this section permits the Commissioners or an authorised officer of the Commissioners to authorise the use of information disclosed by virtue of the Mutual Assistance Directive otherwise than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of the receiving State.



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- (4) In this section—
- “the Commissioners” means the Commissioners of Inland Revenue or the Commissioners of Customs and Excise;
- the “Mutual Assistance Directive” means Council Directive [77/799/EEC](#), [<sup>F100</sup>as amended by Council Directives [92/12/EEC](#) [<sup>F101</sup>, [2003/93/EC](#) and [2004/56/EC](#)]].
- (5) The Treasury may by order make such provision amending the definition of the “Mutual Assistance Directive” in subsection (4) as appears to them appropriate for the purpose of giving effect to any Council Directive adopted after 16th April 2003 amending or replacing the Mutual Assistance Directive.
- (6) An order under subsection (5) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (7) In section 48 of the Value Added Tax Act 1994 (c. 23) (VAT representatives)—
- (a) in subsection (1B) (meaning of “the mutual assistance provisions”) for paragraphs (a) and (b) substitute—
- “(a) section 134 of the Finance Act 2002 and Schedule 39 to that Act (recovery of taxes etc due in other member States);
- (b) section 197 of the Finance Act 2003 (exchange of information between tax authorities of member States);”;
- (b) after subsection (8) insert—
- “(9) The Treasury may by order amend the definition of “the mutual assistance provisions” in subsection (1B) above.”.

#### Textual Amendments

**F100** Words in s. 197(4) substituted (1.1.2004) by [The Mutual Assistance Provisions Order 2003 \(S.I. 2003/3092\)](#), arts. 1, 3

**F101** Words in s. 197(4) substituted (1.1.2005) by [The Mutual Assistance Provisions Order 2004 \(S.I. 2004/3207\)](#), arts. 1, 2

## 198 Arrangements for mutual exchange of tax information

- (1) In the following provisions (which confer power to make arrangements for the exchange of information necessary for carrying out the tax laws of the UK and the territory to which the arrangements relate) for “necessary for carrying out” substitute “foreseeably relevant to the administration or enforcement of”.
- (2) The provisions are—
- sections 788(2) and 815C(1) of the Taxes Act 1988 (income tax, capital gains tax and corporation tax), and
- sections 158(1A) and 220A(1) of the Inheritance Tax Act 1984 (c. 51) (inheritance tax).
- (3) Any reference in arrangements made before the passing of this Act, or in any Order in Council under which such arrangements have effect, to information necessary for the carrying out of the tax laws of the United Kingdom or the territory to which the arrangements relate shall be read as including any information foreseeably relevant to

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the administration or enforcement of the tax laws of the United Kingdom or, as the case may be, of that territory.

## **199 Savings income: Community obligations and international arrangements**

- (1) The Treasury may make regulations for implementing and for dealing with matters arising out of or related to—
  - (a) any Community obligation created with a view to ensuring the effective taxation of savings income under the law of the United Kingdom and the laws of the other member States, or
  - (b) any arrangements made with a territory other than a member State with a view to ensuring the effective taxation of savings income under the law of the United Kingdom and the law of the other territory.
- (2) Regulations under this section may, in particular, require paying agents—
  - (a) to obtain and verify prescribed descriptions of information about the identity and residence of relevant payees to whom they make savings income payments, and
  - (b) to provide to the Inland Revenue (or an officer of the Inland Revenue) prescribed descriptions of information about relevant payees to whom they make savings income payments and about the savings income payments which they make to them.
- (3) Regulations under this section may include provision for the inspection on behalf of the Inland Revenue of books, documents and other records of persons who are, or appear to an officer of the Inland Revenue to be, paying agents.
- (4) Regulations under this section may include provision for notices under such regulations to be combined with notices under sections 17 and 18 of the Taxes Management Act 1970 (c. 9) (interest paid or credited by banks and others).
- (5) Regulations under this section may include provision about the time at or within which, and the manner in which, any requirement imposed by such regulations is to be complied with.
- (6) Regulations under this section may include provision for penalties for failure to comply with requirements imposed by such regulations (including provision applying any provision of the Taxes Management Act 1970 about the determination of penalties or any other matter relating to penalties); and in the first column of the Table in section 98 of that Act (penalties for failure to furnish information etc), insert at the appropriate place “Regulations under section 199 of the Finance Act 2003.”.
- (7) In this section “paying agents” means persons of a prescribed description who make savings income payments to other persons; and the descriptions of persons who may be prescribed as paying agents include, in particular, public officers and government departments.
- (8) For the purposes of this section a person makes savings income payments to another person if the person—
  - (a) makes payments of savings income to the other person, or
  - (b) secures the payment of savings income for the other person.
- (9) In this section “savings income” means interest (apart from interest of a prescribed description) or other sums of a prescribed description.

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- (10) In this section “relevant payees” means persons of a prescribed description who are resident (within the meaning of the regulations) in a prescribed territory and persons of any such other description as may be prescribed; and the only territories which may be prescribed are the other member States and territories with which arrangements such as are mentioned in subsection (1)(b) have been made.
- (11) Regulations under this section—
- (a) may make different provision for different cases or descriptions of case, and
  - (b) may include supplementary, incidental, consequential or transitional provision.
- (12) The power to make regulations under this section is exercisable by statutory instrument.
- (13) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (14) In this section—
- “the Inland Revenue” means the Commissioners of Inland Revenue, and
  - “prescribed” means prescribed by regulations under this section.

## **200 Controlled foreign companies: exempt activities**

- (1) Schedule 42 to this Act (which amends Part 2 of Schedule 25 to the Taxes Act 1988 (exempt activities)) shall have effect.
- (2) The amendments made by that Schedule have effect in relation to accounting periods of a controlled foreign company beginning on or after 27th November 2002.
- (3) In this section “accounting period” and “controlled foreign company” have the same meaning as in Chapter 4 of Part 17 of the Taxes Act 1988.
- (4) This section shall be taken to have come into force on 27th November 2002.

## **201 Application of CFC provisions to Hong Kong and Macao companies**

- (1) In Part 2 (exempt activities) of Schedule 25 to the Taxes Act 1988 (cases where section 747(3) does not apply), in paragraph 5 insert after sub-paragraph (2)—
- “(3) In the case of a controlled foreign company—
- (a) which is, by virtue of section 749(5), presumed to be resident in a territory in which it is subject to a lower level of taxation,
  - (b) the business affairs of which are, throughout the accounting period in question, effectively managed in a special administrative region, and
  - (c) which is liable to tax for that period in that region,
- references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to that region.
- (4) In sub-paragraph (3) above “special administrative region” means the Hong Kong or the Macao Special Administrative Region of the People’s Republic of China.

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(5) Where sub-paragraph (3) above applies, it applies in place of sub-paragraph (2).”.

(2) This section shall be deemed to have had effect—

- (a) as from 1st July 1997, so far as relating to the Hong Kong Special Administrative Region;
- (b) as from 20th December 1999, so far as relating to the Macao Special Administrative Region.

*Administrative matters*

**202 Deduction of tax from interest: recognised clearing houses etc**

(1) Section 349 of the Taxes Act 1988 (payment of annual interest etc) is amended as follows.

(2) In subsection (3) (cases where obligation to make interest payments net of tax does not apply), at the end insert “or—

- (j) to interest paid by a recognised clearing house or recognised investment exchange carrying on business as provider of a central counterparty clearing service, in the ordinary course of that business, on margin or other collateral deposited with it by users of the service; or
- (k) to interest treated by virtue of section 730A(2)(a) or (b) (repos) as paid by a recognised clearing house or recognised investment exchange in respect of contracts made by it as provider of a central counterparty clearing service.”.

(3) In subsection (6) (definitions), at the appropriate places insert—

““central counterparty clearing service” means the service provided by a clearing house or investment exchange to the parties to a transaction where there are contracts between each of the parties and the clearing house or investment exchange (in place of, or as an alternative to, a contract directly between the parties);”;

““recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000 (see section 285 of that Act);”.

(4) This section applies in relation to payments of interest on or after 14th April 2003.

**203 Authorised unit trusts: interest distributions paid gross**

(1) Chapter 3 of Part 12 of the Taxes Act 1988 (unit trust schemes) is amended as follows.

(2) In section 468L(4) (obligation to deduct tax from interest distributions to be subject to provision made by sections 468M and 468N), for “sections 468M and 468N” substitute “section 468M”.

(3) For sections 468M and 468N substitute—

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### **“468M Cases where no obligation to deduct tax**

- (1) Where an interest distribution is made for a distribution period to a unit holder, any obligation to deduct under section 349(2) does not apply to the interest distribution if—
  - (a) the unit holder is a company or the trustees of a unit trust scheme, or
  - (b) either the residence condition or the reputable intermediary condition is on the distribution date fulfilled with respect to the unit holder.
- (2) Section 468O makes provision about the circumstances in which the residence condition or the reputable intermediary condition is fulfilled with respect to a unit holder.”.
- (4) Section 468O (residence condition) is amended as follows.
- (5) In subsection (1), for “sections 468M and 468N” substitute “ section 468M ”.
- (6) After that subsection insert—
  - “(1A) For the purposes of section 468M, the reputable intermediary condition is fulfilled with respect to a unit holder if—
    - (a) the interest distribution is paid on behalf of the unit holder to a company,
    - (b) the company either is subject to the EC Money Laundering Directive, or to equivalent non-EC provisions, or is an associated company resident in a regulating country or territory of a company which is so subject, and
    - (c) the trustees of the authorised unit trust have reasonable grounds for believing that the unit holder is not ordinarily resident in the United Kingdom.
  - (1B) For the purposes of subsection (1A)(b) above—
    - (a) a company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive [91/308/EEC](#), as amended by Directive [2001/97/EC](#),
    - (b) a company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions,
    - (c) a company is to be treated as another’s associated company if it would be so treated for the purposes of Part 11 (see section 416), and
    - (d) a country or territory is a regulating country or territory if it either is a member State or imposes requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.
  - (1C) If Directive [91/308/EEC](#) ceases to have effect, or is further amended, the Treasury may by order make consequential amendments in subsections (1A) and (1B) above.”.
- (7) In the sidenote, insert at the end “ and reputable intermediary condition ”.

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- (8) In section 468P(1) (residence declarations)—
- (a) for “468O” substitute “ 468O(1) ”, and
  - (b) for “subsections (2) to (4)” substitute “ subsection (2) or (3) ”.
- (9) After section 468P insert—

**“468PA Section 468O(1A): consequences of reasonable but incorrect belief**

Where—

- (a) an interest distribution is made to a unit holder by the trustees of an authorised unit trust,
  - (b) the trustees, in reliance on the reputable intermediary condition being fulfilled with respect to the unit holder, do not comply with the obligation under section 349(2) to make a deduction from the interest distribution,
  - (c) that obligation would apply but for that condition being so fulfilled, and
  - (d) (contrary to the belief of the trustees) the unit holder is in fact ordinarily resident in the United Kingdom,
- section 350 and Schedule 16 have effect as if that obligation applied.

**468PB Regulations supplementing sections 468M to 468PA**

- (1) The Board may by regulations make provision for giving effect to sections 468M to 468PA.
- (2) The regulations may, in particular, include provision modifying the application of those sections in relation to interest distributions made to or received under a trust.
- (3) The regulations may, in particular, include provision for the giving by officers of the Board of notices requiring trustees of authorised unit trusts to supply information and make available books, documents and other records for inspection on behalf of the Board.
- (4) The regulations may—
  - (a) make provision in relation to times before they are made,
  - (b) make different provision for different cases, and
  - (c) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.”.
- (10) Section 98 of the Taxes Management Act 1970 (c. 9) (penalties: provisions requiring information etc in response to notices) is amended as follows.
- (11) In subsection (4A)(b), for “or (4D)” substitute “ , (4D) or (4E) ”.
- (12) After subsection (4D) insert—
 

“(4E) A payment is within this subsection if—

  - (a) it is an interest distribution made to a unit holder by the trustees of an authorised unit trust,

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- (b) the trustees, in purported reliance on the reputable intermediary condition being fulfilled with respect to the unit holder, do not comply with the obligation under section 349(2) of the principal Act to make a deduction from the interest distribution,
- (c) that obligation would apply if that condition were not so fulfilled, and
- (d) the trustees did not believe that the unit holder was not ordinarily resident in the United Kingdom or could not reasonably have so believed (so that that condition was not so fulfilled).

Expressions used in this subsection have the same meaning as in Chapter 3 of Part 12 of the principal Act.”

- (13) In the first column of the Table, after the entry relating to regulations under section 431E(1) or 441A(3) of the principal Act, insert—
  - “ section 468P(6); regulations under section 468PB(3); ”.
- (14) This section has effect in relation to interest distributions made on or after 16th October 2002.

## **204 Mandatory electronic payment by large employers**

- (1) The Commissioners of Inland Revenue (“the Commissioners”) may make regulations requiring large employers, subject to such exceptions as may be specified, to use electronic means for the making of specified payments under legislation relating to any tax under the care and management of the Commissioners.

- (2) In subsection (1) “large employer” means a person paying PAYE income to 250 or more recipients.

Regulations under this section may make provision as to the date or period by reference to which this is to be determined and the circumstances in which a person is to be treated as paying PAYE income to a recipient.

- (3) Regulations under this section may make provision—
  - (a) as to conditions that must be complied with in connection with the use of electronic means for the making of any payment;
  - (b) for treating a payment as not having been made unless conditions imposed by any of the regulations are satisfied;
  - (c) for determining the time when payment is to be taken to have been made.
- (4) Regulations under this section may also make provision (which may include provision for the application of conclusive or other presumptions) as to the manner of proving for any purpose—
  - (a) whether any use of electronic means for making a payment is to be taken as having resulted in the payment being made;
  - (b) the time of the making of any payment for the making of which electronic means have been used;
  - (c) any other matter for which provision may be made by regulations under this section.
- (5) Regulations under this section may—

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- (a) allow any authorisation or requirement for which the regulations may provide to be given or imposed by means of a specific or general direction given by the Commissioners;
  - (b) provide that the conditions of any such authorisation or requirement are to be taken to be satisfied only where the Inland Revenue are satisfied as to specified matters.
- (6) Regulations under this section may contain provision—
- (a) requiring the Inland Revenue to notify persons appearing to them to be, or to have become, a person required to use electronic means for the making of any payments in accordance with the regulations;
  - (b) enabling a person so notified to have the question whether he is such a person determined in the same way as an appeal.
- (7) Regulations under this section may confer power on the Commissioners to give specific or general directions—
- (a) suspending, for any period during which the use of electronic means for the making of payments is impossible or impractical, any requirements imposed by the regulations relating to the use of such means;
  - (b) substituting alternative requirements for the suspended ones;
  - (c) making any provision that is necessary in consequence of the imposition of the substituted requirements.
- (8) The power to make provision by regulations under this section includes power—
- (a) to provide for a contravention of, or any failure to comply with, the regulations (a “default”) to attract a surcharge of a specified amount;
  - (b) to provide that specified enactments relating to penalties imposed for the purposes of any taxation matter within the care and management of the Commissioners (including enactments relating to assessments, review and appeal) apply, with or without modifications, in relation to surcharges under the regulations.
- (9) The regulations may specify the surcharge for each default as—
- (a) a specified percentage, depending on the circumstances but not exceeding 10%, of the amount of the payment to which the default relates, or
  - (b) a specified percentage, depending on the circumstances but not exceeding 0.83%, of the total amount of tax due for the accounting period, year of assessment or other specified period of twelve months during which the default occurred;
- but, in either case, they may specify £30 if it is more.
- (10) Regulations under this section may—
- (a) make different provision for different cases;
  - (b) make such incidental, supplemental, consequential and transitional provision in connection with any provision contained in any of the regulations as the Commissioners think fit.
- (11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (12) In this section—
- “the Inland Revenue” means—



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- (a) the Commissioners,
  - (b) any officer of the Commissioners, or
  - (c) any other person who for the purposes of electronic means of payment is acting under the authority of the Commissioners;
- “legislation” means any enactment, Community legislation or subordinate legislation;
- “specified” means specified by or under regulations under this section;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## **205 Use of electronic means of payment under other provisions**

- (1) Any power to make subordinate legislation for or in connection with the making of payments conferred in relation to a taxation matter on—
  - (a) the Commissioners of Inland Revenue, or
  - (b) the Treasury,includes power to make any such provision in relation to the making of those payments as could be made in exercise of the power conferred by section 204.
- (2) Provision as to means of payment made in exercise of the powers conferred by section 204 or subsection (1) above has effect notwithstanding so much of any enactment or subordinate legislation as would otherwise allow payment to be made by any other means.
- (3) Expressions used in this section and section 204 have the same meaning in this section as in that section.
- (4) Nothing in this section shall be read as restricting the generality of the power conferred by section 204.

## **206 Admissibility of evidence not affected by offer of settlement etc**

- (1) In section 105(1) of the Taxes Management Act 1970 (c. 9) (evidence in cases of fraudulent conduct), for paragraphs (a) and (b) and the word “that” preceding them substitute—
  - “(a) that where serious tax fraud has been committed the Board may accept a money settlement and that the Board will accept such a settlement, and will not pursue a criminal prosecution, if he makes a full confession of all tax irregularities, or
  - (b) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty.”.
- (2) For the heading to that section substitute “ **Admissibility of evidence not affected by offer of settlement etc** ”.
- (3) In paragraph 3(1) of Schedule 18 to the Finance Act 1999 (c. 16) (which makes corresponding provision in relation to stamp duty), for paragraphs (a) and (b) substitute—
  - “(a) that where serious stamp duty fraud has been committed the Board may accept a money settlement and that the Board will accept such a

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- settlement, and will not pursue a criminal prosecution, if he makes a full confession of all stamp duty irregularities, or
- (b) that the extent to which he is helpful and volunteers information is a factor that will be taken into account in determining the amount of any penalty.”.
- (4) For the heading before that paragraph substitute “ *Admissibility of evidence not affected by offer of settlement etc* ”.
- (5) The above amendments have effect in relation to statements made, or documents produced, after the passing of this Act.

## 207 Consequential claims etc

- (1) In Part 4 of the Taxes Management Act 1970 (assessment and claims), after section 43B insert—

### “43C Consequential claims etc

- (1) Where—
- (a) a return is amended under section 28A(2)(b), 28B(2)(b) or 28B(4), and
- (b) the amendment is made for the purpose of making good to the Crown any loss of tax attributable to fraudulent or negligent conduct on the part of the taxpayer or a person acting on his behalf,
- sections 36(3) and 43(2) apply in relation to the amendment as they apply in relation to any assessment under section 29.
- (2) Where—
- (a) a return is amended under section 28A(2)(b), 28B(2)(b) or 28B(4), and
- (b) the amendment is not made for the purpose mentioned in subsection (1)(b) above,
- sections 43(2), 43A and 43B apply in relation to the amendment as they apply in relation to any assessment under section 29.
- (3) References to an assessment in sections 36(3), 43(2), 43A and 43B, as they apply by virtue of subsection (1) or (2) above, shall accordingly be read as references to the amendment of the return.
- (4) Where it is necessary to make any adjustment by way of an assessment on any person—
- (a) in order to give effect to a consequential claim, or
- (b) as a result of allowing a consequential claim,
- the assessment is not out of time if it is made within one year of the final determination of the claim.
- For this purpose a claim is not taken to be finally determined until it, or the amount to which it relates, can no longer be varied, on appeal or otherwise.
- (5) In subsection (4) above “consequential claim” means any claim, supplementary claim, election, application or notice that may be made

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or given under section 36(3), 43(2) or 43A (as it applies by virtue of subsection (1) or (2) above or otherwise).”.

- (2) In section 43A of that Act (further assessments: claims etc), in subsection (2A) (elections to which extension of time limit does not apply) for the words from “an election under” to the end substitute “an election under—
  - (a) section 257BA of the principal Act (election as to transfer of married couple’s allowance),
  - (b) Schedule 13B to that Act (elections as to transfer of children’s tax credit), or
  - (c) section 35(5) of the Taxation of Chargeable Gains Act 1992 (election for assets to be re-based to 1982).”.
- (3) So far as it applies in relation to an amendment of a return, this section applies only where the notice of the amendment is issued after the day on which this Act is passed.

### *National Savings*

## **208 Ordinary accounts and investment accounts**

- (1) The National Savings Bank Act 1971 (c. 29) is amended as follows.
- (2) In section 3 (ordinary and investment deposits), after subsection (1) insert—

“(1A) But subsection (1) is subject to any provision made in relation to ordinary accounts or ordinary deposits by regulations under section 2 of this Act made by virtue of section 8(3) of this Act.”.
- (3) Section 6 (interest on investment deposits) is amended as follows.
- (4) In subsection (2), for “Director of Savings may from time to time determine with the consent of the Treasury” substitute “ Treasury may from time to time determine ”.
- (5) After that subsection insert—

“(2ZA) The Treasury may determine that a rate of interest payable on investment deposits, or investment deposits of a particular description, is to be a rate produced by the operation of a formula involving the movement of an index or indices or any other factor.”.
- (6) In subsection (3), after “description” insert “ (other than one occasioned by the operation of a formula) ”.
- (7) After that subsection insert—

“(4) In the case of an alteration in a rate of interest not affecting deposits received before it is made, any notice of the alteration required to be given by subsection (3) above may be given after the alteration is made.”.
- (8) Section 8 (regulations as to particular matters) is amended as follows.
- (9) In subsection (1), after paragraph (b) insert—

“(ba) for the issuing of cards for use in making investment deposits or in withdrawing cash from investment accounts (or both) and regulating the use of such cards;”.

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(10) After subsection (2) insert—

“(3) Regulations under section 2 of this Act may also make provision—

- (a) prohibiting the opening of ordinary accounts after a prescribed date;
- (b) prohibiting the opening of investment accounts of a prescribed description after a date prescribed in relation to that description of accounts;
- (c) prohibiting the making of ordinary deposits after a prescribed date;
- (d) prohibiting the making of deposits in investment accounts of a prescribed description after a date prescribed in relation to that description of accounts;
- (e) requiring the withdrawal of all of the money deposited in any dormant account of a prescribed description if any of the money deposited in it is withdrawn after a date prescribed in relation to that description of account;
- (f) for the transfer to investment accounts of a prescribed description of deposits in dormant accounts of a prescribed description;
- (g) for the transfer to a special Director’s account of deposits in dormant accounts of a prescribed description or in accounts to which deposits have been transferred pursuant to provision made by virtue of paragraph (f) above.

(4) In subsection (3) above—

“dormant account” means an account in which deposits may not be made because of provision made by virtue of paragraph (c) or (d) of that subsection; and

“special Director’s account” means an investment account in the name of the Director of Savings in which deposits are held on behalf of the persons entitled to them.”.

(11) After section 9 insert—

**“9A Investment account terms and conditions**

- (1) Any provision which may be made in relation to investment deposits by regulations under section 2 of this Act may, in the case of deposits in investment accounts of any description first made available after the passing of the Finance Act 2003, be included instead in the terms and conditions of the accounts.
- (2) Any provision included in the terms and conditions of investment accounts under subsection (1) above has effect subject to regulations under section 2 of this Act and orders under section 4 of this Act.
- (3) In this section “terms and conditions” means terms and conditions set by the Treasury and published by Director of Savings in a manner approved by the Treasury.”.

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## **209 Abolition of accounting requirements relating to investment deposits**

In section 120 of the Finance Act 1980 (c. 48) (investment deposits with National Savings Bank: accounting provisions etc), omit subsections (4) and (5) (which require the Director of Savings to keep an account of investment deposits etc and transmit annual statements to the Comptroller and Auditor General for examination etc).

### *Other financial matters*

## **210 Payments for service of national debt**

- (1) Section 15 of the National Loans Act 1968 (c. 13) (payments for service of national debt) is amended as follows.
- (2) In subsection (1) (payments to be made out of Consolidated Fund into National Loans Fund), for “charges on the National Loans Fund for the service of national debt over” substitute “payments out of the National Loans Fund—
  - (a) which represent interest on liabilities of the National Loans Fund, or
  - (b) which, in the opinion of the Treasury, ought to be treated in the same way as payments which represent such interest,over”.
- (3) Omit subsection (3) (which defines “charges on the National Loans Fund for the service of national debt”).
- (4) In paragraph 13 of Schedule 5A to that Act (Debt Management Account: payments to be made out of National Loans Fund into Debt Management Account), omit subparagraph (2) (payments to be treated as charges on the National Loans Fund for the service of national debt).

## **211 Definition of liabilities and assets of National Loans Fund**

In section 19(4) of the National Loans Act 1968 (c. 13) (which defines as the liabilities of the National Loans Fund the nominal amount of the debt outstanding to it and as its assets its balance and loans etc outstanding to it), for the words from “of the National Loans Fund” onwards substitute “and assets of the National Loans Fund shall be as determined by the Treasury.”.

## **212 Accounts of Consolidated Fund and National Loans Fund**

- (1) Section 21 of the National Loans Act 1968 (accounts of Consolidated Fund and National Loans Fund) is amended as follows.
- (2) In subsection (1) (annual accounts of payments in and out), for the words from “in such form” onwards substitute “an account relating to the Consolidated Fund, and an account relating to the National Loans Fund, in such form and containing such information as the Treasury consider appropriate.”.
- (3) Omit subsection (3) (statements of additional information regarding transactions, assets and liabilities of Consolidated Fund and National Loans Fund).
- (4) Subsection (2) has effect for the financial year ending with 31st March 2004 and subsequent financial years.

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- (5) Subsection (3) has effect for such financial year as the Treasury may by order made by statutory instrument appoint and subsequent financial years.

**Commencement Information**

**I104** S. 212(3) has effect as specified by S.I. 2004/2823, art. 2

**213 Debt Management Account: abolition of borrowing cap**

In Schedule 5A to the National Loans Act 1968 (Debt Management Account), omit paragraph 8 (borrowings otherwise than from National Loans Fund not to exceed total standing to credit of that Account in that Fund and at Bank of England).

**214 Payments in error from or to National Loans Fund**

In paragraph 11 of Schedule 5A to the National Loans Act 1968 (c. 13) (payments between National Loans Fund and Debt Management Account in respect of difference between assets and liabilities of that Account), insert at the end—

“(4) If any amount paid under sub-paragraph (1A) or (3) above should not have been paid, the Treasury may repay the whole or any part of it.”.

*Supplementary*

**215 Interpretation**

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

**216 Repeals**

- (1) The enactments mentioned in Schedule 43 to this Act (which include provisions that are spent or of no practical utility) are repealed to the extent specified.
- (2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained or referred to in the notes set out in that Schedule.

**217 Short title**

This Act may be cited as the Finance Act 2003.

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## SCHEDULES

### SCHEDULE 1

Section 19

#### VAT: FACE-VALUE VOUCHERS

- 1 In Part 3 of the Value Added Tax Act 1994 (c. 23) (application of Act in particular cases) insert after section 51A—

#### “51B Face-value vouchers

Schedule 10A shall have effect with respect to face-value vouchers.”.

- 2 After Schedule 10 to that Act insert—

#### “SCHEDULE 10A

#### FACE-VALUE VOUCHERS

##### *Meaning of “face-value voucher” etc*

- 1 (1) In this Schedule “face-value voucher” means a token, stamp or voucher (whether in physical or electronic form) that represents a right to receive goods or services to the value of an amount stated on it or recorded in it.
- (2) References in this Schedule to the “face value” of a voucher are to the amount referred to in sub-paragraph (1) above.

##### *Nature of supply*

- 2 The issue of a face-value voucher, or any subsequent supply of it, is a supply of services for the purposes of this Act.

##### *Treatment of credit vouchers*

- 3 (1) This paragraph applies to a face-value voucher issued by a person who—
- (a) is not a person from whom goods or services may be obtained by the use of the voucher, and
  - (b) undertakes to give complete or partial reimbursement to any such person from whom goods or services are so obtained.
- Such a voucher is referred to in this Schedule as a “credit voucher”.
- (2) The consideration for any supply of a credit voucher shall be disregarded for the purposes of this Act except to the extent (if any) that it exceeds the face value of the voucher.
- (3) Sub-paragraph (2) above does not apply if any of the persons from whom goods or services are obtained by the use of the voucher fails to account for

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any of the VAT due on the supply of those goods or services to the person using the voucher to obtain them.

*Treatment of retailer vouchers*

- 4 (1) This paragraph applies to a face-value voucher issued by a person who—
- (a) is a person from whom goods or services may be obtained by the use of the voucher, and
  - (b) if there are other such persons, undertakes to give complete or partial reimbursement to those from whom goods or services are so obtained.

Such a voucher is referred to in this Schedule as a “retailer voucher”.

- (2) The consideration for the issue of a retailer voucher shall be disregarded for the purposes of this Act except to the extent (if any) that it exceeds the face value of the voucher.
- (3) Sub-paragraph (2) above does not apply if—
  - (a) the voucher is used to obtain goods or services from a person other than the issuer, and
  - (b) that person fails to account for any of the VAT due on the supply of those goods or services to the person using the voucher to obtain them.
- (4) Any supply of a retailer voucher subsequent to the issue of it shall be treated in the same way as the supply of a voucher to which paragraph 6 below applies.

*Treatment of postage stamps*

- 5 The consideration for the supply of a face-value voucher that is a postage stamp shall be disregarded for the purposes of this Act except to the extent (if any) that it exceeds the face value of the stamp.

*Treatment of other kinds of face-value voucher*

- 6 (1) This paragraph applies to a face-value voucher that is not a credit voucher, a retailer voucher or a postage stamp.
- (2) A supply of such a voucher is chargeable at the rate in force under section 2(1) (standard rate) except where sub-paragraph (3), (4) or (5) below applies.
  - (3) Where the voucher is one that can only be used to obtain goods or services in one particular non-standard rate category, the supply of the voucher falls in that category.
  - (4) Where the voucher is used to obtain goods or services all of which fall in one particular non-standard rate category, the supply of the voucher falls in that category.
  - (5) Where the voucher is used to obtain goods or services in a number of different rate categories—



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- (a) the supply of the voucher shall be treated as that many different supplies, each falling in the category in question, and
- (b) the value of each of those supplies shall be determined on a just and reasonable basis.

*Vouchers supplied free with other goods or services*

- 7 Where—
- (a) a face-value voucher (other than a postage stamp) and other goods or services are supplied to the same person in a composite transaction, and
  - (b) the total consideration for the supplies is no different, or not significantly different, from what it would be if the voucher were not supplied,
- the supply of the voucher shall be treated as being made for no consideration.

*Interpretation*

- 8 (1) In this Schedule—
- “credit voucher” has the meaning given by paragraph 3(1) above;
  - “face value” has the meaning given by paragraph 1(2) above;
  - “face value voucher” has the meaning given by paragraph 1(1) above;
  - “retailer voucher” has the meaning given by paragraph 4(1) above.
- (2) For the purposes of this Schedule—
- (a) the “rate categories” of supplies are—
    - (i) supplies chargeable at the rate in force under section 2(1) (standard rate),
    - (ii) supplies chargeable at the rate in force under section 29A (reduced rate),
    - (iii) zero-rated supplies, and
    - (iv) exempt supplies and other supplies that are not taxable supplies;
  - (b) the “non-standard rate categories” of supplies are those in subparagraphs (ii), (iii) and (iv) of paragraph (a) above;
  - (c) goods or services are in a particular rate category if a supply of those goods or services falls in that category.
- (3) A reference in this Schedule to a voucher being used to obtain goods or services includes a reference to the case where it is used as part-payment for those goods or services.”.

3 In Schedule 6 to the Value Added Tax Act 1994 (c. 23) (valuation: special cases), omit paragraph 5 (vouchers etc).

4 The amendments made by this Schedule apply to supplies of tokens, stamps or vouchers issued on or after 9th April 2003.

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## SCHEDULE 2

Section 23

### SUPPLY OF ELECTRONIC SERVICES IN MEMBER STATES: VAT SPECIAL ACCOUNTING SCHEME

#### *Introductory*

1           The Value Added Tax Act 1994 (c. 23) is amended as follows.

#### *Insertion of new section 3A*

2           After section 3 insert—

**“3A Supply of electronic services in member States: special accounting scheme**

- (1) Schedule 3B (scheme enabling persons who supply electronically supplied services in any member State, but who are not established in a member State, to account for and pay VAT in the United Kingdom on those supplies) has effect.
- (2) The Treasury may by order amend Schedule 3B.
- (3) The power of the Treasury by order to amend Schedule 3B includes power to make such incidental, supplemental, consequential and transitional provision in connection with any amendment of that Schedule as they think fit.”.

#### *Persons registered under Schedule 1*

3           In Schedule 1 (registration in respect of taxable supplies) in paragraph 13 (cancellation of registration) at the end insert—

- “(8) This paragraph is subject to paragraph 18 of Schedule 3B (cancellation of registration under this Schedule of persons seeking to be registered under that Schedule, etc).”.

#### *The special accounting scheme*

4           After Schedule 3A insert—

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“SCHEDULE  
3B

Section 3A

SUPPLY OF ELECTRONIC SERVICES IN MEMBER  
STATES: SPECIAL ACCOUNTING SCHEME

**PART 1**

REGISTRATION

*The register*

- 1 Persons registered under this Schedule are to be registered in a single register kept by the Commissioners for the purposes of this Schedule.

*Persons who may be registered*

- 2 (1) A person may be registered under this Schedule if he satisfies the following conditions.
  - (2) Condition 1 is that the person makes or intends to make qualifying supplies in the course of a business carried on by him.
  - (3) Condition 2 is that the person has neither his business establishment nor a fixed establishment in the United Kingdom or in another member State in relation to any supply of goods or services.
  - (4) Condition 3 is that the person is not—
    - (a) registered under this Act,
    - (b) identified for the purposes of VAT in accordance with the law of another member State, or
    - (c) registered under an Act of Tynwald for the purposes of any tax imposed by or under an Act of Tynwald which corresponds to VAT.
  - (5) Condition 4 is that the person—
    - (a) is not required to be registered or identified as mentioned in condition 3, or
    - (b) is required to be so registered or identified, but solely by virtue of the fact that he makes or intends to make qualifying supplies.
  - (6) Condition 5 is that the person is not identified under any provision of the law of another member State which implements Article 26c.
  - (7) In this Schedule, “Article 26c” means Article 26c of the 1977 VAT Directive (which is inserted by Article 1(3) of the 2002 VAT Directive).
  - (8) References in this Schedule to a person’s being registered under this Act do not include a reference to that person’s being registered under this Schedule.

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### *Qualifying supplies*

- 3 In this Schedule, “qualifying supply” means a supply of electronically supplied services (within the meaning of paragraph 7C of Schedule 5) to a person who—
- (a) belongs in the United Kingdom or another member State, and
  - (b) receives those services otherwise than for the purposes of a business carried on by him.

### *Registration request*

- 4 (1) If a person—
- (a) satisfies the Commissioners that the conditions in paragraph 2 above are satisfied in his case, and
  - (b) makes a request in accordance with this paragraph (a “registration request”),
- the Commissioners must register him under this Schedule.
- (2) Sub-paragraph (1) above is subject to paragraph 9 below.
- (3) A registration request must contain the following particulars—
- (a) the name of the person making the request;
  - (b) his postal address;
  - (c) his electronic addresses (including any websites);
  - (d) where he has been allocated a number by the tax authorities in the country in which he belongs, that number;
  - (e) the date on which he began, or intends to begin, making qualifying supplies.
- (4) A registration request must include a statement that the person making the request is not—
- (a) registered under this Act,
  - (b) identified for the purposes of VAT in accordance with the law of another member State, or
  - (c) registered under an Act of Tynwald for the purposes of any tax imposed by or under an Act of Tynwald which corresponds to VAT.
- (5) A registration request must be made by such electronic means, and in such manner, as the Commissioners may direct or may by regulations prescribe.

### *Date on which registration takes effect*

- 5 (1) Where a person is registered under this Schedule, his registration takes effect—
- (a) on the date on which his registration request is made, or
  - (b) on such earlier or later date as may be agreed between him and the Commissioners.
- (2) For the purposes of sub-paragraph (1) above—
- (a) no registration is to take effect before 1st July 2003, and

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- (b) registration requests made before that date are to be treated as if they were made on that date.

#### *Registration number*

- 6 On registering a person under this Schedule, the Commissioners must—
  - (a) allocate a registration number to him, and
  - (b) notify him electronically of the number.

#### *Obligation to notify changes*

- 7 (1) A person who has made a registration request must notify the Commissioners if subsequently—
  - (a) there is a change in any of the particulars contained in his request in accordance with paragraph 4(3) above,
  - (b) he ceases to make, or to have the intention of making, qualifying supplies, or
  - (c) he ceases to satisfy the conditions in any of sub-paragraphs (3) to (6) of paragraph 2 above.
- (2) A notification under this paragraph must be given within the period of 30 days beginning with the date of the change of particulars or of the cessation.
- (3) A notification under this paragraph must be given by such electronic means, and in such manner, as the Commissioners may direct or may by regulations prescribe.

#### *Cancellation of registration*

- 8 (1) The Commissioners must cancel a person's registration under this Schedule if—
  - (a) he notifies them that he has ceased to make, or to have the intention of making, qualifying supplies,
  - (b) they otherwise determine that he has ceased to make, or to have the intention of making, qualifying supplies,
  - (c) he notifies them that he has ceased to satisfy the conditions in any of sub-paragraphs (3) to (6) of paragraph 2 above,
  - (d) they otherwise determine that he has ceased to satisfy any of those conditions, or
  - (e) they determine that he has persistently failed to comply with his obligations under this Schedule.
- (2) In a case falling within sub-paragraph (1)(a) or (c) above, cancellation of a person's registration under this paragraph takes effect—
  - (a) on the date on which the notification is received, or
  - (b) on such earlier or later date as may be agreed between him and the Commissioners.
- (3) In a case falling within sub-paragraph (1)(b), (d) or (e) above, cancellation of a person's registration under this paragraph takes effect—
  - (a) on the date on which the determination is made, or

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- (b) on such earlier or later date as the Commissioners may in his particular case direct.

*Registration after cancellation for persistent default*

- 9 (1) The Commissioners—
  - (a) are not required by paragraph 4(1) above to register a person under this Schedule if he is a persistent defaulter, but
  - (b) shall have the power to do so.
- (2) In this paragraph, “persistent defaulter” means a person—
  - (a) whose previous registration under this Schedule has been cancelled under paragraph 8(1)(e) above (persistent failure to comply with obligations under this Schedule), or
  - (b) who has been excluded from the identification register under any provision of the law of another member State which implements Article 26c(B)(4)(d) of the 1977 VAT Directive (persistent failure to comply with rules concerning the special scheme).

**PART 2**

OBLIGATIONS FOLLOWING REGISTRATION, ETC

*Liability for VAT*

- 10 (1) A person is liable to pay VAT under and in accordance with this Schedule if—
  - (a) he makes a qualifying supply, and
  - (b) he is registered under this Schedule when he makes the supply.
- (2) The amount of VAT which a person is liable to pay by virtue of this Schedule on any qualifying supply is to be determined in accordance with sub-paragraphs (3) and (4) below.
- (3) If the qualifying supply is treated as made in the United Kingdom, the amount is the amount of VAT that would have been charged on the supply under this Act if the person had been registered under this Act when he made the supply.
- (4) If the qualifying supply is treated as made in another member State, the amount is the amount of VAT that would have been charged on the supply in accordance with the law of that member State if the person had been identified for the purposes of VAT in that member State when he made the supply.
- (5) Where a person is liable to pay VAT by virtue of this Schedule—
  - (a) any amount falling to be determined in accordance with sub-paragraph (3) above is to be regarded for the purposes of this Act as VAT charged in accordance with this Act, and
  - (b) any amount falling to be determined in accordance with sub-paragraph (4) above in relation to another member State is to be

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regarded for those purposes as VAT charged in accordance with the law of that member State.

*Obligation to submit special accounting returns*

- 11 (1) A person who is, or has been, registered under this Schedule must submit a return (a “special accounting return”) to the Controller for each reporting period.
- (2) Each quarter for the whole or any part of which a person is registered under this Schedule is a “reporting period” in the case of that person.
- (3) The special accounting return must state the person’s registration number.
- (4) For each member State in which the person is treated as having made qualifying supplies for the reporting period, the special accounting return must specify—
- (a) the total value of his qualifying supplies treated as made in that member State in that period, apart from the VAT which he is liable to pay by virtue of this Schedule in respect of those supplies,
  - (b) the rate of VAT applicable to those supplies by virtue of subparagraph (3) or (4) (as the case may be) of paragraph 10 above, and
  - (c) the total amount of VAT payable by him by virtue of this Schedule in respect of those supplies in that period.
- (5) The special accounting return must state the total amount of VAT which the person is liable to pay by virtue of this Schedule in respect of all qualifying supplies treated as made by him in all member States in the reporting period.
- (6) If a person is registered under this Schedule for part only of a reporting period, references in this paragraph to his qualifying supplies in that period are references to his qualifying supplies in that part of that period.
- (7) In this Schedule, “the Controller” means the Controller, Customs and Excise Value Added Tax Central Unit.

*Further obligations with respect to special accounting returns*

- 12 (1) A special accounting return must set out in sterling the amounts referred to in paragraph 11 above.
- (2) Any conversion from one currency into another for the purposes of subparagraph (1) above shall be made by using the exchange rates published by the European Central Bank—
- (a) for the last day of the reporting period to which the special accounting return relates, or
  - (b) if no such rate is published for that day, for the next day for which such a rate is published.
- (3) A special accounting return must be submitted to the Controller within the period of 20 days after the last day of the reporting period to which it relates.
- (4) A special accounting return must be submitted by such electronic means, and in such manner, as the Commissioners may direct or may by regulations prescribe.

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*Payment of VAT*

- 13 (1) A person who is required to submit a special accounting return must, at the same time as he submits the return, pay to the Controller in sterling the amount referred to in paragraph 11(5) above in respect of the reporting period to which the return relates.
- (2) A payment under this paragraph must be made in such manner as the Commissioners may direct or may by regulations prescribe.

*Obligations to keep and produce records*

- 14 (1) A person must keep records of the transactions which he enters into for the purposes of, or in connection with, qualifying supplies made by him at any time when he is registered under this Schedule.
- (2) The records to be kept must be such as will enable the tax authorities for the member State in which a qualifying supply is treated as made to determine whether any special accounting return which is submitted in respect of that supply is correct.
- (3) Any records required to be kept must be made available—
- (a) to the tax authorities for the member State in which the qualifying supply to which the records relate was treated as made, if they so request, or
  - (b) to the Commissioners, if they so request.
- (4) Records must be made available electronically under sub-paragraph (3) above.
- (5) The records relating to a transaction must be maintained for a period of ten years beginning with the 1st January following the date on which the transaction was entered into.

*Commissioners' power to request production of records*

- 15 (1) The Commissioners may request a person to make available to them electronically records of the transactions entered into by him for the purposes of, or in connection with, qualifying supplies to which this paragraph applies.
- (2) This paragraph applies to qualifying supplies which—
- (a) are treated as made in the United Kingdom, and
  - (b) are made by the person while he is identified under any provision of the law of another member State which implements Article 26c.



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### PART 3

#### UNDERSTATEMENTS AND OVERSTATEMENTS OF UK VAT

##### *Understatement or overstatement of UK VAT in special scheme return*

- 16 (1) If the Commissioners consider that a person who is or has been a participant in the special scheme has submitted a special scheme return which understates his liability to UK VAT, they may give him a notice—
- (a) identifying the return in which they consider that the understatement was made,
  - (b) specifying the amount by which they consider that the person's liability to UK VAT has been understated, and
  - (c) requesting him to pay that amount to the Controller within the period of 30 days beginning with the date on which the notice is given.
- (2) If the Commissioners consider that a person who is or has been a participant in the special scheme has submitted a special scheme return which overstates his liability to UK VAT, they may give him a notice—
- (a) identifying the return in which they consider that the overstatement was made, and
  - (b) specifying the amount by which they consider that the person's liability to UK VAT has been overstated.
- (3) Where the Commissioners give a person a notice under sub-paragraph (2) above, they are liable to pay him the amount specified in the notice.
- (4) No notice under this paragraph may be given more than 3 years after the end of the period for which the special scheme return in question was made.
- (5) In this Schedule, “participant in the special scheme” means a person who—
- (a) is registered under this Schedule, or
  - (b) is identified under any provision of the law of another member State which implements Article 26c.
- (6) In this paragraph—
- “special scheme return” means—
- (a) a special accounting return; or
  - (b) a value added tax return submitted to the tax authorities of another member State;
- “UKVAT” means VAT which a person is liable to pay (whether in the United Kingdom or another member State) in respect of qualifying supplies treated as made in the United Kingdom at a time when he is or was a participant in the special scheme;
- “value added tax return”, in relation to another member State, means any value added tax return required to be submitted under any provision of the law of that member State which implements Article 26c(B)(5) of the 1977 VAT Directive.

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## PART 4

### APPLICATION OF PROVISIONS RELATING TO VAT

#### *Registration under this Act*

- 17 Notwithstanding any provision in this Act to the contrary, a participant in the special scheme is not required to be registered under this Act by virtue of making qualifying supplies.

#### *De-registration*

- 18 Where a person who is registered under Schedule 1 satisfies the Commissioners that he intends to apply for—
- (a) registration under this Schedule, or
  - (b) identification under any provision of the law of another member State which implements Article 26c,
- they may, if he so requests, cancel his registration under Schedule 1 with effect from the day on which the request is made or from such later date as may be agreed between him and the Commissioners.

#### *VAT representatives*

- 19 Section 48(1) (VAT representatives) does not permit the Commissioners to direct a participant in the special scheme to appoint a VAT representative.

#### *Appeals*

- 20 (1) An appeal shall lie to a tribunal with respect to any of the following—
- (a) the registration or cancellation of the registration of any person under this Schedule;
  - (b) a decision of the Commissioners to give a notice under subparagraph (1) of paragraph 16 above;
  - (c) the amount specified in any such notice or in a notice under subparagraph (2) of that paragraph.
- (2) Part 5 (appeals), and any orders or regulations under that Part, have effect in relation to an appeal under this paragraph as if it were an appeal under section 83 (but not under any particular paragraph of that section).

#### *Payments on account of non-UK VAT to other member States*

- 21 (1) Neither—
- (a) paragraph 1(2) of Schedule 11, nor
  - (b) section 10 of the Exchequer and Audit Departments Act 1866,
- applies to money or securities for money collected or received for or on account of VAT if required to be paid to another member State by virtue of the VAT Co-operation Regulation.

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- (2) In sub-paragraph (1) above, “the VAT Co-operation Regulation” means the Council Regulation of 27 January 1992 on administrative co-operation in the field of indirect taxation (VAT) (218/92/EEC), as amended by the Council Regulation of 7 May 2002 (792/2002/EC) (which temporarily amends the VAT Co-operation Regulation as regards additional measures regarding electronic commerce).

#### *Refund of UK VAT*

- 22 (1) The provisions which give effect to the 1986 VAT Refund Directive in the United Kingdom have effect in relation to a participant in the special scheme, but with the following modifications.
- (2) The provision which gives effect to Article 2(1) of the 1986 VAT Refund Directive (as at 9th April 2003, see regulation 186 of the Value Added Tax Regulations 1995) shall apply in relation to a participant in the special scheme, but only so as to entitle him to a refund of VAT charged on—
- (a) goods imported by him into the United Kingdom, and
  - (b) supplies made to him in the United Kingdom,
- in connection with the making by him of qualifying supplies while he is a participant in the special scheme.
- (3) The following provisions shall be omitted.
- (4) The first provision is that which gives effect to Article 1(1) of the 1986 VAT Refund Directive, so far as it requires a member State to prevent a person who is deemed to have supplied services in that member State during a period from being granted a refund of VAT for that period (as at 9th April 2003, see regulation 188(2)(b) of the Value Added Tax Regulations 1995).
- (5) The second provision is that which gives effect to Article 2(2) of the 1986 VAT Refund Directive (which permits member States to make refunds conditional upon the granting by third States of comparable advantages regarding turnover taxes: as at 9th April 2003, see regulation 188(1) of the Value Added Tax Regulations 1995).
- (6) The third provision is that which gives effect to Article 2(3) of the 1986 VAT Refund Directive (which permits member States to require the appointment of a tax representative: as at 9th April 2003, see regulation 187 of the Value Added Tax Regulations 1995).
- (7) The fourth provision is that which gives effect to Article 4(2) of the 1986 VAT Refund Directive (which permits member States to provide for the exclusion of certain expenditure and to make refunds subject to additional conditions).
- (8) In this paragraph “the 1986 VAT Refund Directive” means the Thirteenth Council Directive of 17th November 1986 on the harmonisation of the laws of the member States relating to turnover taxes – arrangements for the refund of value added tax to taxable persons not established in Community territory (86/560/EEC).

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## PART 5

### SUPPLEMENTARY

#### *Interpretation*

23 (1) In this Schedule—

“the 1977 VAT Directive” means the Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the member States relating to turnover taxes – common system of value added tax: uniform basis of assessment ([77/388/EEC](#));

“the 2002 VAT Directive” means the Council Directive of 7 May 2002 amending and amending temporarily the 1977 VAT Directive as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services ([2002/38/EC](#));

“Article 26c” has the meaning given by paragraph 2(7) above;

“the Controller” has the meaning given by paragraph 11(7) above;

“participant in the special scheme” has the meaning given by paragraph 16(5) above;

“qualifying supply” has the meaning given by paragraph 3 above;

“registration number” means the number allocated to a person on his registration under this Schedule in accordance with paragraph 6(a) above;

“registration request” is to be construed in accordance with paragraph 4(1)(b) above;

“reporting period” is to be construed in accordance with paragraph 11(2) above;

“special accounting return” is to be construed in accordance with paragraph 11(1) above.

(2) References in this Schedule to a qualifying supply being “treated as made” in a member State are references to its being treated as made—

(a) in the United Kingdom, by virtue of any provision which gives effect in the United Kingdom to Article 9(2)(f) of the 1977 VAT Directive (which is inserted by Article 1(1)(b) of the 2002 VAT Directive), or

(b) in another member State, by virtue of any provision of the law of that member State which gives effect to that Article.

(3) The provision which, as at 9th April 2003, is to give effect in the United Kingdom to Article 9(2)(f) of the 1977 VAT Directive (as mentioned in subparagraph (2)(a) above) is article 16A of the Value Added Tax (Place of Supply of Services) Order 1992 (which is prospectively inserted by article 3 of the Value Added Tax (Place of Supply of Services) (Amendment) Order 2003).”.

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## SCHEDULE 3

Section 49

### STAMP DUTY LAND TAX: TRANSACTIONS EXEMPT FROM CHARGE

#### *No chargeable consideration*

- 1 A land transaction is exempt from charge if there is no chargeable consideration for the transaction.

#### *Grant of certain leases by registered social landlords*

- 2 (1) The grant of a lease of a dwelling is exempt from charge if the lease—
- (a) is granted by a registered social landlord to one or more individuals in accordance with arrangements to which this paragraph applies, and
  - (b) is for an indefinite term or is terminable by notice of a month or less.
- (2) This paragraph applies to arrangements between a registered social landlord and a housing authority under which the landlord provides, for individuals nominated by the authority in pursuance of its statutory housing functions, temporary rented accommodation which the landlord itself has obtained on a short-term basis.

The reference above to accommodation obtained by the landlord “on a short-term basis” is to accommodation leased to the landlord for a term of five years or less.

- (3) A “housing authority” means—
- (a) in relation to England and Wales—
    - (i) a principal council within the meaning of the Local Government Act 1972 (c. 70), or
    - (ii) the Common Council of the City of London;
  - (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
  - (c) in relation to Northern Ireland—
    - (i) the Department for Social Development in Northern Ireland, or
    - (ii) the Northern Ireland Housing Executive.

#### *Transactions in connection with divorce etc*

- 3 A transaction between one party to a marriage and the other is exempt from charge if it is effected—
- (a) in pursuance of an order of a court made on granting in respect of the parties a decree of divorce, nullity of marriage or judicial separation;
  - (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties' judicial separation, at any time after the granting of such a decree;
  - (c) in pursuance of—
    - (i) an order of a court made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c. 18), or
    - (ii) an incidental order of a court made under section 8(2) of the Family Law (Scotland) Act 1985 (c. 37) by virtue of section 14(1) of that Act;

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- (d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

*[<sup>F102</sup> Assents and appropriations by personal representatives*

**Textual Amendments**

**F102** Sch. 3 para. 3A and cross-heading inserted (with effect in accordance with s. 300(2) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 300\(1\)](#)

- 3A (1) The acquisition of property by a person in or towards satisfaction of his entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is exempt from charge.
- (2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.
- (3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 8A(1) of Schedule 4.
- (4) In this paragraph—  
     “debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and  
     “secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.]

*Variation of testamentary dispositions etc*

- 4 (1) A transaction following a person’s death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is exempt from charge if the following conditions are met.
- (2) The conditions are—  
     (a) that the transaction is carried out within the period of two years after a person’s death, and  
     (b) that no consideration in money or money’s worth other than the making of a variation of another such disposition is given for it.
- [<sup>F103</sup>(2A) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 8A(2) of Schedule 4.]
- (3) This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

**Textual Amendments**

**F103** Sch. 3 para. 4(2A) inserted (with effect in accordance with s. 301(7) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 301\(1\)](#)

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*Power to add further exemptions*

- 5 (1) The Treasury may by regulations provide that any description of land transaction specified in the regulations is exempt from charge.
- (2) The regulations may contain such supplementary, incidental and transitional provision as appears to the Treasury to be appropriate.

SCHEDULE 4

Section 50

STAMP DUTY LAND TAX: CHARGEABLE CONSIDERATION

*Money or money's worth*

- 1 (1) The chargeable consideration for a transaction is, except as otherwise expressly provided, any consideration in money or money's worth given for the subject-matter of the transaction, directly or indirectly, by the purchaser or a person connected with him.
- (2) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of sub-paragraph (1).

*Value added tax*

- 2 The chargeable consideration for a transaction shall be taken to include any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an election under paragraph 2 of Schedule 10 to the Value Added Tax Act 1994 (c. 23) made after the effective date of the transaction.

*Postponed consideration*

- 3 The amount or value of the chargeable consideration for a transaction shall be determined without any discount for postponement of the right to receive it or any part of it.

*Just and reasonable apportionment*

- 4 (1) For the purposes of this Part consideration attributable—
- (a) to two or more land transactions, or
  - (b) in part to a land transaction and in part to another matter, or
  - (c) in part to matters making it chargeable consideration and in part to other matters,
- shall be apportioned on a just and reasonable basis.
- (2) If the consideration is not so apportioned, this Part has effect as if it had been so apportioned.
- (3) For the purposes of this paragraph any consideration given for what is in substance one bargain shall be treated as attributable to all the elements of the bargain, even though—
- (a) separate consideration is, or purports to be, given for different elements of the bargain, or

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- (b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

### *Exchanges*

- 5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person as purchaser (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by him (alone or jointly) as vendor.
- (2) In this paragraph—
- (a) “relevant transaction” means any of those transactions, and
- (b) “relevant acquisition” means a relevant transaction entered into as purchaser and “relevant disposal” means a relevant transaction entered into as vendor.
- (3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made, the chargeable consideration for the acquisition is—
- (i) the market value of the subject-matter of the acquisition, and
- (ii) if the acquisition is the grant of a lease at a rent, that rent;
- (b) where two or more relevant acquisitions are made, the chargeable consideration for each relevant acquisition is—
- (i) the market value of the subject-matter of that acquisition, and
- (ii) if the acquisition is the grant of a lease at a rent, that rent.
- (4) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that is given for the acquisition;
- (b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that is given for the acquisitions.
- (5) For the purposes of sub-paragraph (4)(b) the appropriate proportion is—

$$\frac{MV}{TMV}$$

where—

MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and

TMV is the total market value of the subject-matter of all the relevant acquisitions.

- (6) This paragraph has effect subject to—
- paragraph 6 of this Schedule (partition etc: disregard of existing interest),<sup>F104</sup> ...  
<sup>F105</sup> ...



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F104  
...

[<sup>F106</sup>(7) This paragraph does not apply in a case to which paragraph 17 applies.]

#### Textual Amendments

- F104** Words in Sch. 4 para. 5(6) repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)
- F105** Sch. 4 para. 5(6) entry omitted (7.4.2004) by virtue of [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, [4\(2\)\(a\)](#)
- F106** Sch. 4 para. 5(7) added (7.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, [4\(2\)\(b\)](#)

#### *Partition etc: disregard of existing interest*

- 6 In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the purchaser immediately before the partition or division does not count as chargeable consideration.

#### *Valuation of non-monetary consideration*

- 7 Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction, other than—
- (a) money (whether in sterling or another currency), or
  - (b) debt as defined for the purposes of paragraph 8 (debt as consideration),
- shall be taken to be its market value at the effective date of the transaction.

#### *Debt as consideration*

- 8 (1) Where the chargeable consideration for a land transaction consists in whole or in part of—
- (a) the satisfaction or release of debt due to the purchaser or owed by the vendor, or
  - (b) the assumption of existing debt by the purchaser,
- the amount of debt satisfied, released or assumed shall be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.

[<sup>F107</sup>(1A) Where—

- (a) debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and
- (b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the purchaser, and that assumption of debt constitutes chargeable consideration for the transaction.

(1B) Where in a case in which sub-paragraph (1)(b) applies—

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- (a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and
- (b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there are two or more such persons immediately afterwards,

the amount of secured debt assumed shall be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to his undivided share of the property at that time.

(1C) For the purposes of sub-paragraph (1B), in England and Wales and Northern Ireland each joint tenant of property is treated as holding an equal undivided share of it.]

(2) If the effect of [<sup>F108</sup>this paragraph] would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.

(3) In this paragraph—

- (a) “debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date,
- (b) “existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and
- (c) references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with the amount of any interest that has accrued due on or before the effective date of the transaction.

#### Textual Amendments

**F107** Sch. 4 para. 8(1A)-(1C) inserted (with effect in accordance with s. 301(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 301\(3\)](#)

**F108** Words in Sch. 4 para. 8(2) substituted (with effect in accordance with s. 301(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 301\(4\)](#)

#### <sup>F109</sup>Cases where conditions for exemption not fully met

#### Textual Amendments

**F109** Sch. 4 para. 8A and cross-heading inserted (with effect in accordance with s. 301(7) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 301\(5\)](#)

8A (1) Where a land transaction would be exempt from charge under paragraph 3A of Schedule 3 (assents and appropriations by personal representatives) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

“Secured debt” has the same meaning as in that paragraph.

(2) Where a land transaction would be exempt from charge under paragraph 4 of Schedule 3 (variation of testamentary dispositions etc) but for a failure to meet the

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condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.]

*Conversion of amounts in foreign currency*

- 9 (1) References in this Part to the amount or value of the consideration for a transaction are to its amount or value in sterling.
- (2) For the purposes of this Part the sterling equivalent of an amount expressed in another currency shall be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).

*Carrying out of works*

- 10 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—
- (a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and
- (b) to the extent that those conditions are not met, the value of the works shall be taken into account as chargeable consideration.
- (2) The conditions referred to in sub-paragraph (1) are—
- (a) that the works are carried out after the effective date of the transaction,
- (b) that the works are carried out on land acquired or to be acquired under the transaction or on other land held by the purchaser or a person connected with him, and
- (c) that it is not a condition of the transaction that the works are carried out by the vendor or a person connected with him.

[<sup>F110</sup>(2A) [<sup>F111</sup>Where by virtue of—

- (a) subsection (8) of section 44 (contract and conveyance),
- (b) paragraph 12A of Schedule 17A (agreement for lease), or
- (c) paragraph 19(3) to (6) of Schedule 17A (missives of let etc in Scotland),

there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease),] the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.]

(3) In this paragraph—

- (a) references to the acquisition of land are to the acquisition of a major interest in it;
- (b) the value of the works shall be taken to be the amount that would have to be paid in the open market for the carrying out of the works in question.

(4) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this paragraph.

[<sup>F112</sup>(5) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).]

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#### Textual Amendments

- F110** Sch. 4 para. 10(2A) inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 9\(2\)](#)
- F111** Words in Sch. 4 para. 10(2A) substituted (with effect in accordance with s. 297(9) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 297\(8\)](#)
- F112** Sch. 4 para. 10(5) added (19.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 4 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/3293\)](#), regs. 1, [2\(3\)](#)

#### *Provision of services*

- 11<sup>F113</sup>(1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 10 applies), the value of that consideration shall be taken to be the amount that would have to be paid in the open market to obtain those services.
- [<sup>F114</sup>(2) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).]

#### Textual Amendments

- F113** Sch. 4 para. 11 renumbered as Sch. 4 para. 11(1) (19.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 4 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/3293\)](#), regs. 1, [2\(4\)](#)
- F114** Sch. 4 para. 11(2) inserted (19.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 4 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/3293\)](#), regs. 1, [2\(4\)](#)

#### *Land transaction entered into by reason of employment*

- 12 (1) Where a land transaction is entered into by reason of the purchaser's employment, or that of a person connected with him, then—
- (a) if the transaction gives rise to a charge to tax under Chapter 5 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (taxable benefits: living accommodation) and—
    - (i) no rent is payable by the purchaser, or
    - (ii) the rent payable by the purchaser is less than the cash equivalent of the benefit calculated under section 105 or 106 of that Act,
 there shall be taken to be payable by the purchaser as rent an amount equal to the cash equivalent chargeable under those sections;
  - (b) if the transaction would give rise to a charge under that Chapter but for section 99 of that Act (accommodation provided for performance of duties), the consideration for the transaction is the actual consideration (if any);
  - (c) if neither paragraph (a) nor paragraph (b) applies, the consideration for the transaction shall be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.
- (2) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this paragraph.

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### *Obligations under lease*

F115 13 .....

#### **Textual Amendments**

**F115** Sch. 4 paras. 13-15 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### *Surrender of existing lease in return for new lease*

F115 14 .....

#### **Textual Amendments**

**F115** Sch. 4 paras. 13-15 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### *Reverse premium*

F115 15 .....

#### **Textual Amendments**

**F115** Sch. 4 paras. 13-15 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### *Indemnity given by purchaser*

16 Where the purchaser agrees to indemnify the vendor in respect of liability to a third party arising from breach of an obligation owed by the vendor in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

### *<sup>F116</sup>Arrangements involving public or educational bodies*

#### **Textual Amendments**

**F116** Sch. 4 para. 17 added (19.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 4 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/3293\)](#), regs. 1, [2\(5\)](#)

17. (1) This paragraph applies in any case where arrangements are entered into under which—

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- [<sup>F117</sup>(a) there is a transfer, or the grant or assignment of a lease, of land by a qualifying body (“A”) to a non-qualifying body (“B”) (“the main transfer”),]
- [<sup>F118</sup>(b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or under-lease of the whole, or substantially the whole, of that land (“the leaseback”),]
- (c) B undertakes to carry out works or provide services to A, and
- (d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money,
- [<sup>F119</sup>whether or not there is also a transfer, or the grant or assignment of a lease, of any other land by A to B (a “transfer of surplus land”).]
- (2) The following are qualifying bodies—
- (a) public bodies within section 66,
- (b) institutions within the further education sector or the higher education sector within the meaning of 91 of the Further and Higher Education Act 1992,
- (c) further education corporations within the meaning of section 17 of that Act,
- (d) higher education corporations within the meaning section 90 of that Act,
- (e) persons who undertake to establish and maintain, and carry on, or provide for the carrying on, of an Academy within the meaning of section 482 of the Education Act 1996, and
- (f) in Scotland, institutions funded by the Scottish Further Education Funding Council or the Scottish Higher Education Funding Council.
- [<sup>F120</sup>(3) The following shall not count as chargeable consideration for the main transfer or any transfer of surplus land—
- (a) the lease-back;
- (b) the carrying out of building works by B for A; or
- (c) the provision of services by B to A.
- (4) The chargeable consideration for the lease back does not include—
- (a) the main transfer;
- (b) any transfer of surplus land; or
- (c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (3).]
- [ Sub-paragraphs (3) and (4) shall be disregarded for the purposes of determining
- <sup>F121</sup>(4A) whether the land transaction in question is notifiable.]
- (5) This paragraph applies to Scotland as if—
- (a) references to A transferring land to B were references to A transferring the interest of an owner of land to B, and
- [<sup>F122</sup>(b) references in sub-paragraph (1) to assignment were references to assignment.]
- Until the appointed day for the purposes of the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (asp 5), the reference in paragraph (a) to the interest of the owner shall be read, in relation to feudal property, as a reference to the estate or interest of the proprietor of the *dominium utile*.
- (6) In this paragraph “under-lease” includes a sub-lease.]

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#### Textual Amendments

- F117** Sch. 4 para. 17(1)(a)(b) substituted (7.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, **4(3)(a)(i)**
- F118** Sch. 4 para. 17(1)(b) substituted (27.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) \(No. 2\) Regulations 2004 \(S.I. 2004/1206\)](#), regs. 1, **3**
- F119** Words in Sch. 4 para. 17(1) substituted (7.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, **4(3)(a)(ii)**
- F120** Sch. 4 para. 17(3)(4) substituted (7.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, **4(3)(b)**
- F121** Sch. 4 para. 17(4A) inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 39 para. 9(3)**
- F122** Sch. 4 para. 17(5)(b) substituted (7.4.2004) by [The Stamp Duty Land Tax \(Amendment of Part 4 of the Finance Act 2003\) Regulations 2004 \(S.I. 2004/1069\)](#), regs. 1, **4(3)(c)**

## SCHEDULE 5

Section 56

### STAMP DUTY LAND TAX: AMOUNT OF TAX CHARGEABLE: RENT

#### *Introduction*

- 1 This Schedule provides for calculating the tax chargeable—
- in respect of a chargeable transaction for which the chargeable consideration consists of or includes rent, or
  - where such a transaction is to be taken into account as a linked transaction.

<sup>F123</sup> *Amounts payable in respect of periods before grant of lease*

#### Textual Amendments

- F123** Sch. 5 para. 1A and cross-heading inserted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 39 para. 10**

- 1A For the purposes of this Part “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.]

#### *Calculation of tax chargeable in respect of rent*

- 2 (1) Tax is chargeable under this Schedule in respect of so much of the chargeable consideration as consists of rent.
- <sup>F124</sup>(2) The tax chargeable is the total of the amounts produced by taking the relevant percentage of so much of the relevant rental value as falls within each rate band.
- (3) The relevant percentages and rate bands are determined by reference to whether the relevant land—
- consists entirely of residential property (in which case Table A below applies), or

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- (b) consists of or includes land that is not residential property (in which case Table B below applies).

TABLE A: RESIDENTIAL

<i>Rate bands</i>	<i>Percentage</i>
£0 to [ <sup>F125</sup> £120,000]	0%
Over [ <sup>F125</sup> £120,000]	1%

TABLE B: NON-RESIDENTIAL OR MIXED

<i>Rate bands</i>	<i>Percentage</i>
£0 to £150,000	0%
Over £150,000	1%

- (4) For the purposes of sub-paragraphs (2) and (3)—
- (a) the relevant rental value is the net present value of the rent payable over the term of the lease, and
- (b) the relevant land is the land that is the subject of the lease.
- (5) If the lease in question is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the above provisions are modified.
- (6) In that case the tax chargeable is determined as follows.

First, calculate the amount of the tax that would be chargeable if the linked transactions were a single transaction, so that—

- (a) the relevant rental value is the total of the net present values of the rent payable over the terms of all the leases, and
- (b) the relevant land is all land that is the subject of any of those leases.

Then, multiply that amount by the fraction:

$$\frac{NPV}{TNPV}$$

where—

*NPV* is the net present value of the rent payable over the term of the lease in question, and

*TNPV* is the total of the net present values of the rent payable over the terms of the all the leases.]

#### Textual Amendments

**F124** Sch. 5 para. 2(2)-(6) substituted for Sch. 5 para. 2(2)-(5) (1.12.2003) by The Stamp Duty Land Tax (Amendment of Schedule 5 to the Finance Act 2003) Regulations 2003 (SI 2003/2914), reg. 2 Sch. para. 1

**F125** Sum in Sch. 5 para. 2(3) substituted (with application in accordance with s. 95(4) of the amending Act) by [Finance Act 2005 \(c. 7\), s. 95\(2\)](#)



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*Net present value of rent payable over term of lease*

3 The net present value (v) of the rent payable over the term of a lease is calculated by applying the formula:

where—

- ri is the rent payable <sup>F126</sup>... in year i,
- i is the first, second, third, etc year of the term,
- n is the term of the lease <sup>F126</sup>..., and
- T is the temporal discount rate (see paragraph 8).

**Textual Amendments**

**F126** Words in Sch. 5 para. 3 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

*Rent payable*

<sup>F127</sup>4 .....

**Textual Amendments**

**F127** Sch. 5 paras. 4-7 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

*Effect of provision for rent review*

<sup>F127</sup>5 .....

**Textual Amendments**

**F127** Sch. 5 paras. 4-7 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

*Term of lease*

<sup>F127</sup>6 .....

**Textual Amendments**

**F127** Sch. 5 paras. 4-7 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain

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changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### *Treatment of lease for indefinite term*

F127

#### **Textual Amendments**

**F127** Sch. 5 paras. 4-7 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 4(2)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### *Temporal discount rate*

- 8
- (1) For the purposes of this Schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by regulations made by the Treasury.
  - (2) Regulations under this paragraph may make any such provision as is mentioned in subsection (3)(b) to (f) of section 178 of the Finance Act 1989 (c. 26) (power of Treasury to set rates of interest).
  - (3) Subsection (5) of that section (power of Inland Revenue to specify rate by order in certain circumstances) applies in relation to regulations under this paragraph as it applies in relation to regulations under that section.

### *Tax chargeable in respect of consideration other than rent*

- 9
- (1) Where in the case of a transaction to which this Schedule applies there is chargeable consideration other than rent, the provisions of this Part apply in relation to that consideration as in relation to other chargeable consideration.
  - (2) If the [<sup>F128</sup>relevant rental figure] exceeds £600 a year, the 0% band in the Tables in subsection (2) of section 55 does not apply and any case that would have fallen within that band is treated as falling within the 1% band.

[<sup>F129</sup>(2A) For the purposes of sub-paragraph (2) the relevant rental figure is—

- (a) the annual rent in relation to the transaction in question, or
- (b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all those transactions.]

(3) [<sup>F130</sup>In sub-paragraph (2A)] the “annual rent” means the average annual rent over the term of the lease or, if—

- (a) different amounts of rent are payable for different parts of the term, and
- (b) those amounts (or any of them) are ascertainable at the effective date of the transaction,

the average annual rent over the period for which the highest ascertainable rent is payable.

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- (4) Tax chargeable under this Schedule is in addition to any tax chargeable under section 55 in respect of consideration other than rent.
- (5) Where a transaction to which this Schedule applies falls to be taken into account for the purposes of that section as a linked transaction, no account shall be taken of rent in determining the relevant consideration.

**Textual Amendments**

- F128** Words in Sch. 5 para. 9(2) substituted (1.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 5 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/2914\)](#), regs. 1, 2, **Sch. para. 2(2)**
- F129** Sch. 5 para. 9(2A) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 5 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/2914\)](#), regs. 1, 2, **Sch. para. 2(3)**
- F130** Words in Sch. 5 para. 9(3) substituted (1.12.2003) by [The Stamp Duty Land Tax \(Amendment of Schedule 5 to the Finance Act 2003\) Regulations 2003 \(S.I. 2003/2914\)](#), regs. 1, 2, **Sch. para. 2(4)**

*Increase of rent treated as grant of new lease*

**F131** 10 .....

**Textual Amendments**

- F131** Sch. 5 para. 10 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 4(2)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

*Interpretation*

**F132** 11 .....

**Textual Amendments**

- F132** Sch. 5 para. 11 repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 4(2)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

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## SCHEDULE 6

Section 57

### STAMP DUTY LAND TAX: DISADVANTAGED AREAS RELIEF

#### PART 1

##### DISADVANTAGED AREAS

###### *Meaning of “disadvantaged area”*

- 1 (1) For the purposes of this Schedule a “disadvantaged area” means an area designated as a disadvantaged area by regulations made by the Treasury.
- (2) The regulations may—
- (a) designate specified areas as disadvantaged areas, or
  - (b) provide for areas of a description specified in the regulations to be designated as disadvantaged areas.
- (3) If the regulations so provide, the designation of an area as a disadvantaged area shall have effect for such period as may be specified by or determined in accordance with the regulations.
- (4) The regulations may—
- (a) make different provision for different cases, and
  - (b) contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

###### *Continuation of regulations made for purposes of stamp duty*

- 2 Any regulations made by the Treasury—
- (a) designating areas as disadvantaged areas for the purposes of section 92 of the Finance Act 2001 (c. 9) (stamp duty exemption for land in disadvantaged areas), and
  - (b) in force immediately before the implementation date,
- have effect for the purposes of this Schedule as if made under paragraph 1 above and may be varied or revoked accordingly.

#### PART 2

##### LAND WHOLLY SITUATED IN A DISADVANTAGED AREA

###### *Introduction*

- 3 This Part of this Schedule applies to a land transaction if
- <sup>F133</sup>(a) the subject matter of the transaction is a chargeable interest in relation to land that is wholly situated in a disadvantaged area<sup>F134</sup>, and
  - (b) the land is wholly or partly residential property].

*Status: Point in time view as at 18/04/2005.*

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#### Textual Amendments

**F133** Word in Sch. 6 para. 3 inserted (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(2\)](#) (with [Sch. 9 para. 4](#))

**F134** Sch. 6 para. 3(b) and word inserted (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(2\)](#) (with [Sch. 9 para. 4](#))

#### *Land all non-residential*

**F135**<sup>4</sup> .....

#### Textual Amendments

**F135** Sch. 6 para. 4 repealed (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(3\)](#), [Sch. 11 Pt. 3\(2\)](#) (with [Sch. 9 para. 4](#))

#### *Land all residential*

- 5
- (1) This paragraph applies where all the land is residential property.
  - (2) If—
    - (a) the consideration for the transaction does not include rent and the relevant consideration does not exceed £150,000, or
    - (b) the consideration for the transaction consists only of rent and the relevant rental value does not exceed £150,000,the transaction is exempt from charge.
  - (3) If the consideration for the transaction includes rent and the relevant rental value does not exceed £150,000, the rent does not count as chargeable consideration.
  - (4) If the consideration for the transaction includes consideration other than rent, then—
    - (a) if—
      - (i) the annual rent does not exceed £600, and
      - (ii) the relevant consideration does not exceed £150,000,the consideration other than rent does not count as chargeable consideration;
    - (b) if the annual rent exceeds £600, the 0% band in Table A in subsection (2) of section 55 does not apply in relation to the consideration other than rent and any case that would have fallen within that band is treated as falling within the 1% band.

#### *Land partly non-residential and partly residential*

- 6
- (1) [<sup>F136</sup>This paragraph applies, where the land is partly non-residential property and partly residential property, in relation to the consideration attributable to land that is residential property.]

References in this paragraph to the consideration attributable to <sup>F137</sup>... land that is residential property (or to the rent or annual rent so attributable) are to the consideration (or rent or annual rent) so attributable on a just and reasonable apportionment.

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- <sup>F138</sup>(2) .....
- <sup>F138</sup>(3) .....
- (4) If—
- (a) the consideration so attributable does not include rent and the relevant consideration does not exceed £150,000, or
  - (b) the consideration so attributable consists only of rent and the relevant rental value does not exceed £150,000,
- none of the consideration so attributable counts as chargeable consideration.
- (5) If the consideration so attributable includes rent and the relevant rental value does not exceed £150,000, the rent so attributable does not count as chargeable consideration.
- (6) If the consideration so attributable includes consideration other than rent, then—
- (a) if—
    - (i) the annual rent so attributable does not exceed £600, and
    - (ii) the relevant consideration does not exceed £150,000,
 the consideration other than rent does not count as chargeable consideration;
  - (b) if the annual rent so attributable exceeds £600, the 0% band in the Tables in subsection (2) of section 55 does not apply in relation to the consideration other than rent and any case that would have fallen within that band is treated as falling within the 1% band.

#### Textual Amendments

- F136** Words in Sch. 6 para. 6(1) substituted (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(4\)\(a\)](#) (with [Sch. 9 para. 4](#))
- F137** Words in Sch. 6 para. 6(1) repealed (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(4\)\(b\)](#), [Sch. 11 Pt. 3\(2\)](#) (with [Sch. 9 para. 4](#))
- F138** Sch. 6 para. 6(2)(3) repealed (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(4\)\(c\)](#), [Sch. 11 Pt. 3\(2\)](#) (with [Sch. 9 para. 4](#))

### PART 3

#### LAND PARTLY SITUATED IN A DISADVANTAGED AREA

##### Introduction

- 7 (1) This Part of this Schedule applies to a land transaction if
- <sup>F139</sup>(a) the subject matter of the transaction is a chargeable interest in relation to land that is partly in a disadvantaged area and partly outside such an area<sup>F140</sup>, and
  - (b) the land situated in a disadvantaged area is wholly or partly residential property].
- (2) References in this Part to the consideration attributable to land situated in a disadvantaged area and to land not so situated (or to the rent or annual rent so attributable) are to the consideration (or rent or annual rent) so attributable on a just and reasonable apportionment.

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#### Textual Amendments

- F139** Word in Sch. 6 para. 7(1) inserted (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(5\)](#) (with [Sch. 9 para. 4](#))
- F140** Sch. 6 para. 7(1)(b) and word inserted (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(5\)](#) (with [Sch. 9 para. 4](#))

#### *Land all non-residential*

**F1418** .....

#### Textual Amendments

- F141** Sch. 6 para. 8 repealed (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(6\)](#), [Sch. 11 Pt. 3\(2\)](#) (with [Sch. 9 para. 4](#))

#### *Land all residential*

- 9 (1) This paragraph applies where all the land situated in a disadvantaged area is residential property.
- (2) If—
- (a) the consideration attributable to land situated in a disadvantaged area does not include rent and the relevant consideration does not exceed £150,000, or
  - (b) the consideration so attributable consists only of rent and the relevant rental value does not exceed £150,000,
- none of the consideration so attributable counts as chargeable consideration.
- (3) If the consideration attributable to land situated in a disadvantaged area includes rent and the relevant rental value does not exceed £150,000, the rent so attributable does not count as chargeable consideration.
- (4) If the consideration attributable to land in a disadvantaged area includes consideration other than rent (“non-rent consideration”), then—
- (a) if—
    - (i) the annual rent so attributable does not exceed £600, and
    - (ii) the relevant consideration does not exceed £150,000,the non-rent consideration so attributable does not count as chargeable consideration;
  - (b) if the annual rent so attributable exceeds £600, the 0% band in Table A in subsection (2) of section 55 does not apply in relation to the non-rent consideration so attributable and any case that would have fallen within that band is treated as falling within the 1% band.

#### *Land partly non-residential and partly residential*

- 10 (1) <sup>F142</sup>This paragraph applies, where the land situated in a disadvantaged area is partly non-residential property and partly residential property, in relation to the consideration attributable to land that is residential property.]

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References in this paragraph to the consideration attributable to <sup>F143</sup>... land that is residential property (or to the rent or annual rent so attributable) are to the consideration (or rent or annual rent) attributable to land in a disadvantaged area that is, on a just and reasonable apportionment, so attributable.

<sup>F144</sup>(2) .....

<sup>F144</sup>(3) .....

(4) If—

- (a) the consideration so attributable does not include rent and the relevant consideration does not exceed £150,000, or
- (b) the consideration so attributable consists only of rent and the relevant rental value does not exceed £150,000,

none of the consideration so attributable counts as chargeable consideration.

(5) If the consideration so attributable includes rent and the relevant rental value does not exceed £150,000, the rent so attributable does not count as chargeable consideration.

(6) If the consideration so attributable includes consideration other than rent, then—

(a) if—

- (i) the annual rent so attributable does not exceed £600, and
- (ii) the relevant consideration does not exceed £150,000,

the consideration other than rent does not count as chargeable consideration;

- (b) if the annual rent so attributable exceeds £600, the 0% band in the Tables in subsection (2) of section 55 does not apply in relation to the consideration other than rent and any case that would have fallen within that band is treated as falling within the 1% band.

#### Textual Amendments

**F142** Words in Sch. 6 para. 10(1) substituted (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(7\)\(a\)](#) (with [Sch. 9 para. 4](#))

**F143** Words in Sch. 6 para. 10(1) repealed (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(7\)\(b\)](#), [Sch. 11 Pt. 3\(2\)](#) (with [Sch. 9 para. 4](#))

**F144** Sch. 6 para. 10(2)(3) repealed (with application in accordance with Sch. 9 para. 4(1) of the amending Act) by [Finance Act 2005 \(c. 7\)](#), [Sch. 9 para. 1\(7\)\(c\)](#), [Sch. 11 Pt. 3\(2\)](#) (with [Sch. 9 para. 4](#))

## PART 4

[<sup>F145</sup>SUPPLEMENTARY]

#### Textual Amendments

**F145** Sch. 6 Pt. 4 heading substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 298\(5\)\(a\)](#)



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*Relevant consideration and relevant rental value*

- 11 (1) References in this Schedule to the “relevant consideration” in relation to a transaction are to the amount falling to be taken into account for the purposes of section 55(2) in determining the rate of tax chargeable under that section in relation to the transaction apart from any relief under this Schedule (whether in relation to that or any other transaction).
- (2) References in this Schedule to the “relevant rental value” in relation to a transaction are to the amount falling to be taken into account for the purposes of paragraph 2(3) of Schedule 5 in determining the rate of tax chargeable under that Schedule in relation to the transaction apart from any relief under this Schedule (whether in relation to that or any other transaction).

*Rent and annual rent*

- 12 For the purposes of this Schedule “rent” has the same meaning as in Schedule 5 (amount of tax chargeable: rent) and “annual rent” has the same meaning as in paragraph 9(2) of that Schedule.

*[<sup>F146</sup>Notification of transactions*

**Textual Amendments**

**F146** Sch. 6 para. 13 and cross-heading inserted (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 298\(5\)\(b\)](#)

- 13 For the purposes of section 77 (which specifies what land transactions are notifiable) no account shall be taken of any provision of this Schedule to the effect that consideration does not count as chargeable consideration.]

**[<sup>F147</sup>SCHEDULE 6A**

Section 58A

**RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY**

**Textual Amendments**

**F147** Sch. 6A inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 39 para. 17\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

*Acquisition by house-building company from individual acquiring new dwelling*

- 1 (1) Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the individual (whether alone or with other individuals) acquires from the house-building company a new dwelling,

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- (b) that the individual—
    - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
    - (ii) intends to occupy the new dwelling as his only or main residence,
  - (c) that each acquisition is entered into in consideration of the other, and
  - (d) that the area of land acquired by the house-building company does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired by the house-building company exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.
- References in this paragraph to such a company include any company connected with it.
- (5) In this paragraph—
- (a) references to the acquisition of the new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Acquisition by property trader from individual acquiring new dwelling*

- 2 (1) Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,
  - (b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,
  - (c) that the individual—
    - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
    - (ii) intends to occupy the new dwelling as his only or main residence,
  - (d) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling, or
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

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- (e) that the area of land acquired by the property trader does not exceed the permitted area.

Paragraph (d)(ii) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (3) Where the conditions in sub-paragraph (2)(a) to (d) are met, but the area of land acquired by the property trader exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) The provisions of paragraph 1(4) (meaning of “house-building company” etc) also have effect for the purposes of this paragraph.
- (5) In this paragraph—
  - (a) references to the acquisition of a new dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

#### *Acquisition by property trader from personal representatives*

- 3 (1) Where a dwelling is acquired by a property trader from the personal representatives of a deceased individual, the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
  - (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from personal representatives of deceased individuals,
  - (b) that the deceased individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of his death,
  - (c) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the dwelling, or
    - (ii) to grant a lease or licence of the dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and
  - (d) that the area of land acquired does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met, but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph—
  - (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and

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- (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Acquisition by property trader from individual where chain of transactions breaks down*

- 4 (1) Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if—
- (a) the individual has made arrangements to sell a dwelling (“the old dwelling”) and acquire another dwelling (“the second dwelling”),
  - (b) the arrangements to sell the old dwelling fail, and
  - (c) the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,
- and the following conditions are met.
- (2) The conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in those circumstances,
  - (b) that the individual—
    - (i) occupied the old dwelling as his only or main residence at some time in the period of two years ending with the date of its acquisition, and
    - (ii) intends to occupy the second dwelling as his only or main residence,
  - (c) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling, or
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
  - (d) that the area of land acquired does not exceed the permitted area.
- Paragraph (c)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than six months.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met, but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.
- (4) In this paragraph—
- (a) references to the acquisition of the second dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling;
  - (b) references to the acquisition of the old dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (c) references to the market value of the old dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

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*Acquisition by employer in case of relocation of employment*

- 5 (1) Where a dwelling is acquired from an individual (whether alone or with other individuals) by his employer, the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—
- (a) that the individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of the acquisition,
  - (b) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
  - (c) that the consideration for the acquisition does not exceed the market value of the dwelling, and
  - (d) that the area of land acquired does not exceed the permitted area.
- (3) Where the conditions in sub-paragraph (2)(a) to (c) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph “relocation of employment” means a change of the individual’s place of employment due to—
- (a) his becoming an employee of the employer,
  - (b) an alteration of the duties of his employment with the employer, or
  - (c) an alteration of the place where he normally performs those duties.
- (5) For the purposes of this paragraph a change of residence is one “resulting from” relocation of employment if—
- (a) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and
  - (b) his former residence is not within a reasonable daily travelling distance of that place.
- The individual’s “new place of employment” means the place where he normally performs, or is normally to perform, the duties of his employment after the relocation.
- (6) In this paragraph—
- (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling;
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area; and
  - (c) references to an individual’s employer include a prospective employer.

*Acquisition by property trader in case of relocation of employment*

- 6 (1) Where a dwelling is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the following conditions are met.
- (2) The conditions are—

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- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in connection with a change of residence resulting from relocation of employment,
- (b) that the individual occupied the dwelling as his only or main residence at some time in the period of two years ending with the date of the acquisition,
- (c) that the acquisition is made in connection with a change of residence by the individual resulting from relocation of employment,
- (d) that the consideration for the acquisition does not exceed the market value of the dwelling,
- (e) that the property trader does not intend—
  - (i) to spend more than the permitted amount on refurbishment of the dwelling, or
  - (ii) to grant a lease or licence of the dwelling, or
  - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling, and
- (f) that the area of land acquired does not exceed the permitted area.

Paragraph (e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than six months.

- (3) Where the conditions in sub-paragraph (2)(a) to (e) are met but the area of land acquired exceeds the permitted area, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the dwelling.
- (4) In this paragraph “relocation of employment” means a change of the individual’s place of employment due to—
  - (a) his becoming employed by a new employer,
  - (b) an alteration of the duties of his employment, or
  - (c) an alteration of the place where he normally performs those duties.
- (5) For the purposes of this paragraph a change of residence is one “resulting from” relocation of employment if—
  - (a) the change is made wholly or mainly to allow the individual to have his residence within a reasonable daily travelling distance of his new place of employment, and
  - (b) his former residence is not within a reasonable daily travelling distance of that place.

An individual’s “new place of employment” means the place where he normally performs, or is normally to perform, the duties of his employment after the relocation.

- (6) In this paragraph—
  - (a) references to the acquisition of the dwelling are to the acquisition, by way of transfer, of a major interest in the dwelling; and
  - (b) references to the market value of the dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

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*Meaning of “dwelling”, “new dwelling” and “the permitted area”*

- 7 (1) “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.
- (2) A building or part of a building is a “new dwelling” if—
- (a) it has been constructed for use as a single dwelling and has not previously been occupied, or
  - (b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.
- (3) “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—
- (a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or
  - (b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.
- (4) Where sub-paragraph (3)(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

*Meaning of “property trader” and “principal”*

- 8 (1) A “property trader” means—
- (a) a company,
  - (b) a limited liability partnership, or
  - (c) a partnership whose members are all either companies or limited liability partnerships,
- that carries on the business of buying and selling dwellings.
- (2) In relation to a property trader a “principal” means—
- (a) in the case of a company, a director;
  - (b) in the case of a limited liability partnership, a member;
  - (c) in the case of a partnership whose members are all either companies or limited liability partnerships, a member or a person who is a principal of a member.
- (3) For the purposes of this Schedule—
- (a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
  - (b) references to the principals or employees of a property trader include the principals or employees of any such company.

*Meaning of “refurbishment” and “the permitted amount”*

- 9 (1) “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—
- (a) cleaning the dwelling, or
  - (b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.
- (2) The “permitted amount”, in relation to the refurbishment of a dwelling, is—
- (a) 10,000, or

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- (b) 5% of the consideration for the acquisition of the dwelling, whichever is the greater, but subject to a maximum of £20,000.

*Connected companies etc*

- 10 Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Schedule.

*Withdrawal of relief under this Schedule*

- 11 (1) Relief under this Schedule is withdrawn in the following circumstances.
- (2) Relief under paragraph 2 (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling, or
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (3) Relief under paragraph 3 (acquisition by property trader from personal representatives) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling, or
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.
- (4) Relief under paragraph 4 (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling, or
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (5) Relief under paragraph 6 (acquisition by property trader in case of relocation of employment) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the dwelling, or
  - (b) grants a lease or licence of the dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the dwelling.

Paragraph (b) does not apply to the grant of lease or licence to the individual for a period of no more than six months.

- (6) Where relief is withdrawn the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.]



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## SCHEDULE 7

Section 62

### STAMP DUTY LAND TAX: GROUP RELIEF AND RECONSTRUCTION AND ACQUISITION RELIEFS

#### PART 1

#### GROUP RELIEF

##### *Group relief*

- 1 (1) A transaction is exempt from charge if the vendor and purchaser are companies that at the effective date of the transaction are members of the same group.
- (2) For the purposes of group relief—
- (a) “company” means a body corporate, and
  - (b) companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.
- (3) For the purposes of group relief a company (“company A”) is the 75% subsidiary of another company (“company B”) if company B—
- (a) is beneficial owner of not less than 75% of the ordinary share capital of company A,
  - (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of company A, and
  - (c) would be beneficially entitled to not less than 75% of any assets of company A available for distribution to its equity holders on a winding-up.
- (4) The ownership referred to in sub-paragraph (3)(a) is ownership either directly or through another company or companies.
- For the purposes of that provision the amount of ordinary share capital of company A owned by company B through another company or companies shall be determined in accordance with section 838(5) to (10) of the Taxes Act 1988.
- (5) In sub-paragraphs (3)(a) and (4) above “ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- (6) Schedule 18 to the Taxes Act 1988 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (3)(b) and (c) above as it applies for the purposes of section 413(7)(a) and (b) of that Act, but with the omission of paragraphs 5(3) and 5B to 5E.
- (7) This paragraph is subject to paragraph 2 (restrictions on availability of group relief) and paragraph 3 (withdrawal of group relief).

##### *Restrictions on availability of group relief*

- 2 (1) Group relief is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the purchaser but not of the vendor.

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This does not apply to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”)—

- (a) in relation to which section 75 of the Finance Act 1986 (c. 41) (stamp duty: acquisition relief) will apply,
- (b) in relation to which the conditions for relief under that section will be met, and
- (c) as a result of which the purchaser will be a member of the same group as the acquiring company.

(2) Group relief is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—

- (a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or
- (b) the vendor and the purchaser are to cease to be members of the same group by reason of the purchaser ceasing to be a 75% subsidiary of the vendor or a third company.

(3) Arrangements are within sub-paragraph (2)(a) if under them the vendor or the purchaser, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a group company.

(4) In sub-paragraphs (2)(a) and (3) a “group company” means a company that at the effective date of the transaction is a member of the same group as the vendor or the purchaser.

(5) In this paragraph—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable; and

“control” has the meaning given by section 840 of the Taxes Act 1988.

#### *Withdrawal of group relief*

3 (1) Where in the case of a transaction (“the relevant transaction”) that is exempt from charge by virtue of paragraph 1 (group relief)—

- (a) the purchaser ceases to be a member of the same group as the vendor—
  - (i) before the end of the period of three years beginning with the effective date of the transaction, or
  - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,

and

- (b) at the time the purchaser ceases to be a member of the same group as the vendor (“the relevant time”), it or a relevant associated company holds a chargeable interest—

- (i) that was acquired by the purchaser under the relevant transaction, or
- (ii) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed,

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group relief in relation to the relevant transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.

- (2) The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for group relief if the chargeable consideration for that transaction had been an amount equal to the market value of the subject matter of the transaction or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (3) In sub-paragraphs (1) and (2) “an appropriate proportion” means an appropriate proportion having regard to the subject matter of the relevant transaction and what is held at the relevant time by the transferee company or, as the case may be, by that company and its relevant associated companies.
- (4) In this paragraph—
  - “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable; and
  - “relevant associated company”, in relation to the purchaser, means a company that—
    - (a) is a member of the same group as the purchaser immediately before the purchaser ceases to be a member of the same group as the vendor, and
    - (b) ceases to be a member of the same group as the vendor in consequence of the purchaser so ceasing.
- (5) This paragraph has effect subject to paragraph 4 (cases in which group relief not withdrawn).

#### *Cases in which group relief not withdrawn*

- 4 (1) Group relief is not withdrawn under paragraph 3 in the following cases.
  - (2) The first case is where the purchaser ceases to be a member of the same group as the vendor because the vendor leaves the group.
  - (3) The vendor is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—
    - (a) the vendor, or
    - (b) another company that as a result of the transaction ceases to be a member of the same group as the purchaser.
  - (4) The second case is where the purchaser ceases to be a member of the same group as the vendor by reason of anything done for the purposes of, or in the course of, winding up the vendor or another company that is above the vendor in the group structure.
  - (5) For this purpose a company is “above” the vendor in the group structure if the vendor, or another company that is above the vendor in the group structure, is a 75% subsidiary of the company.
  - (6) The third case is where—
    - (a) the purchaser ceases to be a member of the same group as the vendor as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—

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- (i) section 75 of the Finance Act 1986 (c. 41) applies (stamp duty: acquisition relief), and
  - (ii) the conditions for relief under that section are met,
  - and
  - (b) the purchaser is immediately after that acquisition a member of the same group as the acquiring company.
- (7) But if in a case within sub-paragraph (6)—
- (a) the purchaser ceases to be a member of the same group as the acquiring company—
    - (i) before the end of the period of three years beginning with the effective date of the relevant transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,
  - and
  - (b) at the time the purchaser ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest—
    - (i) that was acquired by the purchaser under the relevant transaction, or
    - (ii) that is derived from an interest so acquired,
 and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed,
- the provisions of this Part relating to group relief apply as if the purchaser had then ceased to be a member of the same group as the vendor.

- (8) In sub-paragraph (7)—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable; and
  - “relevant associated company”, in relation to the purchaser, means a company that is a member of the same group as the purchaser that ceases to be a member of the same group as the acquiring company in consequence of the purchaser so ceasing.

*Recovery of group relief from another group company or controlling director*

- 5 (1) This paragraph applies where—
- (a) tax is chargeable under paragraph 3 (withdrawal of group relief),
  - (b) the amount so chargeable has been finally determined, and
  - (c) the whole or part of the amount so chargeable is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 6, be required to pay the unpaid tax—
- (a) the vendor;
  - (b) any company that at any relevant time was a member of the same group as the purchaser and was above it in the group structure;
  - (c) any person who at any relevant time was a controlling director of the purchaser or a company having control of the purchaser.

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- (3) For the purposes of sub-paragraph (2)(b)—
- (a) a “relevant time” means any time between the effective date of the relevant transaction and the purchaser ceasing to be a member of the same group as the vendor; and
  - (b) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.
- (4) In sub-paragraph (2)(c)—
- “director”, in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (read with subsection (2) of that section) and includes any person falling within section 417(5) of the Taxes Act 1988 (read with subsection (6) of that section); and
- “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988).

*Recovery of group relief: supplementary*

- 6 (1) The Inland Revenue may serve a notice on a person within paragraph 5(2) above requiring him within 30 days of the service of the notice to pay the amount that remains unpaid.
- (2) Any such notice must be served before the end of the period of three years beginning with the date of the final determination mentioned in paragraph 5(1)(b).
- (3) The notice must state the amount required to be paid by the person on whom the notice is served.
- (4) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that person.
- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the purchaser.
- (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 purpose.

**PART 2**

RECONSTRUCTION AND ACQUISITION RELIEFS

*Reconstruction relief*

- 7 (1) Where—

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- (a) a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company, and
  - (b) the first, second and third conditions specified below are met,
- a land transaction entered into for the purposes of or in connection with the transfer of the undertaking or part is exempt from charge.

Relief under this paragraph is referred to in this Part as “reconstruction relief”.

- (2) The first condition is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all the shareholders of the target company.

“Non-redeemable shares” means shares that are not redeemable shares.

- (3) Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the first condition, that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

- (4) The second condition is that after the acquisition has been made—

- (a) each shareholder of each of the companies is a shareholder of the other, and
- (b) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder.

- (5) The third condition is that the acquisition is effected for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

“Tax” here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

- (6) This paragraph is subject to paragraph 9 (withdrawal of reconstruction or acquisition relief).

#### *Acquisition relief*

- 8 (1) Where—

- (a) a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”), and
- (b) the first and second conditions specified below are met,

the rate of tax chargeable on a land transaction entered into for the purposes of or in connection with the transfer of the undertaking or part is limited to 0.5%.

Relief under this paragraph is referred to in this Part as “acquisition relief”.

- (2) The first condition is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—

- (a) the target company, or
- (b) all or any of the target company’s shareholders.

“Non-redeemable shares” means shares that are not redeemable shares.

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- (3) Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the first condition, that condition is met only if the rest of the consideration consists wholly of—
- (a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued, or
  - (b) the assumption or discharge by the acquiring company of liabilities of the target company, or
  - (c) both of those things.
- (4) The second condition is that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part.
- (5) For this purpose—
- (a) companies are associated if one has control of the other or both are controlled by the same person or persons, and
  - (b) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.
- The reference in paragraph (a) to control shall be construed in accordance with section 416 of the Taxes Act 1988.
- (6) This paragraph is subject to paragraph 9 (withdrawal of reconstruction or acquisition relief).

*Withdrawal of reconstruction or acquisition relief*

- 9 (1) Where in the case of a transaction (“the relevant transaction”) that is exempt by virtue of reconstruction relief or is subject to a reduced rate of tax by virtue of acquisition relief—
- (a) control of the acquiring company changes—
    - (i) before the end of the period of three years beginning with the effective date of the transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,
- and
- (b) at the time control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—
    - (i) that was acquired by the acquiring company under the relevant transaction, or
    - (ii) that is derived from an interest so acquired,
- and that has not subsequently been acquired at market value under a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed,
- reconstruction or acquisition relief in relation to the relevant transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
- (2) The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to the market value of

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the subject matter of the transaction or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

- (3) In sub-paragraphs (1) and (2) “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.
- (4) In this paragraph “relevant associated company”, in relation to the acquiring company, means a company—
  - (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.
- (5) In this paragraph—
  - (a) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - (b) “control” shall be construed in accordance with section 416 of the Taxes Act 1988; and
  - (c) references to control of a company changing are to the company becoming controlled—
    - (i) by a different person,
    - (ii) by a different number of persons, or
    - (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
- (6) This paragraph has effect subject to paragraph 10 (cases in which reconstruction or acquisition relief not withdrawn).

*Cases in which reconstruction or acquisition relief not withdrawn*

- 10 (1) Reconstruction or acquisition relief is not withdrawn under paragraph 9 in the following cases.
- (2) The first case is where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in any of paragraphs (a) to (d) of paragraph 3 of Schedule 3 (transactions in connection with divorce etc).
- (3) The second case is where control of the acquiring company changes as a result of a share transaction that—
  - (a) is effected as mentioned in paragraph 4(1) of Schedule 3, and
  - (b) meets the conditions in paragraph 4(2) of that Schedule (variation of testamentary dispositions etc).
- (4) The third case is where control of the acquiring company changes as a result of an exempt intra-group transfer.

An “exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c. 28) or section 11 of the Finance Act (Northern Ireland) 1954 (c. 23 (N. I.)) (transfers between associated bodies corporate).



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But see paragraph 11 (withdrawal of relief in case of subsequent non-exempt transfer).

- (5) The fourth case is where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.

“Share acquisition relief” means relief under section 77 of the Finance Act 1986 (c. 41) and a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision. But see paragraph 11 (withdrawal in case of subsequent non-exempt transfer).

- (6) The fifth case is where—

- (a) control of the acquiring company changes as a result of a loan creditor becoming, or ceasing to be, treated as having control of the company, and
- (b) the other persons who were previously treated as controlling the company continue to be so treated.

“Loan creditor” here has the meaning given by section 417(7) to (9) of the Taxes Act 1988.

*Withdrawal of reconstruction or acquisition relief on subsequent non-exempt transfer*

- 11 (1) Where paragraph 10(4) (change of control of acquiring company as a result of exempt intra-group transfer) has effect to prevent the withdrawal of reconstruction or acquisition relief on a change of control of the acquiring company, but—
- (a) a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—
    - (i) before the end of the period of three years beginning with the effective date of the relevant transaction, or
    - (ii) in pursuance of or in connection with arrangements made before the end of that period,
- and
- (b) the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
    - (i) that was transferred to the acquiring company by the relevant transaction, or
    - (ii) that is derived from an interest that was so transferred,and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed,

reconstruction or acquisition relief in relation to the relevant transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.

(2) Where paragraph 10(5) (change of control of acquiring company as a result of a transfer to which share acquisition relief applies) has effect to prevent the withdrawal of reconstruction or acquisition relief on a change of control of the acquiring company, but—

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- (a) control of the other company mentioned in that provision changes—
- (i) before the end of the period of three years beginning with the effective date of the relevant transaction, or
  - (ii) in pursuance of or in connection with arrangements made before the end of that period,
- at a time when that company holds any shares transferred to it by the exempt transfer, or any shares derived from shares so transferred,
- and
- (b) the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (i) that was transferred to the acquiring company by the relevant transaction, or
  - (ii) that is derived from an interest that was so transferred,
- and that has not subsequently been transferred at market value by a chargeable transaction in relation to which reconstruction or acquisition relief was available but was not claimed,
- reconstruction or acquisition relief in relation to the relevant transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
- (3) The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to the market value of the subject matter of the transaction or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (4) In sub-paragraphs (1), (2) and (3) “an appropriate proportion” means an appropriate proportion having regard to the subject-matter of the relevant transaction and what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.
- (5) In this paragraph “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.
- (6) In this paragraph—
- (a) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
  - (b) “control” shall be construed in accordance with section 416 of the Taxes Act 1988; and
  - (c) references to control of a company changing are to the company becoming controlled—
    - (i) by a different person,
    - (ii) by a different number of persons, or
    - (iii) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.

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*Recovery of reconstruction or acquisition relief  
from another group company or controlling director*

- 12 (1) This paragraph applies where—
- (a) tax is chargeable under paragraph 9 or 11 (withdrawal of reconstruction or acquisition relief),
  - (b) the amount so chargeable has been finally determined, and
  - (c) the whole or part of the amount so chargeable is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 13, be required to pay the unpaid tax—
- (a) any company that at any relevant time was a member of the same group as the acquiring company and was above it in the group structure;
  - (b) any person who at any relevant time was a controlling director of the acquiring company or a company having control of the acquiring company.
- (3) For the purposes of sub-paragraph (2) “relevant time” means any time between effective date of the relevant transaction and the change of control by virtue of which tax is chargeable.
- (4) For the purposes of sub-paragraph (2)(a) a company (“company A”) is “above” another company (“company B”) in a group structure if company B, or another company that is above company B in the group structure, is a 75% subsidiary of company A.
- (5) For the purposes of sub-paragraph (2)(b)—
- (a) “director”, in relation to a company, has the meaning given by section 67(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (read with subsection (2) of that section) and includes any person falling within section 417(5) of the Taxes Act 1988 (read with subsection (6) of that section); and
  - (b) “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988).

*Recovery of reconstruction or acquisition relief: supplementary*

- 13 (1) The Inland Revenue may serve a notice on a person within paragraph 12(2) above requiring him within 30 days of the service of the notice to pay the amount that remains unpaid.
- (2) Any such notice must be served before the end of the period of three years beginning with the date of the final determination mentioned in paragraph 12(1)(b).
- (3) The notice must state the amount required to be paid by the person on whom the notice is served.
- (4) The notice has effect—
- (a) for the purposes of the recovery from that person of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that person.

*Status: Point in time view as at 18/04/2005.*

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- (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the acquiring company.
- (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purpose.

## SCHEDULE 8

Section 68

### STAMP DUTY LAND TAX: CHARITIES RELIEF

#### *Charities relief*

- 1 (1) A land transaction is exempt from charge if the purchaser is a charity and the following conditions are met.
- Relief under [<sup>F148</sup>this Schedule] is referred to in this Part as “charities relief”.
- (2) The first condition is that the purchaser must intend to hold the subject-matter of the transaction for qualifying charitable purposes, that is—
- (a) for use in furtherance of the charitable purposes of the purchaser or of another charity, or
  - (b) as an investment from which the profits are applied to the charitable purposes of the purchaser.
- (3) The second condition is that the transaction must not have not been entered into for the purpose of avoiding tax under this Part (whether by the purchaser or any other person).
- (4) In this paragraph a “charity” means a body or trust established for charitable purposes only.

#### **Textual Amendments**

**F148** Words in Sch. 8 para. 1(1) substituted (with effect in accordance with s. 302(7) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 302\(3\)](#)

#### *Withdrawal of charities relief*

- 2 (1) Where in the case of a transaction (“the relevant transaction”) that is exempt by virtue of [<sup>F149</sup>this Schedule] —
- (a) a disqualifying event occurs—
    - (i) before the end of the period of three years beginning with the effective date of the transaction, or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,

and
  - (b) at the time of the disqualifying event the purchaser holds a chargeable interest—
    - (i) that was acquired by the purchaser under the relevant transaction, or

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- (ii) that is derived from an interest so acquired,  
charities relief in relation to the relevant transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
- (2) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for charities relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.
- (3) For the purposes of this paragraph a “disqualifying event” means—
- (a) the purchaser ceasing to be established for charitable purposes only, or
  - (b) the subject-matter of the transaction, or any interest or right derived from it, being used or held by the purchaser otherwise than for qualifying charitable purposes.
- (4) In sub-paragraphs (1) and (2) an “appropriate proportion” means an appropriate proportion having regard to—
- (a) what was acquired by the purchaser under the relevant transaction and what is held by the purchaser at the time of the disqualifying event, and
  - (b) the extent to which what is held by the purchaser at that time becomes used or held for purposes other than qualifying charitable purposes.
- (5) In this paragraph “qualifying charitable purposes” has the same meaning as in paragraph 1.

#### Textual Amendments

**F149** Words in Sch. 8 para. 2(1) substituted (with effect in accordance with s. 302(7) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 302\(4\)](#)

#### *<sup>F150</sup>Cases where first condition not fully met*

#### Textual Amendments

**F150** Sch. 8 para. 3 and cross-heading inserted (with effect in accordance with s. 302(7) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 302\(1\)](#)

- 3 (1) This paragraph applies where—
- (a) a land transaction is not exempt from charge under paragraph 1 because the first condition in that paragraph is not met, but
  - (b) the purchaser (“C”) intends to hold the greater part of the subject-matter of the transaction for qualifying charitable purposes.
- (2) In such a case—
- (a) the transaction is exempt from charge, but
  - (b) for the purposes of paragraph 2 (withdrawal of charities relief) “disqualifying event” includes—
    - (i) any transfer by C of a major interest in the whole or any part of the subject-matter of the transaction, or
    - (ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter,

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that is not made in furtherance of the charitable purposes of C.

- (3) For the purposes of sub-paragraph (2)(b)(ii)—
- (a) a lease is granted “at a premium” if there is consideration other than rent, and
  - (b) a lease is a “low-rental” lease if the annual rent (if any) does not exceed £600 a year.
- (4) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 2—
- (a) the date of the event for those purposes is the effective date of the transaction;
  - (b) paragraph 2 has effect as if—
    - (i) in sub-paragraph (1)(b), for “at the time of” there were substituted “immediately before”,
    - (ii) in sub-paragraph (4)(a), for “at the time of” there were substituted “immediately before and immediately after”, and
    - (iii) sub-paragraph (4)(b) were omitted.
- (5) In this paragraph—
- “qualifying charitable purposes” has the same meaning as in paragraph 1;
- “rent” has the same meaning as in Schedule 5 (amount of tax chargeable: rent) and “annual rent” has the same meaning as in paragraph 9(2) of that Schedule.]

### *[<sup>F151</sup>Charitable trusts*

#### **Textual Amendments**

**F151** Sch. 8 para. 4 and cross-heading inserted (with effect in accordance with s. 302(7) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), s. 302(2)

- 4 (1) This Schedule applies in relation to a charitable trust as it applies in relation to a charity.
- (2) In this paragraph “charitable trust” means—
- (a) a trust of which all the beneficiaries are charities, or
  - (b) a unit trust scheme in which all the unit holders are charities,
- and “charity” has the same meaning as in paragraph 1.
- (3) In this Schedule as it applies by virtue of this paragraph—
- (a) references to the purchaser in paragraphs (a) and (b) of paragraph 1(2) are to the beneficiaries or unit holders, or any of them;
  - (b) the reference to the purchaser in paragraph 2(3)(a) is to any of the beneficiaries or unit holders;
  - (c) the reference in paragraph 3(2)(b) to the charitable purposes of C is to those of the beneficiaries or unit holders, or any of them.]

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## SCHEDULE 9

Section 70

### STAMP DUTY LAND TAX: RIGHT TO BUY, SHARED OWNERSHIP LEASES ETC

#### *Right to buy transactions*

- 1 (1) In the case of a right to buy transaction—
- (a) section 51(1) (contingent consideration to be included in chargeable consideration on assumption that contingency will occur) does not apply, and
  - (b) any consideration that would be payable only if a contingency were to occur, or that is payable only because a contingency has occurred, does not count as chargeable consideration.
- (2) A “right to buy transaction” means—
- (a) the sale of a dwelling at a discount, or the grant of a lease of a dwelling at a discount, by a relevant public sector body, or
  - (b) the sale of a dwelling, or the grant of a lease of a dwelling, in pursuance of the preserved right to buy.
- (3) The following are relevant public sector bodies for the purposes of sub-paragraph (2) (a):

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#### ***Government***

A Minister of the Crown  
The Scottish Ministers  
A Northern Ireland department

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#### ***Local Government***

A local housing authority within the meaning of the Housing Act 1985 (c. 68)  
A county council in England  
A council constituted under section 2 of the Local Government etc.  
(Scotland) Act 1994 (c. 39), the common good of such a council or any trust under its control  
A district council within the meaning of the Local Government Act (Northern Ireland) 1972 (c. 9 (N.I.))

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#### ***Social housing***

The Housing Corporation  
Scottish Homes  
The Northern Ireland Housing Executive  
A registered social landlord  
A housing action trust established under Part 3 of the Housing Act 1988 (c. 50)

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#### ***New towns and development corporations***

The Commission for the New Towns

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A development corporation established by an order made, or having effect as if made, under the New Towns Act 1981 (c. 64)

A development corporation established by an order made, or having effect as if made, under the New Towns (Scotland) Act 1968 (c. 16)

A new town commission established under section 7 of the New Towns Act (Northern Ireland) 1965 (c. 13 (N.I.))

An urban development corporation established by an order made under section 135 of the Local Government, Planning and Land Act 1980 (c. 65)

The Welsh Development Agency

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***Police***

A police authority within the meaning of section 101(1) of the Police Act 1996 (c. 16)

A police authority within the meaning of section 2(1) or 19(9)(b) of the Police (Scotland) Act 1967 (c. 77)

The Northern Ireland Policing Board

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***Miscellaneous***

An Education and Libraries Board within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

The United Kingdom Atomic Energy Authority

Any person mentioned in paragraphs (g), (k), (l) or (n) of section 61(11) of the Housing (Scotland) Act 1987 (c. 26)

A body prescribed for the purposes of this sub-paragraph by Treasury order.

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- (4) For the purposes of sub-paragraph (2)(b) the transfer of a dwelling, or the grant of a lease of a dwelling, is made in pursuance of the preserved right to buy if—
- (a) the vendor is—
    - (i) in England and Wales, a person against whom the right to buy under Part 5 of the Housing Act 1985 (c. 68) is exercisable by virtue of section 171A of that Act, or
    - (ii) in Scotland, a person against whom the right to buy under section 61 of the Housing (Scotland) Act 1987 is exercisable by virtue of section 81A of that Act,
 (which provide for the preservation of the right to buy on disposal to a private sector landlord),
  - (b) the purchaser is the qualifying person for the purposes of the preserved right to buy, and
  - (c) the dwelling is the qualifying dwelling-house in relation to the purchaser.
- (5) A grant under section 20 or 21 of the Housing Act 1996 (c. 52) (purchase grants in respect of disposals at a discount by registered social landlords) does not count as part of the chargeable consideration for a right to buy transaction in relation to which the vendor is a registered social landlord.



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*Shared ownership lease: election for market value treatment*

- 2 (1) This paragraph applies where—
- (a) a lease is granted—
    - (i) by a qualifying body, or
    - (ii) in pursuance of the preserved right to buy,
  - (b) the conditions in sub-paragraph (2) are met, and
  - (c) the purchaser elects for tax to be charged in accordance with this paragraph.
- (2) The conditions are as follows—
- (a) the lease must be of a dwelling;
  - (b) the lease must give the lessee or lessees exclusive use of the dwelling;
  - (c) the lease must provide for the lessee or lessees to acquire the reversion;
  - (d) the lease must be granted partly in consideration of rent and partly in consideration of a premium calculated by reference to—
    - (i) the market value of the dwelling, or
    - (ii) a sum calculated by reference to that value;
  - (e) the lease must contain a statement of—
    - (i) the market value of the dwelling, or
    - (ii) the sum calculated by reference to that value,by reference to which the premium is calculated.
- (3) An election for tax to be charged in accordance with this paragraph must be included in the land transaction return made in respect of the grant of the lease, or in an amendment of that return, and is irrevocable, so that the return may not be amended so as to withdraw the election.
- (4) Where this paragraph applies the chargeable consideration for the grant of the lease shall be taken to be the amount stated in the lease in accordance with sub-paragraph (2)(e)(i) or (ii).
- As to the tax treatment of the acquisition of the reversion in pursuance of the lease, see paragraph 3.
- (5) Section 118 (meaning of “market value”) does not apply in relation to the reference in sub-paragraph (2)(e) above to the market value of the dwelling.

*Transfer of reversion under shared ownership lease  
where election made for market value treatment*

- 3 The transfer of the reversion to the lessee or lessees under the terms of a lease to which paragraph 2 applies (shared ownership lease: election for market value treatment) is exempt from charge if—
- (a) an election was made for tax to be charged in accordance with that paragraph, and
  - (b) any tax chargeable in respect of the grant of the lease has been paid.

*Shared ownership lease: election where staircasing allowed*

- 4 (1) This paragraph applies where—
- (a) a lease is granted by a qualifying body or in pursuance of the preserved right to buy,

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- (b) the conditions in sub-paragraph (2) below are met, and
  - (c) the purchaser elects for tax to be charged in accordance with this paragraph.
- (2) The conditions are as follows—
- (a) the lease must be of a dwelling;
  - (b) the lease must give the lessee or lessees exclusive use of the dwelling;
  - (c) the lease must provide that the lessee or lessees may, on the payment of a sum, require the terms of the lease to be altered so that the rent payable under it is reduced;
  - (d) the lease must be granted partly in consideration of rent and partly in consideration of a premium calculated by reference to—
    - (i) the premium obtainable on the open market for the grant of a lease containing the same terms as the lease but with the substitution of the minimum rent for the rent payable under the lease, or
    - (ii) a sum calculated by reference to that premium;
  - (e) the lease must contain a statement of the minimum rent and of—
    - (i) the premium obtainable on the open market, or
    - (ii) the sum calculated by reference to that premium,
 by reference to which the premium is calculated.
- (3) An election for tax to be charged in accordance with this paragraph must be included in the land transaction return made in respect of the grant of the lease, or in an amendment of that return, and is irrevocable, so that the return may not be amended so as to withdraw the election.
- (4) Where this paragraph applies—
- (a) the rent in consideration of which the lease is granted shall be taken to be the minimum rent stated in the lease in accordance with sub-paragraph (2) (e), and
  - (b) the chargeable consideration for the grant other than rent shall be taken to be the amount stated in the lease in accordance with sub-paragraph (2)(e) (i) or (ii).
- (5) In this paragraph the “minimum rent” means the lowest rent which could become payable under the lease if it were altered as mentioned in sub-paragraph (2)(c) at the date when the lease is granted.

*<sup>F152</sup>Shared ownership lease: treatment of staircasing transaction*

**Textual Amendments**

**F152** Sch. 9 para. 4A and cross-heading inserted (with effect in accordance with s. 303(4) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 303\(1\)](#)

- 4A (1) This paragraph applies where under a shared ownership lease—
- (a) the lessee or lessees have the right, on the payment of a sum, to require the terms of the lease to be altered so that the rent payable under it is reduced, and
  - (b) by exercising that right the lessee or lessees acquire an interest, additional to one already held, calculated by reference to the market value of the dwelling

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and expressed as a percentage of the dwelling or its value (a “share of the dwelling”).

- (2) Such an acquisition is exempt from charge if—
  - (a) an election was made for tax to be charged in accordance with paragraph 2 or, as the case may be, paragraph 4 and any tax chargeable in respect of the grant of the lease has been paid, or
  - (b) immediately after the acquisition the total share of the dwelling held by the lessee or lessees does not exceed 80%.
- (3) In this paragraph “shared ownership lease” means a lease granted—
  - (a) by a qualifying body, or
  - (b) in pursuance of the preserved right to buy,in relation to which the conditions in paragraph 2(2) or 4(2) are met.
- (4) Section 118 (meaning of “market value”) does not apply in relation to the references in this paragraph to the market value of the dwelling.]

*Shared ownership leases: meaning of “qualifying body” and “preserved right to buy”*

- 5 (1) This paragraph has effect for the purposes of paragraphs [F153<sup>2</sup>, 4 and 4A] (shared ownership leases: election as to basis of taxation).
- (2) A “qualifying body” means—
  - (a) a local housing authority within the meaning of the Housing Act 1985 (c. 68);
  - (b) a housing association within the meaning of—
    - (i) the Housing Associations Act 1985 (c. 69), or
    - (ii) Part 2 of the Housing (Northern Ireland) Order 1992 (S.I. 1992/1725 (N.I. 15));
  - (c) a housing action trust established under Part 3 of the Housing Act 1988 (c. 50);
  - (d) the Northern Ireland Housing Executive;
  - (e) the Commission for the New Towns;
  - (f) a development corporation established by an order made, or having effect as if made, under the New Towns Act 1981 (c. 64).
- (3) A lease is granted “in pursuance of the preserved right to buy” if—
  - (a) the vendor is a person against whom the right to buy under Part 5 of the Housing Act 1985 is exercisable by virtue of section 171A of that Act (preservation of right to buy on disposal to private sector landlord),
  - (b) the lessee is, or lessees are, the qualifying person for the purposes of the preserved right to buy, and
  - (c) the lease is of a dwelling that is the qualifying dwelling-house in relation to the purchaser.

#### Textual Amendments

**F153** Words in Sch. 9 para. 5(1) substituted (with effect in accordance with s. 303(4) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 303\(2\)](#)

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*Rent to mortgage or rent to loan: chargeable consideration*

- 6 (1) The chargeable consideration for a rent to mortgage or rent to loan transaction is determined in accordance with this paragraph.
- (2) A “rent to mortgage transaction” means—
- (a) the transfer of a dwelling to a person, or
  - (b) the grant of a lease of a dwelling to a person,
- pursuant to the exercise by that person of the right to acquire on rent to mortgage terms under Part 5 of the Housing Act 1985 (c. 68).
- (3) The chargeable consideration for such a transaction is equal to the price that, by virtue of section 126 of the Housing Act 1985, would be payable for—
- (a) a transfer of the dwelling to the person (where the rent to mortgage transaction is a transfer), or
  - (b) the grant of a lease of the dwelling to the person (where the rent to mortgage transaction is the grant of a lease),
- if the person were exercising the right to buy under Part 5 of that Act.
- (4) A “rent to loan transaction” means the execution of a heritable disposition in favour of a person pursuant to the exercise by that person of the right to purchase a house by way of the rent to loan scheme in Part 3 of the Housing (Scotland) Act 1987 (c. 26).
- (5) The chargeable consideration for such a transaction is equal to the price that, by virtue of section 62 of the Housing (Scotland) Act 1987, would be payable for the house if the person were exercising the right to purchase under section 61 of that Act.

SCHEDULE 10

Section 78

STAMP DUTY LAND TAX: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

**PART 1**

LAND TRANSACTION RETURNS

*Contents of return*

- 1 (1) A land transaction return must—
- (a) be in the prescribed form,
  - (b) contain the prescribed information, and
  - (c) include a declaration by the purchaser (or each of them) that the return is to the best of his knowledge correct and complete.

[<sup>F154</sup>(1A) Sub-paragraph (1)(c) is subject to paragraphs 1A and 1B.]

- (2) In sub-paragraph (1) “prescribed” means prescribed by regulations made by the Inland Revenue.
- (3) The regulations may make different provision for different kinds of return.

*Status: Point in time view as at 18/04/2005.*

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- (4) Regulations under sub-paragraph (1)(b) may require the provision of information corresponding to any of the particulars formerly required under—
- (a) Schedule 2 to the Finance Act 1931 (c. 28) (requirement to deliver particulars of land transactions in Great Britain), or
  - (b) section 244 of the Finance Act 1994 (c. 9) (corresponding provision for Northern Ireland).
- (5) The return is treated as containing any information provided by the purchaser for the purpose of completing the return.

#### Textual Amendments

**F154** Sch. 10 para. 1(1A) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **3(a)**

#### *<sup>F155</sup>Declaration by agent*

#### Textual Amendments

**F155** Sch. 10 paras. 1A, 1B and cross-headings inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **3(b)**

- 1A. (1) Where —
- (a) the purchaser (or each of them) authorises an agent to complete a land transaction return,
  - (b) the purchaser (or each of them) makes a declaration that, with the exception of the effective date, the information provided in the return is to the best of his knowledge correct and complete, and
  - (c) the land transaction return includes a declaration by the agent that the effective date provided in the return is to the best of his knowledge correct, the requirement in paragraph 1(1)(c) shall be deemed to be met.
- (2) Sub-paragraph (1) applies only where the return is in a form specified by the Inland Revenue for the purposes of that sub-paragraph.
- (3) Nothing in this paragraph affects the liability of the purchaser (or each of them) under this Part of this Act.

#### *Declaration by the relevant Official Solicitor*

- 1B. (1) Where —
- (a) the purchaser (or any of them) is a person under a disability,
  - (b) the Official Solicitor is acting for the purchaser (or any of them), and
  - (c) the land transaction return includes a declaration by the Official Solicitor that the return is to the best of his knowledge correct and complete, the requirement in paragraph 1(1)(c) shall be deemed to be met.
- (2) Sub-paragraph (1) applies only where the return is in a form specified by the Inland Revenue for the purposes of that sub-paragraph.

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- (3) Nothing in this paragraph affects the liability of the purchaser (or each of them) under this Part of this Act.
- (4) In this paragraph “the Official Solicitor” means the Official Solicitor to the Supreme Court of England and Wales or the Official Solicitor to the Supreme Court of Northern Ireland (as the case requires).]

*Meaning of filing date and delivery of return*

- 2 (1) References in this Part of this Act to the filing date, in relation to a land transaction return, are to the last day of the period within which the return must be delivered.
- (2) References in this Part of this Act to the delivery of a land transaction return are to the delivery of a return that—
- (a) complies with the requirements of paragraph 1(1) (contents of return), and
  - (b) is accompanied by payment of any tax required to accompany the return.

*Failure to deliver return: flat-rate penalty*

- 3 (1) A person who is required to deliver a land transaction return and fails to do so by the filing date is liable to a flat-rate penalty under this paragraph.
- He may also be liable to a tax-related penalty under paragraph 4.
- (2) The penalty is—
- (a) £100 if the return is delivered within three months after the filing date, and
  - (b) £200 in any other case.

*Failure to deliver return: tax-related penalty*

- 4 (1) A purchaser who is required to deliver a land transaction return in respect of a chargeable transaction and fails to do so within twelve months after the filing date is liable to a tax-related penalty under this paragraph.
- This is in addition to any flat-rate penalty under paragraph 3.
- (2) The penalty is an amount not exceeding the amount of tax chargeable in respect of the transaction.

*Formal notice to deliver return: daily penalty*

- 5 (1) If it appears to the Inland Revenue—
- (a) that a purchaser required to deliver a land transaction return in respect of a chargeable transaction has failed to do so, and
  - (b) that the filing date has now passed,
- they may issue a notice requiring him to deliver a land transaction return in respect of the transaction.
- (2) The notice must specify—
- (a) the transaction to which it relates, and
  - (b) the period for complying with the notice (which must not be less than 30 days from the date of issue of the notice).

*Status: Point in time view as at 18/04/2005.*

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- (3) If the purchaser does not comply with the notice within the specified period, the Inland Revenue may apply to the General or Special Commissioners for an order imposing a daily penalty.
- (4) On such an application the Commissioners may direct that the purchaser shall be liable to a penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which he is notified of the direction.
- (5) This paragraph does not affect, and is not affected by, any penalty under paragraph 3 or 4 (flat-rate or tax-related penalty for failure to deliver return).

*Amendment of return by purchaser*

- 6 (1) The purchaser may amend a land transaction return given by him by notice to the Inland Revenue.
- (2) The notice must be in such form, and contain such information, as the Inland Revenue may require.
- [<sup>F156</sup>(2A) If the effect of the amendment would be to entitle the purchaser to a repayment of tax, the notice must be accompanied by—
  - (a) the contract for the land transaction; and
  - (b) the instrument (if any) by which that transaction was effected.]
  - (3) Except as otherwise provided, an amendment may not be made more than twelve months after the filing date.

**Textual Amendments**

**F156** Sch. 10 para. 6(2A) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **3(c)**

*Correction of return by Revenue*

- 7 (1) The Inland Revenue may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise).
- (2) A correction under this paragraph is made by notice to the purchaser.
- (3) No such correction may be made more than nine months after—
  - (a) the day on which the return was delivered, or
  - (b) if the correction is required in consequence of an amendment under paragraph 6, the day on which that amendment was made.
- (4) A correction under this paragraph is of no effect if the purchaser—
  - (a) amends the return so as to reject the correction, or
  - (b) after the end of the period within which he may amend the return, but within three months from the date of issue of the notice of correction, gives notice rejecting the correction.
- (5) Notice under sub-paragraph (4)(b) must be given to the officer of the Board by whom notice of the correction was given.

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*Penalty for incorrect or uncorrected return*

- 8 (1) A purchaser who—
- (a) fraudulently or negligently delivers in respect of a chargeable transaction a land transaction return which is incorrect, or
  - (b) discovers that a land transaction return delivered by him in respect of a chargeable transaction (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay,
- is liable to a tax-related penalty.
- (2) The penalty is an amount not exceeding the amount of tax understated, that is, the difference between—
- (a) the amount of tax chargeable in respect of the transaction, and
  - (b) the amount that would have been chargeable on the basis of the return delivered.

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

- C2** Sch. 10 para. 8 restricted (22.7.2004 for specified purposes) by [Finance Act 2004 \(c. 12\)](#), **ss. 313(4)(f)**, **319(1)(2)** (with s. 314)

**PART 2**

DUTY TO KEEP AND PRESERVE RECORDS

*Duty to keep and preserve records*

- 9 (1) A purchaser who is required to deliver a land transaction return must—
- (a) keep such records as may be needed to enable him to deliver a correct and complete return, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved for six years after the effective date of the transaction and until any later date on which—
- (a) an enquiry into the return is completed, or
  - (b) if there is no enquiry, the Inland Revenue no longer have power to enquire into the return.
- (3) The records required to be kept and preserved under this paragraph include—
- (a) relevant instruments relating to the transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents;
  - (b) records of relevant payments, receipts and financial arrangements.

*Preservation of information instead of original records*

- 10 (1) The duty under paragraph 9 to preserve records may be satisfied by the preservation of the information contained in them.
- (2) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.



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*Penalty for failure to keep and preserve records*

- 11 (1) A person who fails to comply with paragraph 9 in relation to a transaction is liable to a penalty not exceeding £3,000, subject to the following exception.
- (2) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

**PART 3**

ENQUIRY INTO RETURN

*Notice of enquiry*

- 12 (1) The Inland Revenue may enquire into a land transaction return if they give notice of their intention to do so (“notice of enquiry”)—
- (a) to the purchaser,
  - (b) before the end of the enquiry period.
- (2) The enquiry period is the period of nine months—
- (a) after the filing date, if the return was delivered on or before that date;
  - (b) after the date on which the return was delivered, if the return was delivered after the filing date;
  - (c) after the date on which the amendment was made, if the return is amended under paragraph 6 (amendment by purchaser).

[<sup>F157</sup>This is subject to the following qualification.]

[<sup>F158</sup>(2A) If—

- (a) the Inland Revenue give notice, within the period specified in sub-paragraph (2), of their intention to enquire into a land transaction return delivered under section 80 (adjustment where contingency ceases or consideration is ascertained), 81 (further return where relief withdrawn) or 81A (return or further return in consequence of later linked transaction), and
- (b) it appears to the Inland Revenue to be necessary to give a notice under this paragraph in respect of an earlier land transaction return in respect of the same land transaction,

a notice may be given notwithstanding that the period referred to in sub-paragraph (2) has elapsed in relation to that earlier land transaction.]

- (3) A return that has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) of the return under paragraph 6.

**Textual Amendments**

**F157** Words in Sch. 10 para. 12(2) added (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **4(2)(a)**

**F158** Sch. 10 para. 12(2A) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **4(2)(b)**

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### *Scope of enquiry*

- 13 (1) An enquiry extends to anything contained in the return, or required to be contained in the return, that relates—
- (a) to the question whether tax is chargeable in respect of the transaction, or
  - (b) to the amount of tax so chargeable.
- This is subject to the following exception.
- (2) If the notice of enquiry is given as a result of an amendment of the return under paragraph 6 (amendment by purchaser)—
- (a) at a time when it is no longer possible to give notice of enquiry under paragraph 12, or
  - (b) after an enquiry into the return has been completed,
- the enquiry into the return is limited to matters to which the amendment relates or that are affected by the amendment.

### *Notice to produce documents etc for purposes of enquiry*

- 14 (1) If the Inland Revenue give notice of enquiry into a land transaction return, they may by notice in writing require the purchaser—
- (a) to produce to them such documents in his possession or power, and
  - (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
  - (b) the Inland Revenue may by notice require the original to be produced for inspection.
- A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.
- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige a purchaser to produce documents or provide information relating to the conduct of—
- (a) any pending appeal by him, or
  - (b) any pending referral to the Special Commissioners under paragraph 19 to which he is a party.

### *Appeal against notice to produce documents etc*

- 15 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 14 to produce documents or provide information.
- (2) Notice of appeal must be given—
- (a) in writing,

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- (b) within 30 days after the issue of the notice appealed against,
  - (c) to the officer of the Board by whom that notice was given.
- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—
  - (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
  - (b) shall confirm the notice so far as it requires the production or documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

*Penalty for failure to produce documents etc*

- 16
- (1) A person who fails to comply with a notice under paragraph 14 (notice to produce documents etc for purposes of enquiry) is liable—
    - (a) to a penalty of £50, and
    - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the amount specified in sub-paragraph (2) below for each day on which the failure continues.
  - (2) The amount referred to in sub-paragraph (1)(b) is—
    - (a) £30 if the penalty is determined by an officer of the Board, and
    - (b) £150 if the penalty is determined by the court.
  - (3) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

*Amendment of self-assessment during enquiry to prevent loss of tax*

- 17
- (1) If at a time when an enquiry is in progress into a land transaction return the Inland Revenue form the opinion—
    - (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
    - (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,they may by notice in writing to the purchaser amend the assessment to make good the deficiency.
  - (2) In the case of an enquiry that under paragraph 13(2) is limited to matters arising from an amendment of the return, sub-paragraph (1) above applies only so far as the deficiency is attributable to the amendment.
  - (3) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—

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- (a) beginning with the day on which notice of enquiry is given, and
- (b) ending with the day on which the enquiry is completed.

*Amendment of return by taxpayer during enquiry*

- 18 (1) This paragraph applies if a return is amended under paragraph 6 (amendment by purchaser) at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) So far as the amendment affects the amount stated in the self-assessment included in the return as the amount of tax payable, it does not take effect while the enquiry is in progress and—
- (a) if the Inland Revenue state in the closure notice that they have taken the amendments into account and that—
    - (i) the amendment has been taken into account in formulating the amendments contained in the notice, or
    - (ii) their conclusion is that the amendment is incorrect,
 the amendment shall not take effect;
  - (b) otherwise, the amendment takes effect when the closure notice is issued.
- (4) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

*Referral of questions to Special Commissioners during enquiry*

- 19 (1) At any time when an enquiry is in progress into a land transaction return any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
- (a) jointly by the purchaser and the Inland Revenue,
  - (b) in writing,
  - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which the notice of enquiry was given, and
  - (b) ending with the day on which the enquiry is completed.

*Withdrawal of notice of referral*

- 20 (1) The Inland Revenue or the purchaser may withdraw a notice of referral under paragraph 19 by notice in accordance with this paragraph.

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- (2) Notice of withdrawal must be given—
- (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

*Effect of referral on enquiry*

- 21 (1) While proceedings on a referral under paragraph 19 are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
- (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
- (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

*Effect of determination*

- 22 (1) The determination of a question referred to the Special Commissioners under paragraph 19 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by the Inland Revenue—
- (a) in reaching their conclusions on the enquiry, and
  - (b) in formulating any amendments of the return required to give effect to those conclusions.
- (3) Any right of appeal under paragraph 35 (appeals against assessments etc) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.

*Completion of enquiry*

- 23 (1) An enquiry under paragraph 12 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.
- (2) A closure notice must either—
- (a) state that in the opinion of the Inland Revenue no amendment of the return is required, or
  - (b) make the amendments of the return required to give effect to their conclusions.
- (3) A closure notice takes effect when it is issued.

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*Direction to complete enquiry*

- 24 (1) The purchaser may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

**PART 4**

REVENUE DETERMINATION IF NO RETURN DELIVERED

*Determination of tax chargeable if no return delivered*

- 25 (1) If in the case of a chargeable transaction no land transaction return is delivered by the filing date, the Inland Revenue may make a determination (a “Revenue determination”) to the best of their information and belief of the amount of tax chargeable in respect of the transaction.
- (2) Notice of the determination must be served on the purchaser, stating the date on which it is issued.
- (3) No Revenue determination may be made more than six years after the effective date of the transaction.

*Determination to have effect as a self-assessment*

- 26 (1) A Revenue determination has effect for enforcement purposes as if were a self-assessment by the purchaser.
- (2) In sub-paragraph (1) “for enforcement purposes” means for the purposes of the following provisions of this Part of this Act—
- (a) the provisions of this Schedule providing for tax-related penalties;
  - (b) section 87 (interest on unpaid tax);
  - (c) section 91 and Schedule 12 (collection and recovery of unpaid tax etc).
- (3) Nothing in this paragraph affects any liability of the purchaser to a penalty for failure to deliver a return.

*Determination superseded by actual self-assessment*

- 27 (1) If after a Revenue determination has been made the purchaser delivers a land transaction return in respect of the transaction, the self-assessment included in that return supersedes the determination.
- (2) Sub-paragraph (1) does not apply to a return delivered—
- (a) more than six years after the day on which the power to make the determination first became exercisable, or
  - (b) more than twelve months after the date of the determination,
- whichever is the later.

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- (3) Where—
- (a) proceedings have been begun for the recovery of any tax charged by a Revenue determination, and
  - (b) before the proceedings are concluded the determination is superseded by a self-assessment,
- the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.

## PART 5

### REVENUE ASSESSMENTS

#### *Assessment where loss of tax discovered*

- 28 (1) If the Inland Revenue discover as regards a chargeable transaction that—
- (a) an amount of tax that ought to have been assessed has not been assessed, or
  - (b) an assessment to tax is or has become insufficient, or
  - (c) relief has been given that is or has become excessive,
- they may make an assessment (a “discovery assessment”) in the amount or further amount that ought in their opinion to be charged in order to make good to the Crown the loss of tax.
- (2) The power to make a discovery assessment in respect of a transaction for which the purchaser has delivered a return is subject to the restrictions specified in paragraph 30.

#### *Assessment to recover excessive repayment of tax*

- 29 (1) If an amount of tax has been repaid to any person that ought not to have been repaid to him, that amount may be assessed and recovered as if it were unpaid tax.
- (2) Where the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.
- (3) The power to make an assessment under this paragraph in respect of a transaction for which the purchaser has delivered a land transaction return is subject to the restrictions specified in paragraph 30.

#### *Restrictions on assessment where return delivered*

- 30 (1) If the purchaser has delivered a land transaction return in respect of the transaction in question, an assessment under paragraph 28 or 29 in respect of the transaction—
- (a) may only be made in the two cases specified in sub-paragraphs (2) and (3) below, and
  - (b) may not be made in the circumstances specified in sub-paragraph (5) below.
- (2) The first case is where the situation mentioned in paragraph 28(1) or 29(1) is attributable to fraudulent or negligent conduct on the part of—
- (a) the purchaser,

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- (b) a person acting on behalf of the purchaser, or
  - (c) a person who was a partner of the purchaser at the relevant time.
- (3) The second case is where the Inland Revenue, at the time they—
- (a) ceased to be entitled to give a notice of enquiry into the return, or
  - (b) completed their enquiries into the return,
- could not have been reasonably expected, on the basis of the information made available to them before that time, to be aware of the situation mentioned in paragraph 28(1) or 29(1).
- (4) For this purpose information is regarded as made available to the Inland Revenue if—
- (a) it is contained in a land transaction return made by the purchaser,
  - (b) it is contained in any documents produced or information provided to the Inland Revenue for the purposes of an enquiry into any such return, or
  - (c) it is information the existence of which, and the relevance of which as regards the situation mentioned in paragraph 28(1) or 29(1)—
    - (i) could reasonably be expected to be inferred by the Inland Revenue from information falling within paragraphs (a) or (b) above, or
    - (ii) are notified in writing to the Inland Revenue by the purchaser or a person acting on his behalf.
- (5) No assessment may be made if—
- (a) the situation mentioned in paragraph 28(1) or 29(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been computed, and
  - (b) the return was in fact made on the basis or in accordance with the practice generally prevailing at the time it was made.

*Time limit for assessment*

- 31 (1) The general rule is that no assessment may be made more than six years after the effective date of the transaction to which it relates.
- (2) In a case involving fraud or negligence on the part of—
- (a) the purchaser, or
  - (b) a person acting on behalf of the purchaser, or
  - (c) a person who was a partner of the purchaser at the relevant time,
- an assessment may be made up to 21 years after the effective date of the transaction to which it relates.
- (3) An assessment under paragraph 29 (assessment to recover excessive repayment of tax) is not out of time—
- (a) in a case where notice of enquiry is given into the land transaction return delivered by the person concerned, if it is made before the enquiry is completed;
  - (b) in any case, if it is made within one year after the repayment in question was made.
- (4) Where the purchaser has died—
- (a) any assessment on the personal representatives of the deceased must be made within three years after his death, and



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- (b) an assessment shall not be made by virtue of sub-paragraph (2) in respect of a transaction of which the effective date was more than six years before the death.
- (5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on an appeal against the assessment.

*Assessment procedure*

- 32 (1) Notice of an assessment must be served on the purchaser.
- (2) The notice must state—
  - (a) the tax due,
  - (b) the date on which the notice is issued, and
  - (c) the time within which any appeal against the assessment must be made.
- (3) After notice of the assessment has been served on the purchaser, the assessment may not be altered except in accordance with the express provisions of this Part of this Act.
- (4) Where an officer of the Board has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, he may entrust to some other officer of the Board responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

**PART 6**

RELIEF IN CASE OF EXCESSIVE ASSESSMENT

*Relief in case of double assessment*

- 33 (1) A person who believes he has been assessed to tax more than once in respect of the same matter may make a claim [<sup>F159</sup>to the Inland Revenue for relief against any double charge] .
- <sup>F160</sup>(2) .....
- <sup>F160</sup>(3) .....
- (4) An appeal against a decision of the Inland Revenue on a claim for relief under this paragraph may be brought to the Commissioners having jurisdiction to hear an appeal relating to the assessment, or the later of the assessments, to which the claim relates.

**Textual Amendments**

**F159** Words in Sch. 10 para. 33(1) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(7\)\(a\)](#)

**F160** Sch. 10 para. 33(2)(3) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(7\)\(b\)](#), [Sch. 42 Pt. 4\(2\)](#)

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*Relief in case of mistake in return*

- 34 (1) A person who believes he has paid tax under an assessment that was excessive by reason of some mistake in a land transaction return may make a claim [<sup>F161</sup>to the Inland Revenue for relief against any excessive charge].
- (2) The claim must be made <sup>F162</sup>... not more than six years after the effective date of the transaction.
- <sup>F163</sup>(3) .....
- (4) No relief shall be given under this paragraph—
- (a) in respect of a mistake as to the basis on which the liability of the claimant ought to have been computed when the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made, or
- (b) in respect of a mistake in a claim or election included in the return.
- (5) In determining a claim under this paragraph the Inland Revenue shall have regard to all the relevant circumstances of the case.
- They shall, in particular, consider whether the granting of relief would result in amounts being excluded from charge to tax.
- (6) On an appeal against the Inland Revenue's decision on the claim, the Special Commissioners shall hear and determine the claim in accordance with the same principles as apply to the determination by the Inland Revenue of claims under this paragraph.

**Textual Amendments**

**F161** Words in Sch. 10 para. 34(1) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(8\)\(a\)](#)

**F162** Words in Sch. 10 para. 34(2) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(8\)\(b\)](#), [Sch. 42 Pt. 4\(2\)](#)

**F163** Sch. 10 para. 34(3) repealed (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 299\(8\)\(c\)](#), [Sch. 42 Pt. 4\(2\)](#)

**PART 7**

APPEALS AGAINST REVENUE DECISIONS ON TAX

*Right of appeal*

- 35 (1) An appeal may be brought against—
- (a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),
- (b) a conclusion stated or amendment made by a closure notice,
- (c) a discovery assessment, <sup>F164</sup>...
- (d) an assessment under paragraph 29 (assessment to recover excessive repayment)<sup>F165</sup>, or
- (e) a Revenue determination under paragraph 25 (determination of tax chargeable if no return delivered).]

*Status: Point in time view as at 18/04/2005.*

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- (2) The appeal lies to the General or Special Commissioners.
- (3) An appeal under sub-paragraph (1)(a) against an amendment of a self-assessment made while an enquiry is in progress shall not be heard and determined until the enquiry is completed.

#### Textual Amendments

- F164** Word in Sch. 10 para. 35(1)(c) omitted (with effect in accordance with reg. 1 of the amending S.I.) by virtue of [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **5(2)(a)**
- F165** Sch. 10 para. 35(1)(e) and word added (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **5(2)(b)**

#### *Notice of appeal*

- 36 (1) Notice of an appeal under paragraph 35 must be given—
- (a) in writing,
  - (b) within 30 days after the specified date,
  - (c) to the relevant officer of the Board.
- (2) In relation to an appeal under paragraph 35(1)(a)—
- (a) the specified date is the date on which the notice of amendment was issued, and
  - (b) the relevant officer of the Board is the officer by whom the notice of amendment was given.
- (3) In relation to an appeal under paragraph 35(1)(b)—
- (a) the specified date is the date on which the closure notice was issued, and
  - (b) the relevant officer of the Board is the officer by whom the closure notice was given.
- (4) In relation to an appeal under paragraph 35(1)(c) or (d)—
- (a) the specified date is the date on which the notice of assessment was issued, and
  - (b) the relevant officer of the Board is the officer by whom the notice of assessment was given.
- [<sup>F166</sup>(4A) In relation to an appeal under paragraph 35(1)(e) —
- (a) the specified date is the date on which the Revenue determination was issued, and
  - (b) the relevant officer of the Board is the officer by whom the determination was made.]

(5) The notice of appeal must specify the grounds of appeal.

[<sup>F167</sup>(5A) The only grounds on which an appeal lies under paragraph 35(1)(e) are that—

    - (a) the purchase to which the determination relates did not take place,
    - (b) the interest in the land to which the determination relates has not been purchased,

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- (c) the contract for the purchase of the interest to which the determination relates has not been substantially performed, or
  - (d) the land transaction is one for which a self-certificate is due (for example, because the land transaction is exempt from charge under Schedule 3).]
- (6) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not deliberate or unreasonable.

#### **Textual Amendments**

**F166** Sch. 10 para. 36(4A) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **5(3)(a)**

**F167** Sch. 10 para. 36(5A) inserted (with effect in accordance with reg. 1 of the amending S.I.) by [The Stamp Duty Land Tax \(Land Transaction Returns\) Regulations 2004 \(S.I. 2004/3208\)](#), regs. 1, **5(3)(b)**

#### *Settling of appeals by agreement*

- 37 (1) If, before an appeal under paragraph 35 is determined, the appellant and the Inland Revenue agree that the decision appealed against—
- (a) should be upheld without variation,
  - (b) should be varied in a particular manner, or
  - (c) should be discharged or cancelled,
- the same consequences shall follow, for all purposes, as would have followed if, at the time the agreement was come to, the Commissioners had determined the appeal and had upheld the decision without variation, varied it in that manner or discharged or cancelled it, as the case may be.
- (2) Sub-paragraph (1) does not apply if, within 30 days from the date when the agreement was come to, the appellant gives notice in writing to the Inland Revenue that he wishes to withdraw from the agreement.
- (3) Where the agreement is not in writing—
- (a) sub-paragraphs (1) and (2) do not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Inland Revenue to the appellant or by the appellant to the Inland Revenue, and
  - (b) the references in those provisions to the time when the agreement was come to shall be read as references to the time when the notice of confirmation was given.
- (4) Where—
- (a) the appellant notifies the Inland Revenue, orally or in writing, that he does not wish to proceed with the appeal, and
  - (b) the Inland Revenue do not, within 30 days after that notification, give the appellant notice in writing indicating that they are unwilling that the appeal should be withdrawn,
- the provisions of sub-paragraphs (1) to (3) have effect as if, at the date of the appellant's notification, the appellant and the Inland Revenue had come to an agreement (orally or in writing, as the case may be) that the decision under appeal should be upheld without variation.

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- (5) References in this paragraph to an agreement being come to with an appellant, and to the giving of notice or notification by or to the appellant, include references to an agreement being come to, or notice or notification being given by or to, a person acting on behalf of the appellant in relation to the appeal.

*Recovery of tax not postponed by appeal*

- 38 (1) Where there is an appeal to the Commissioners under paragraph 35, the tax charged by the amendment or assessment in question remains due and payable as if there had been no appeal.
- (2) Sub-paragraph (1) is subject to—  
paragraph 39 (direction by Commissioners postponing payment), and  
paragraph 40 (agreement to postpone payment).

*Direction by Commissioners to postpone payment*

- 39 (1) If the appellant has grounds for believing that he is overcharged to tax by the decision appealed against, he may by notice in writing apply to the Commissioners for a direction that payment of an amount of tax shall be postponed pending the determination of the appeal.
- (2) The notice must—  
(a) be given to the relevant officer of the Board within 30 days after the specified date, and  
(b) state the amount by which the appellant believes himself to be overcharged to tax, and his grounds for that belief.
- (3) An application may be made more than 30 days after the specified date if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that he is overcharged to tax by the decision appealed against.
- (4) If, after any determination on such an application of the amount of tax the payment of which should be postponed, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, he may, by notice in writing given to the other party at any time before the determination of the appeal, apply to the Commissioners for a further determination of that amount.
- (5) An application under this paragraph shall be heard and determined by the Commissioners in the same way as an appeal.
- The fact that any such application has been heard and determined by any Commissioners does not preclude them from hearing and determining the appeal or any further application under this paragraph.
- (6) The amount of tax of which payment is to be postponed pending the determination of the appeal is the amount (if any) by which it appears to the Commissioners, having regard to the representations made and any evidence adduced, that there are reasonable grounds for believing that the appellant is overcharged.
- (7) Where an application is made under this paragraph, the date on which any tax of which payment is not postponed is due and payable shall be determined as if the tax

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were charged by an amendment or assessment of which notice was issued on the date on which the application was determined and against which there was no appeal.

- (8) On the determination of the appeal—
- (a) the date on which any tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the amendment or assessment if there had been no appeal, be determined as if the tax were charged by an amendment or assessment—
    - (i) of which notice was issued on the date on which the Inland Revenue issues to the appellant a notice of the total amount payable in accordance with the determination, and
    - (ii) against which there had been no appeal, and
  - (b) any tax overpaid shall be repaid.

*Agreement to postpone payment of tax*

- 40 (1) If the appellant and the relevant officer of the Board agree that payment of an amount of tax should be postponed pending the determination of the appeal, the same consequences shall follow, for all purposes, as would have followed if, at the time the agreement was come to, the Commissioners had made a direction to the same effect.

This is without prejudice to the making of a further agreement or of a further direction.

- (2) Where the agreement is not in writing—
- (a) sub-paragraph (1) does not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the relevant officer of the Board to the appellant or by the appellant to that officer, and
  - (b) the reference in that provision to the time when the agreement was come to shall be read as a reference to the time when notice of confirmation was given.
- (3) References in this paragraph to an agreement being come to with an appellant, and to the giving of notice to or by the appellant, include references to an agreement being come to, or notice being given to or by, a person acting on behalf of the appellant in relation to the appeal.

SCHEDULE 11

Section 79

STAMP DUTY LAND TAX: SELF-CERTIFICATES

**PART 1**

GENERAL

*Introductory*

*Status: Point in time view as at 18/04/2005.*

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- (a) references to a self-certificate are to a certificate by the purchaser that no land transaction return is required in respect of the transaction, and
- (b) references to the date on which a self-certificate was produced are to the date on which it was produced to the registrar (in Scotland, to the Keeper of the Registers of Scotland).

#### *Form and contents of self-certificate*

- 2 (1) A self-certificate must—
- (a) be in the prescribed form,
  - (b) contain the prescribed information, and
  - (c) include a declaration by the purchaser (or each of them) that the certificate is to the best of his knowledge correct and complete.
- (2) In sub-paragraph (1) “prescribed” means prescribed by regulations made by the Inland Revenue.
- (3) The regulations may make different provision for different kinds of self-certificate.

#### *Tax-related penalty for fraud or negligence*

- 3 (1) A person who—
- (a) fraudulently or negligently gives a self-certificate in respect of a chargeable transaction, or
  - (b) discovers that a transaction in respect of which he has given a self-certificate (neither fraudulently nor negligently) is a chargeable transaction and does not remedy the error without unreasonable delay,
- is liable to a tax-related penalty.
- (2) The penalty is an amount not exceeding the amount of tax chargeable in respect of the transaction.

## **PART 2**

### **DUTY TO KEEP AND PRESERVE RECORDS**

#### *Duty to keep and preserve records*

- 4 (1) A purchaser who may be required to give a self-certificate must—
- (a) keep such records as may be needed to enable him to deliver a correct and complete certificate, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved for six years after the effective date of the transaction and until any later date on which—
- (a) an enquiry into the certificate is completed, or
  - (b) if there is no enquiry, the Inland Revenue no longer have power to enquire into the certificate.
- (3) The records required to be kept and preserved under this paragraph include—

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- (a) relevant instruments relating to the transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents;
- (b) records of relevant payments, receipts and financial arrangements.

*Preservation of information instead of original records*

- 5 (1) The duty under paragraph 4 to preserve records may be satisfied by the preservation of the information contained in them.
- (2) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.

*Penalty for failure to keep and preserve records*

- 6 (1) A person who fails to comply with paragraph 4 in relation to a transaction is liable to a penalty not exceeding £3,000, subject to the following exception.
- (2) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

### PART 3

#### ENQUIRY INTO SELF-CERTIFICATE

*Notice of enquiry*

- 7 (1) The Inland Revenue may enquire into a self-certificate if they give notice of their intention to do so (“notice of enquiry”)—
- (a) to the purchaser,
  - (b) before the end of the enquiry period.
- (2) The enquiry period is the period of nine months after the date on which the self-certificate was produced.
- (3) A self-certificate that has been the subject of one notice of enquiry may not be the subject of another.

*Scope of enquiry*

- 8 An enquiry extends to anything contained in the certificate, or required to be contained in the certificate, that relates—
- (a) to the question whether the transaction to which the certificate relates is chargeable or notifiable, or
  - (b) to the amount of tax chargeable in respect of it.

*Notice to produce documents etc for purposes of enquiry*

- 9 (1) If the Inland Revenue give notice of enquiry into a self-certificate, they may by notice in writing require the purchaser—
- (a) to produce to them such documents in his possession or power, and



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- (b) to provide them with such information, in such form, as they may reasonably require for the purposes of the enquiry.
- (2) A notice under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
  - (a) the copies must be photographic or other facsimiles, and
  - (b) the Inland Revenue may by notice require the original to be produced for inspection.A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.
- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige the purchaser to produce documents or provide information relating to the conduct of—
  - (a) any pending appeal by him, or
  - (b) any pending referral to the Special Commissioners under paragraph 12 to which he is a party.

*Appeal against notice to produce documents etc*

- 10
- (1) An appeal may be brought against a requirement imposed by a notice under paragraph 9 to produce documents or provide information.
  - (2) Notice of appeal must be given—
    - (a) in writing,
    - (b) within 30 days after the issue of the notice appealed against,
    - (c) to the officer of the Board by whom that notice was given.
  - (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
  - (4) On an appeal under this paragraph the Commissioners—
    - (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
    - (b) shall confirm the notice so far as it requires the production or documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
  - (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
  - (6) The decision of the Commissioners on an appeal under this paragraph is final.

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*Penalty for failure to produce documents etc*

- 11 (1) A person who fails to comply with a notice under paragraph 9 (notice to produce documents etc for purposes of enquiry) is liable—
- (a) to a penalty of £50, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the amount specified in sub-paragraph (2) below for each day on which the failure continues.
- (2) The amount referred to in sub-paragraph (1)(b) is—
- (a) £30 if the penalty is determined by an officer of the Board, and
  - (b) £150 if the penalty is determined by the court.
- (3) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

*Referral of questions to Special Commissioners during enquiry*

- 12 (1) At any time when an enquiry is in progress into a self-certificate any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
- (a) jointly by the purchaser and the Inland Revenue,
  - (b) in writing,
  - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which the notice of enquiry was given, and
  - (b) ending with the day on which the enquiry is completed.

*Withdrawal of notice of referral*

- 13 (1) The Inland Revenue or the purchaser may withdraw a notice of referral under paragraph 12 by notice in accordance with this paragraph.
- (2) Notice of withdrawal must be given—
- (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

*Effect of referral on enquiry*

- 14 (1) While proceedings on a referral under paragraph 12 are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and

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- (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
  - (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
  - (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

*Effect of determination*

- 15
- (1) The determination of a question referred to the Special Commissioners under paragraph 12 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
  - (2) The determination shall be taken into account by the Inland Revenue—
    - (a) in reaching their conclusions on the enquiry, and
    - (b) in formulating any amendments of the self-certificate required to give effect to those conclusions.
  - (3) Any right of appeal under paragraph 35 of Schedule 10 (appeals against assessments etc) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.

*Completion of enquiry*

- 16
- (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.
  - (2) A closure notice must state whether in the opinion of the Inland Revenue the self-certificate was correct, and if their opinion is that it was not whether in their opinion the transaction to which it relates was chargeable or notifiable.

*Direction to complete enquiry*

- 17
- (1) The purchaser may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
  - (2) Any such application shall be heard and determined in the same way as an appeal.
  - (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

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## [<sup>F168</sup>SCHEDULE 11A

Section 82A

### STAMP DUTY LAND TAX: CLAIMS NOT INCLUDED IN RETURNS

#### Textual Amendments

**F168** Sch. 11A inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 40](#)

#### *Introductory*

- 1 This Schedule applies to a claim under any provision of this Part other than a claim that is required to be made in, or by amendment to, a return under this Part. References in this Schedule to a claim shall be read accordingly.

#### *Making of claims*

- 2 (1) A claim must be made in such form as the Inland Revenue may determine.
- (2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.
- (3) The form of claim may require—
- (a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim;
  - (b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct;
  - (c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).
- (4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

#### *Duty to keep and preserve records*

- 3 (1) A person who may wish to make a claim must—
- (a) keep such records as may be needed to enable him to make a correct and complete claim, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved until the latest of the following times—
- (a) the end of the period of twelve months beginning with day on which the claim was made;
  - (b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed;
  - (c) where the claim is amended and there is there is no enquiry into the amendment, the time when the Inland Revenue no longer have power to enquire into the amendment.
- (3) The duty under this paragraph to preserve records may be satisfied by the preservation of the information contained in them.

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- (4) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (5) A person who fails to comply with this paragraph in relation to a claim that he makes is liable to a penalty not exceeding £3,000, subject to the following exception.
- (6) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

*Amendment of claim by claimant*

- 4 (1) The claimant may amend his claim by notice to the Inland Revenue.
- (2) No such amendment may be made—
  - (a) more than twelve months after the day on which the claim was made, or
  - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
    - (i) beginning with the day on which notice is given, and
    - (ii) ending with the day on which the enquiry under that paragraph is completed.

*Correction of claim by Revenue*

- 5 (1) The Inland Revenue may by notice to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).
- (2) No such correction may be made—
  - (a) more than nine months after the day on which the claim was made, or
  - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
    - (i) beginning with the day on which notice is given, and
    - (ii) ending with the day on which the enquiry under that paragraph is completed.
- (3) A correction under this paragraph is of no effect if, within three months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.
- (4) Notice under sub-paragraph (3) must be given to the officer of the Board by whom the notice of correction was given.

*Giving effect to claims and amendments*

- 6 (1) As soon as practicable after a claim is made, or is amended under paragraph 4 or 5, the Inland Revenue shall give effect to the claim or amendment by discharge or repayment of tax.
- (2) Where the Inland Revenue enquire into a claim or amendment—
  - (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 11 (completion of enquiry), and then it applies subject to paragraph 13 (giving effect to amendments under paragraph 11), but

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- (b) the Inland Revenue may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as they think fit.

*Notice of enquiry*

- 7 (1) The Inland Revenue may enquire into a person's claim or amendment of a claim if they give him notice of their intention to do so ("notice of enquiry") before the end of the period of nine months after the day on which the claim or amendment was made.
- (2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

*Notice to produce documents etc for purposes of enquiry*

- 8 (1) If the Inland Revenue give a person a notice of enquiry, they may by notice in writing require him—
- (a) to produce to them such documents in his possession or power, and
- (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice given to a person under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which he is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
- (b) the Inland Revenue may by notice require the original to be produced for inspection.

A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the person is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige a person to produce documents or provide information relating to the conduct of any pending appeal by him.

*Appeal against notice to produce documents etc*

- 9 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 8 to produce documents or provide information.
- (2) Notice of appeal must be given—
- (a) in writing,
- (b) within 30 days after the issue of the notice appealed against,
- (c) to the officer of the Board by whom that notice was given.
- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—

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- (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
  - (b) shall confirm the notice so far as it requires the production of documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

*Penalty for failure to produce documents etc*

- 10 (1) A person who fails to comply with a notice under paragraph 8 (notice to produce documents etc for purposes of enquiry) is liable—
- (a) to a penalty of £50, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £30 for each day on which the failure continues.
- (2) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

*Completion of enquiry*

- 11 (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.
- (2) A closure notice must either—
- (a) state that in the opinion of the Inland Revenue no amendment of the claim is required, or
  - (b) if in the Inland Revenue’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.
- In the case of an enquiry into an amendment of a claim, paragraph (b) applies only so far as the deficiency or excess is attributable to the amendment.
- (3) A closure notice takes effect when it is issued.

*Direction to complete enquiry*

- 12 (1) The claimant may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

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*Giving effect to amendments under paragraph 11*

- 13 (1) Within 30 days after the date of issue of a notice under paragraph 11(2)(b) (closure notice that amends claim), the Inland Revenue shall give effect to the amendment by making such adjustment as may be necessary, whether—
- (a) by way of assessment on the claimant, or
  - (b) by discharge or repayment of tax.
- (2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

*Appeals against amendments under paragraph 11*

- 14 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.
- (2) Notice of the appeal must be given—
- (a) in writing,
  - (b) within 30 days after the date on which the closure notice was issued,
  - (c) to the officer of the Board by whom the closure notice was given.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not deliberate or unreasonable.
- (5) Paragraph 37 of Schedule 10 (settling of appeals by agreement) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under paragraph 35 of that Schedule.
- (6) On an appeal against an amendment made by a closure notice, the Commissioners may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (7) Where any such amendment is varied, whether by the Commissioners or by the order of a court, paragraph 13 (giving effect to amendments under paragraph 11) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

*Jurisdiction of Commissioners*

- 15 (1) An appeal against a conclusion stated or amendment made by a closure notice is to be made to the Special Commissioners if it relates to a claim made to the Board.
- (2) Subject to—
- (a) sub-paragraph (1),
  - (b) paragraph 33(4) of Schedule 10 (appeal against decision on claim for relief in case of double assessment), and
  - (c) any right to elect to bring an appeal before the Special Commissioners conferred by regulations under Schedule 17 (General and Special Commissioners, appeals and other proceedings),
- an appeal under any provision of this Schedule is to be made to the General Commissioners.]



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## SCHEDULE 12

Section 91

### STAMP DUTY LAND TAX: COLLECTION AND RECOVERY OF TAX

#### PART 1

#### GENERAL

##### *Issue of tax demands and receipts*

- 1 (1) Where tax is due and payable, a collector may make demand of the sum charged from the person liable to pay it.
- (2) On payment of the tax, the collector shall if so requested give a receipt.

##### *Recovery of tax by distraint*

- 2 (1) In England and Wales or Northern Ireland, if a person neglects or refuses to pay the sum charged, upon demand made by the collector, the collector may distraint upon the goods and chattels of the person charged (“the person in default”).
- (2) For the purposes of levying such distress a justice of the peace, on being satisfied by information on oath that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, may issue a warrant in writing authorising a collector to break open, in the daytime, any house or premises, calling to his assistance any constable.

Every such constable shall, when so required, assist the collector in the execution of the warrant and in levying such distress in the house or premises.

- (3) A levy or warrant to break open must be executed by, or under the direction of, and in the presence of, the collector.
- (4) A distress levied by the collector shall be kept for five days, at the costs and charges of the person in default.
- (5) If the person in default does not pay the sum due, together with the costs and charges, the distress shall be appraised by one or more independent persons appointed by the collector, and shall be sold by public auction by the collector for payment of the sum due and all costs and charges.

Any surplus resulting from the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the owner of the goods distrained.

- (6) The Treasury may by regulations make provision with respect to—
  - (a) the fees chargeable on or in connection with the levying of distress, and
  - (b) the costs and charges recoverable where distress has been levied.

##### *Recovery of tax by diligence in Scotland*

- 3 (1) In Scotland, where any tax is due and has not been paid, the sheriff, on an application by the collector accompanied by a certificate by the collector—
  - (a) stating that none of the persons specified in the application has paid the tax to him,

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- (b) stating that the collector has demanded payment under paragraph 1 from each such person of the amount due by him,
  - (c) stating that 14 days have elapsed since the date of such demand without payment of that amount, and
  - (d) specifying the amount due and unpaid by each such person,
- shall grant a summary warrant in a form prescribed by Act of Sederunt authorising the recovery, by any of the diligences mentioned in sub-paragraph (2), of the amount remaining due and unpaid.
- (2) The diligences referred to in sub-paragraph (1) are—
    - (a) an attachment;
    - (b) an earnings arrestment;
    - (c) an arrestment and action of furthcoming or sale.
  - (3) Subject to sub-paragraph (4), the sheriff officer's fees, together with the outlays necessarily incurred by him, in connection with the execution of a summary warrant are chargeable against the debtor.
  - (4) No fee is chargeable by the sheriff officer against the debtor for collecting, and accounting to the collector for, sums paid to him by the debtor in respect of the amount owing.

## PART 2

### COURT PROCEEDINGS

#### *Civil proceedings in magistrates' court or court of summary jurisdiction*

- 4 (1) An amount not exceeding £2,000 due and payable by way of tax is in England and Wales or Northern Ireland recoverable summarily as a civil debt in proceedings brought in the name of the collector.
- (2) All or any of the sums recoverable under this paragraph that are—
  - (a) due from any one person, and
  - (b) payable to any one collector,
 may be included in the same complaint, summons or other document required to be laid before or issued by justices.
 

Each such document shall, as respects each such sum, be construed as a separate document and its invalidity as respects any one such sum does not affect its validity as respects any other such sum.
- (3) Proceedings under this paragraph in England and Wales may be brought at any time within one year from the time when the matter complained of arose.
- (4) In sub-paragraph (1) the expression “recoverable summarily as a civil debt” in relation to proceedings in Northern Ireland means recoverable by proceedings under Article 62 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (5) The Treasury may by order increase the sum specified in sub-paragraph (1).

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*Proceedings in county court or sheriff court*

- 5 (1) Tax due and payable may be sued for and recovered from the person charged as a debt due to the Crown by proceedings brought in the name of a collector—
- (a) in a county court, or
  - (b) in a sheriff court.
- (2) An officer of the Board who is authorised by the Board to do so may address the court in any proceedings under this paragraph in England and Wales or Scotland.
- (3) In Northern Ireland—
- (a) the reference in sub-paragraph (1) to a county court is to a county court held for a division under the County Courts (Northern Ireland) Order 1980 (S.I. 1980/397 (N.I. 3));
  - (b) proceedings may not be brought under this paragraph if the amount exceeds the limit specified in Article 10(1) of that Order;
  - (c) Part III of that Order (general civil jurisdiction) applies for the purposes of this paragraph; and
  - (d) sections 21 and 42(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) apply as if any reference in those provisions to an enactment included this paragraph.

*Proceedings in High Court or Court of Session*

- 6 Tax may be sued for and recovered from the person charged—
- (a) as a debt due to the Crown, or
  - (b) by any other means by which a debt of record or otherwise due to the Crown may be sued for and recovered,
- by proceedings in the High Court or, in Scotland, in the Court of Session sitting as the Court of Exchequer.

*Evidence of unpaid tax*

- 7 (1) A certificate of an officer of the Board—
- (a) that tax is due and payable, and
  - (b) that to the best of his knowledge and belief payment of the tax has not been made,
- is sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Crown.
- (2) A document purporting to be such a certificate shall be deemed to be such a certificate unless the contrary is proved.

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## SCHEDULE 13

Section 93

## STAMP DUTY LAND TAX: INFORMATION POWERS

## PART 1

POWER OF AUTHORISED OFFICER TO CALL FOR  
DOCUMENTS OR INFORMATION FROM TAXPAYER*Notice requiring taxpayer to deliver documents or provide information*

- 1 (1) An authorised officer of the Board may by notice in writing require a person—
- (a) to deliver to him such documents as are in that person’s possession or power and (in the officer’s reasonable opinion) contain, or may contain, information relevant to—
    - (i) any tax liability to which that person is or may be subject, or
    - (ii) the amount of any such liability, or
  - (b) to provide him with such information as he may reasonably require as being relevant to, or to the amount of, any such liability.
- (2) An “authorised officer of the Board” means an officer of the Board authorised for the purposes of this Part of this Schedule.
- (3) Before a person is given a notice under this paragraph he must be given a reasonable opportunity to deliver the documents or provide the information in question.
- No application for consent under paragraph 2 shall be made unless he has been given that opportunity.

*Requirement of consent of General or Special Commissioner*

- 2 (1) The consent of a General or Special Commissioner is required for the giving of a notice under paragraph 1.
- (2) Consent shall not be given unless the Commissioner is satisfied that in all the circumstances the officer is justified in proceeding under that paragraph.
- (3) A Commissioner who has given such consent shall not take part in, or be present at, any proceedings on, or related to, any appeal brought by the person to whom the notice applies if the Commissioner has reason to believe that any of the required information is likely to be adduced in evidence in those proceedings.

The “required information” means any document or information that was the subject of the notice with respect to which the Commissioner gave his consent.

*Contents of notice under this Part*

- 3 (1) A notice under paragraph 1 must—
- (a) specify or describe the documents or information to which it relates, and
  - (b) require the documents to be delivered, or the information to be provided, within such time as may be specified in the notice.

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- (2) The period specified for complying with the notice must not be less than 30 days after the date of the notice.

*Summary of reasons to be given*

- 4 (1) An officer who gives a notice under paragraph 1 must also give to the person to whom the notice applies a written summary of his reasons for applying for consent to the notice.
- (2) This does not require the disclosure of any information—
- (a) that would, or might, identify any person who has provided the officer with any information which he took into account in deciding whether to apply for consent, or
  - (b) that the General or Special Commissioner giving consent under paragraph 2 directs need not be disclosed.
- (3) A Commissioner shall not give any such direction unless he is satisfied that the officer has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.

*Power to take copies of documents etc*

- 5 The person to whom documents are delivered, or to whom information is provided, in pursuance of a notice under paragraph 1 may take copies of them or of extracts from them.

**PART 2**

POWER OF AUTHORISED OFFICER TO CALL FOR DOCUMENTS FROM THIRD PARTY

*Notice requiring documents to be delivered or made available*

- 6 (1) An authorised officer of the Board may for the purpose of enquiring into the tax liability of any person (“the taxpayer”) by notice in writing require any other person—
- (a) to deliver to the officer, or
  - (b) if the person to whom the notice is given so elects, to make available for inspection by a named officer of the Board,
- such documents as are in that person’s possession or power and (in the officer’s reasonable opinion) contain, or may contain, information relevant to any tax liability to which the taxpayer is or may be, or may have been, subject, or the amount of any such liability.
- (2) An “authorised officer of the Board” means an officer of the Board authorised for the purposes of this Part of this Schedule.
- (3) Before a person is given a notice under this paragraph he must be given a reasonable opportunity to deliver or make available the documents in question. No application for consent under paragraph 7 shall be made unless he has been given that opportunity.

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- (4) The persons who may be treated as “the taxpayer” for the purposes of this paragraph include a company that has ceased to exist and an individual who has died.

But a notice in relation to a taxpayer who has died may not be given more than six years after his death.

*Requirement of consent of General or Special Commissioner*

- 7 (1) The consent of a General or Special Commissioner is required for the giving of a notice under paragraph 6.
- (2) Consent shall not be given unless the Commissioner is satisfied that in all the circumstances the officer is justified in proceeding under that paragraph.
- (3) A Commissioner who has given such consent shall not take part in, or be present at, any proceedings on, or related to, any appeal brought by the taxpayer concerned if the Commissioner has reason to believe that any of the documents that were the subject of the notice is likely to be adduced in evidence in those proceedings.

*Contents of notice under paragraph 6*

- 8 (1) A notice under paragraph 6 must—
- (a) specify or describe the documents to which it relates, and
  - (b) require the documents to be delivered or made available within such time as may be specified in the notice.
- (2) The period specified for complying with the notice must not be less than 30 days after the date of the notice.
- (3) Subject to paragraph 11 (power to give notice in respect of unnamed taxpayer or taxpayers), a notice under this paragraph must name the taxpayer to whom it relates.

*Copy of notice to be given to taxpayer*

- 9 (1) Where a notice is given to a person under this paragraph, the officer shall give a copy of the notice to the taxpayer to whom it relates.
- (2) This paragraph does not apply if, on application by the officer, a General or Special Commissioner directs that it shall not apply.
- (3) Such a direction shall only be given if the Commissioner is satisfied that the officer has reasonable grounds for suspecting the taxpayer of fraud.

*Summary of reasons to be given*

- 10 (1) An officer who gives a notice under paragraph 6 must also give to the taxpayer concerned a written summary of his reasons for applying for consent to the notice.
- (2) This does not require the disclosure of any information—
- (a) that would, or might, identify any person who has provided the officer with any information which he took into account in deciding whether to apply for consent, or
  - (b) that the General or Special Commissioner giving consent under paragraph 7 directs need not be disclosed.

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- (3) A Commissioner shall not give such a direction unless he is satisfied that the officer has reasonable grounds for believing that disclosure of the information in question would prejudice the assessment or collection of tax.
- (4) This paragraph does not apply if under paragraph 9(2) a copy of the notice need not be given to the taxpayer.

*Power to give notice relating to unnamed taxpayer or taxpayers*

- 11 (1) If, on an application made by an officer of the Board and authorised by an order of the Board, a Special Commissioner gives his consent, the officer may give such a notice as is mentioned in paragraph 6 without naming the taxpayer to whom the notice relates.
- (2) Consent shall not be given unless the Commissioner is satisfied—
  - (a) that the notice relates—
    - (i) to a taxpayer whose identity is not known to the officer, or
    - (ii) to a class of taxpayers whose individual identities are not so known,
  - (b) that there are reasonable grounds for believing that the taxpayer, or any of the class of taxpayers, to whom the notice relates may have failed or may fail to comply with any provision of this Part of this Act,
  - (c) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax, and
  - (d) that the information that is likely to be contained in the documents to which the notice relates is not readily available from another source.
- (3) Before a person is given a notice under this paragraph he must be given a reasonable opportunity to deliver or make available the documents in question.

No application for consent under sub-paragraph (1) shall be made unless he has been given that opportunity.

- (4) A person to whom there is given a notice under this paragraph may, by notice in writing given to the officer within 30 days after the date of the notice, object to it on the ground that it would be onerous for him to comply with it.
- (5) If the matter is not resolved by agreement it shall be referred to the Special Commissioners who may confirm, vary or cancel the notice.

*Contents of notice under paragraph 11*

- 12 (1) A notice under paragraph 11 must—
  - (a) specify or describe the documents to which it relates, and
  - (b) require the documents to be delivered or made available within such time as may be specified in the notice.
- (2) The period specified for complying with the notice must not be less than 30 days after the date of the notice.

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*Power to take copies of documents etc*

- 13 The person to whom documents are delivered or made available in pursuance of a notice under this Part of this Schedule may take copies of them or of extracts from them.

**PART 3**

POWER TO CALL FOR PAPERS OF TAX ACCOUNTANT

*Power to call for papers of tax accountant*

- 14 (1) Where a person who has stood in relation to others as a tax accountant—
- (a) is convicted of an offence in relation to tax by or before a court in the United Kingdom, or
  - (b) has a penalty imposed on him under section 96 (assisting in preparation of incorrect return etc),

an authorised officer of the Board may by notice in writing require that person to deliver to him such documents as are in his possession or power and (in the officer's reasonable opinion) contain information relevant to any tax liability to which any client of his is or has been, or may be or have been, subject, or to the amount of any such liability.

- (2) An “authorised officer of the Board” means an officer of the Board authorised for the purposes of this Part of this Schedule.
- (3) Before a person is given a notice under this paragraph he must be given a reasonable opportunity to deliver the documents in question.

No application for consent under paragraph 16 shall be made unless he has been given that opportunity.

*When notice may be given*

- 15 (1) No notice under paragraph 14 may be given for so long as an appeal is pending against the conviction or penalty.
- (2) For the purposes of sub-paragraph (1)—
- (a) an appeal is treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing it or, in the case of a conviction in Scotland, until the expiration of 28 days from the date of conviction; and
  - (b) references to an appeal include a further appeal, but in relation to the imposition of a penalty do not include an appeal against the amount of the penalty.
- (3) No notice may be given under paragraph 14 by reference to a person's conviction or the imposition on him of a penalty after the end of the period of twelve months beginning with the date on which the power to give such a notice was first exercisable in his case by virtue of that conviction or penalty.



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*Requirement of consent of appropriate judicial authority*

- 16 (1) The consent of the appropriate judicial authority is required for the giving of a notice under paragraph 14.
- (2) Consent shall not be given unless that authority is satisfied that in all the circumstances the officer is justified in proceeding under that paragraph.
- (3) The appropriate judicial authority is—
- (a) in England and Wales, a circuit judge;
  - (b) in Scotland, a sheriff;
  - (c) in Northern Ireland, a county court judge.

*Contents of notice*

- 17 (1) A notice under paragraph 14 must—
- (a) specify or describe the documents to which it relates, and
  - (b) require the documents to be delivered within such time as may be specified in the notice.
- (2) The period specified for complying with the notice must not be less than 30 days after the date of the notice.

*Power to take copies of documents etc*

- 18 The officer to whom documents are delivered in pursuance of a notice under paragraph 14 may take copies of them or of extracts from them.

**PART 4**

RESTRICTIONS ON POWERS UNDER PARTS 1 TO 3

*Introduction*

- 19 The provisions of Parts 1 to 3 of this Schedule have effect subject to the following restrictions.

*Personal records or journalistic material*

- 20 (1) Parts 1 to 3 of this Schedule do not apply—
- (a) to documents that are personal records or journalistic material, or
  - (b) to information contained in any personal records or journalistic material.
- (2) In sub-paragraph (1)—
- “personal records” means personal records as defined in section 12 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, in Article 14 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)); and
- “journalistic material” means journalistic material as defined in section 13 of that Act or, in Northern Ireland, in Article 15 of that Order.

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*Documents or information relating to pending appeal*

- 21 (1) A notice under Part 1 of this Schedule does not oblige a person to deliver documents or provide information relating to the conduct of any pending appeal by him.
- (2) A notice under Part 2 of this Schedule does not oblige a person to deliver or make available documents relating to the conduct of a pending appeal by the taxpayer.
- (3) A notice under Part 3 of this Schedule does not oblige a person to deliver documents relating to the conduct of a pending appeal by the client.
- (4) An “appeal” here means an appeal relating to tax.

*Barristers, advocates and solicitors*

- 22 (1) A notice under Part 2 or 3 of this Schedule may not be given to a barrister, advocate or solicitor by an authorised officer of the Board but only by the Board.
- (2) Accordingly, in relation to a barrister, advocate or solicitor, the references in those Parts to an authorised officer of the Board shall be read as references to the Board.

*Provision of copies instead of original documents*

- 23 (1) To comply with a notice under Part 1 or 3 of this Schedule, and as an alternative to delivering documents to comply with a notice under Part 2 of this Schedule, copies of documents may be delivered instead of originals.
- (2) The copies must be photographic or otherwise by way of facsimile.
- (3) If so required by the officer (or, as the case may be, the Board) in the case of any documents specified in the requirement, the originals must be made available for inspection by a named officer of the Board.
- (4) Failure to comply with such a requirement counts as failure to comply with the notice.

*Documents originating more than six years before date of notice*

- 24 (1) A notice under Part 2 of this Schedule does not oblige a person to deliver or make available a document the whole of which originates more than six years before the date of the notice.
- (2) Sub-paragraph (1) does not apply where the notice is so expressed as to exclude the restrictions of that sub-paragraph.
- (3) A notice may only be so expressed if—
- (a) in the case of a notice given by an authorised officer, the General or Special Commissioner giving consent to the notice has also given approval to the exclusion;
  - (b) in the case of a notice given by the Board, they have applied to a General or Special Commissioner for, and obtained, that approval.
- (4) Approval shall only be given if the Commissioner is satisfied, on application by the officer or the Board, that tax has been, or may have been, lost to the Crown owing to the fraud of the taxpayer.

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*Documents subject to legal privilege*

- 25 (1) A notice under Part 2 or 3 of this Schedule does not oblige a barrister, advocate or solicitor to deliver or make available, without his client's consent, any document with respect to which a claim to legal privilege could be maintained.
- (2) "Legal privilege" here has the same meaning as in paragraph 35 of this Schedule.

*Documents belonging to auditor or tax adviser*

- 26 (1) A notice under Part 2 of this Schedule—
- (a) does not oblige a person who has been appointed as auditor for the purposes of any enactment to deliver or make available documents that are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
  - (b) does not oblige a tax adviser to deliver or make available documents that are his property and consist of relevant communications (as defined below).
- (2) "Relevant communications" means communications between the tax adviser and—
- (a) a person in relation to whose tax affairs he has been appointed, or
  - (b) any other tax adviser of such a person,
- the purpose of which is the giving or obtaining of advice about any of those tax affairs.
- (3) In this paragraph "tax adviser" means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).
- (4) This paragraph has effect subject to paragraph 27 (documents belonging to auditor or tax adviser: information to be disclosed).

*Documents belonging to auditor or tax adviser: information to be disclosed*

- 27 (1) This paragraph applies where a notice is given under Part 2 of this Schedule relating to a document that falls within paragraph 26 (documents belonging to auditor or tax adviser) but contains—
- (a) information explaining any information, return or other document that the person to whom the notice is given has, as tax accountant, assisted any client of his in preparing for, or for delivering to, the officer or the Board, or
  - (b) in the case of a notice under paragraph 11 (notice in respect of unnamed taxpayer or taxpayers), information as to the identity or address of any taxpayer to whom the notice relates or any person who has acted on behalf of any such person,
- that has not otherwise been made available to the Inland Revenue.
- (2) For this purpose information is regarded as having been made available to the Inland Revenue if it is contained in some other document and—
- (a) that other document, or a copy of it, has been delivered to the officer or the Board, or
  - (b) that other document has been inspected by an officer of the Board.

*Status: Point in time view as at 18/04/2005.*

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- (3) Where this paragraph applies the person to whom the notice is given must, if he does not deliver the document or make it available for inspection in accordance with the notice—
- (a) deliver to the officer (or, as the case may be, the Board) a copy (photographic or otherwise by way of facsimile) of any parts of the document that contain such information as is mentioned in sub-paragraph (1), and
  - (b) if so required by the officer (or, as the case may be, the Board), make available for inspection by a named officer of the Board such parts of the original document as contain such information.
- (4) Failure to comply with any such requirement counts as a failure to comply with the notice.

## PART 5

### POWERS OF BOARD TO CALL FOR DOCUMENTS OR INFORMATION

#### *Notice requiring delivery of documents or provision of information*

- 28 (1) The Board may by notice in writing require a person—
- (a) to deliver to a named officer of the Board such documents as are in the person's possession or power and (in the Board's reasonable opinion) contain, or may contain, information relevant to—
    - (i) any tax liability to which the person is or may be subject, or
    - (ii) the amount of any such liability, or
  - (b) to provide to a named officer of the Board such information as the Board may reasonably require as being relevant to, or to the amount of, any such liability.
- (2) Notice under this paragraph shall not be given unless the Board have reasonable grounds for believing—
- (a) that the person to whom it relates may have failed, or may fail, to comply with any provision of this Part of this Act, and
  - (b) that any such failure is likely to have led, or to lead, to serious prejudice to the proper assessment or collection of tax.

#### *Contents of notice*

- 29 A notice under paragraph 28 must—
- (a) specify or describe the documents or information to which it relates, and
  - (b) require the documents to be delivered or the information to be provided within such time as may be specified in the notice.

#### *Power to take copies of documents etc*

- 30 The person to whom documents are delivered, or to whom information is provided, in pursuance of a notice under paragraph 28 may take copies of them or of extracts from them.

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*Exclusion of personal records or journalistic material*

- 31 (1) This Part of this Schedule does not apply to documents that are personal records or journalistic material.
- (2) In sub-paragraph (1)—
- “personal records” means personal records as defined in section 12 of the Police and Criminal Evidence Act 1984 (c. 60) or, in Northern Ireland, in Article 14 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)); and
- “journalistic material” means journalistic material as defined in section 13 of that Act or, in Northern Ireland, in Article 15 of that Order.

**PART 6**

ORDER OF JUDICIAL AUTHORITY FOR THE DELIVERY OF DOCUMENTS

*Order for the delivery of documents*

- 32 (1) The appropriate judicial authority may make an order under this paragraph if satisfied on information on oath given by an authorised officer of the Board—
- (a) that there is reasonable ground for suspecting that an offence involving serious fraud in connection with, or in relation to, stamp duty land tax has been or is about to be committed, and
- (b) that documents that may be required as evidence for the purposes of any proceedings in respect of such an offence are or may be in the power or possession of any person.
- (2) An order under this paragraph is an order requiring the person who appears to the authority to have in his possession or power the documents specified or described in the order to deliver them to an officer of the Board within—
- (a) ten working days after the day on which notice of the order is served on him, or
- (b) such shorter or longer period as may be specified in the order.
- For this purpose a “working day” means any day other than a Saturday, Sunday or public holiday.
- (3) The appropriate judicial authority is—
- (a) in England and Wales, a circuit judge;
- (b) in Scotland, a sheriff;
- (c) in Northern Ireland, a county court judge.
- (4) Where in Scotland the information relates to persons residing or having places of business at addresses situated in different sheriffdoms—
- (a) an application for an order may be made to the sheriff for the sheriffdom in which any of the addresses is situated, and
- (b) where the sheriff makes an order in respect of a person residing or having a place of business in his own sheriffdom, he may also make orders in respect of all or any of the other persons to whom the information relates (whether or not they have an address within the sheriffdom).

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- (5) In sub-paragraph (1) an “authorised officer of the Board” means an officer of the Board authorised by the Board for the purposes of this Part of this Schedule.
- (6) The Inland Revenue may make provision by regulations as to—
- (a) the procedures for approving in any particular case the decision to apply for an order under this Part of this Schedule, and
  - (b) the descriptions of officer by whom such approval may be given.

*Notice of application for order*

- 33 (1) A person is entitled—
- (a) to notice of the intention to apply for an order against him under paragraph 32, and
  - (b) to appear and be heard at the hearing of the application,
- unless the appropriate judicial authority is satisfied that this would seriously prejudice the investigation of the offence.
- (2) The Inland Revenue may make provision by regulations as to the notice to be given, the contents of the notice and the manner of giving it.

*Obligations of person given notice of application*

- 34 (1) A person who has been given notice of intention to apply for an order under paragraph 32 must not—
- (a) conceal, destroy, alter or dispose of any document to which the application relates, or
  - (b) disclose to any other person information or any other matter likely to prejudice the investigation of the offence to which the application relates.

This is subject to the following qualifications.

- (2) Sub-paragraph (1)(a) does not prevent anything being done—
- (a) with the leave of the appropriate judicial authority,
  - (b) with the written permission of an officer of the Board,
  - (c) after the application has been dismissed or abandoned, or
  - (d) after any order made on the application has been complied with.
- (3) Sub-paragraph (1)(b) does not prevent a professional legal adviser from disclosing any information or other matter—
- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings, and
    - (ii) for the purposes of those proceedings.

This sub-paragraph does not apply in relation to any information or other matter that is disclosed with a view to furthering a criminal purpose.

- (4) A person who fails to comply with the obligation in sub-paragraph (1)(a) or (b) may be dealt with as if he had failed to comply with an order under paragraph 32.

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*Exception of items subject to legal privilege*

- 35 (1) This Part of this Schedule does not apply to items subject to legal privilege.
- (2) Items “subject to legal privilege” means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
  - (b) communications between a professional legal adviser and his client or any person representing his client, or between such an adviser or his client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;
  - (c) items enclosed with or referred to in such communications and made—
    - (i) in connection with the giving of legal advice, or
    - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in possession of a person entitled to possession of them.
- (3) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

*Resolution of disputes as to legal privilege*

- 36 (1) The Inland Revenue may make provision by regulations for the purposes of this Part of this Schedule for the resolution of disputes as to whether a document, or part of a document, is an item subject to legal privilege.
- (2) The regulations may, in particular, make provision as to—
- (a) the custody of the document whilst its status is being decided,
  - (b) the appointment of an independent, legally qualified person to decide the matter,
  - (c) the procedures to be followed, and
  - (d) who is to meet the costs of the proceedings.

*Complying with an order*

- 37 (1) The Inland Revenue may make provision by regulations as to how a person is to comply with an order under paragraph 32.
- (2) The regulations may, in particular, make provision as to—
- (a) the officer of the Board to whom the documents are to be produced,
  - (b) the address to which the documents are to be taken or sent, and
  - (c) the circumstances in which sending documents by post complies with the order.
- (3) Where an order relates to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

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*Document not to be retained if photograph or copy sufficient*

- 38 Where a document delivered to an officer of the Board under this Part of this Schedule is of such a nature that a photograph or copy of it would be sufficient—
- (a) for use as evidence at a trial for an offence, or
  - (b) for forensic examination or for investigation in connection with an offence,
- it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

*Access to or supply of photograph or copy of documents delivered*

- 39 (1) If a request for permission to be granted access to a document that—
- (a) has been delivered to an officer of the Board under this Part of this Schedule, and
  - (b) is retained by the Board for the purposes of investigating an offence,
- is made to the officer in overall charge of the investigation by a person who had custody or control of the document immediately before it was so delivered, or by someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.
- (2) If a request for a photograph or copy of any such document is made to the officer in overall charge of the investigation by a person who had custody or control of the document immediately before it was so delivered, or by someone acting on behalf of any such person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an officer of the Board for the purpose of photographing or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (3) Where a document is photographed or copied under sub-paragraph (2)(b) the photograph or copy shall be supplied to the person who made the request.
- (4) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (5) There is no duty under this paragraph to grant access to, or to supply a photograph or copy of, a document if the officer in overall charge of the investigation for the purposes of which it was delivered has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation,
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the document was delivered, or
  - (c) any criminal proceedings that may be brought as a result of—
    - (i) the investigation of which he is in charge, or
    - (ii) any such investigation as is mentioned in paragraph (b).
- (6) The references in this paragraph to the officer in overall charge of the investigation is to the person whose name and address are endorsed on the order concerned as being the officer so in charge.

*Sanction for failure to comply with order*

- 40 (1) A person who fails to comply with an order under this Part of this Schedule may be dealt with as if he had committed a contempt of the court.



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- (2) For this purpose “the court” means—
- (a) in relation to an order made by a circuit judge, the Crown Court;
  - (b) in relation to an order made by a sheriff, a sheriff court;
  - (c) in relation to an order made by a county court judge in Northern Ireland, a county court in Northern Ireland.

*Notice of order, etc*

- 41 The Inland Revenue may make provision by regulations as to the circumstances in which notice of an order under paragraph 32, or of an application for such an order, is to be treated as having been given.

*General provisions about regulations*

- 42 Regulations under this Part of this Schedule may contain such incidental, supplementary and transitional provision as appears to the Inland Revenue to be appropriate.

**PART 7**

ENTRY WITH WARRANT TO OBTAIN EVIDENCE OF OFFENCE

*Power to issue warrant*

- 43 (1) The appropriate judicial authority, if satisfied on information on oath given by an officer of the Board that—
- (a) there is reasonable ground for suspecting that an offence involving serious fraud in connection with, or in relation to, tax is being, has been or is about to be committed and that evidence of it is to be found on premises specified in the information, and
  - (b) in applying under this paragraph the officer acts with the approval of the Board given in relation to the particular case,
- may issue a warrant in writing authorising an officer of the Board to enter the premises, if necessary by force, at any time within 14 days from the time of issue of the warrant, and search them.
- (2) The appropriate judicial authority is—
- (a) in England and Wales, a circuit judge;
  - (b) in Scotland, a sheriff;
  - (c) in Northern Ireland, a county court judge.
- (3) Where in Scotland the information relates to premises situated in different sheriffdoms—
- (a) petitions for the issue of warrants in respect of all the premises to which the information relates may be made to the sheriff for a sheriffdom in which any of the premises is situated, and
  - (b) where the sheriff issues a warrant in respect of premises situated in his own sheriffdom, he shall also have jurisdiction to issue warrants in respect of all or any of the other premises to which the information relates.

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This does not affect any power or jurisdiction of a sheriff to issue a warrant in respect of an offence committed within his own sheriffdom.

*Meaning of offence involving serious fraud*

- 44 (1) An offence that involves fraud is for the purposes of this Part of this Schedule an offence involving serious fraud if its commission has led, or is intended or likely to lead, either—
- (a) to substantial financial gain to any person, or
  - (b) to serious prejudice to the proper assessment or collection of tax.
- (2) An offence that, if considered alone, would not be regarded as involving serious fraud may nevertheless be so regarded if there is reasonable ground for suspecting that it forms part of a course of conduct that is, or but for its detection would be, likely to result in serious prejudice to the proper assessment or collection of tax.
- (3) Sub-paragraphs (1) and (2) are without prejudice to the general concept of serious fraud.

*Approval of application by Board*

- 45 (1) The Board shall not approve an application for a warrant under this Part of this Schedule unless they have reasonable grounds for believing that use of the procedure under Part 6 of this Schedule (order for delivery of documents) might seriously prejudice the investigation.
- (2) Section 4A of the Inland Revenue Regulation Act 1890 (c. 21) (Board's functions exercisable by an officer acting under their authority) does not apply to the giving of Board approval under this paragraph.

*Extent of powers conferred by warrant*

- 46 The powers conferred by a warrant under this Part of this Schedule are not exercisable—
- (a) by more than such number of officers of the Board as may be specified in the warrant,
  - (b) outside such times of day as may be so specified, and
  - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.

*Exercise of powers conferred by warrant*

- 47 (1) An officer of the Board seeking to exercise the powers conferred by a warrant under this Part of this Schedule or, if there is more than one such officer, the one who is in charge of the search—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
  - (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and

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- (c) if neither paragraph (a) nor paragraph (b) applies, shall leave such a copy in a prominent place on the premises.
- (2) An officer who enters the premises under the authority of a warrant under this Part of this Schedule may—
- (a) take with him such other persons as appear to him to be necessary,
  - (b) seize and remove any things whatsoever found there that he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in paragraph 43(1), and
  - (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of such things.

But no person shall be searched except by a person of the same sex.

- (3) In the case of information contained in a computer that—
- (a) an officer who enters the premises as mentioned in sub-paragraph (2) has reasonable cause to believe may be required as evidence for the purposes mentioned in paragraph (b) of that sub-paragraph, and
  - (b) is accessible from the premises,
- the power of seizure under that sub-paragraph includes a power to require the information to be produced in a form in which it can be taken away and in which it is visible and legible.

#### *Items subject to legal privilege*

- 48 (1) Nothing in this Part of this Schedule authorises the seizure of items subject to legal privilege.
- (2) Items “subject to legal privilege” means—
- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
  - (b) communications between a professional legal adviser and his client or any person representing his client, or between such an adviser or his client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;
  - (c) items enclosed with or referred to in such communications and made—
    - (i) in connection with the giving of legal advice, or
    - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in possession of a person entitled to possession of them.
- (3) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

#### *Procedure where documents etc are removed*

- 49 (1) An officer of the Board who removes anything in the exercise of the powers conferred by this Part of this Schedule shall, if so requested by a person showing himself—
- (a) to be the occupier of the premises from which it was removed, or
  - (b) to have had custody or control of it immediately before the removal,

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provide that person with a record of what he removed.

- (2) The officer of the Board shall provide the record within a reasonable time from the making of the request for it.

*Document not to be retained if photograph or copy sufficient*

- 50 Where anything that has been removed by an officer of the Board as mentioned in paragraph 49 is of such a nature that a photograph or copy of it would be sufficient—
- (a) for use as evidence at a trial for an offence, or
  - (b) for forensic examination or for investigation in connection with an offence,
- it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

*Access to or supply of photograph or copy of items removed*

- 51 (1) If a request for permission to be granted access to anything that—
- (a) has been removed by an officer of the Board, and
  - (b) is retained by the Board for the purposes of investigating an offence,
- is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.
- (2) If a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who has custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an officer of the Board for the purpose of photographing or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (3) Where anything is photographed or copied under sub-paragraph (2)(b) the photograph or copy shall be supplied to the person who made the request.
- (4) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (5) There is no duty under this paragraph to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation,
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed, or
  - (c) any criminal proceedings that may be brought as a result of—
    - (i) the investigation of which he is in charge, or
    - (ii) any such investigation as is mentioned in paragraph (b).
- (6) The references in this paragraph to the officer in overall charge of the investigation is to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.

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*Endorsement and custody etc of warrant*

- 52 (1) Where entry has been made with a warrant under this Part of this Schedule, and the officer making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.
- (2) The following provisions (which relate to return, retention and inspection of warrants), that is—
- (a) in England and Wales, section 16(10) to (12) of the Police and Criminal Evidence Act 1984 (c. 60), and
  - (b) in Northern Ireland, Article 18(10) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),
- apply to a warrant under this Part of this Schedule (together with any list endorsed on or attached to it under sub-paragraph (1)) as they apply to a warrant issued to a constable under any enactment.

**PART 8**

FALSIFICATION ETC OF DOCUMENTS

*Falsification etc of documents*

- 53 (1) A person commits an offence if he intentionally—
- (a) falsifies, conceals, destroys or otherwise disposes of, or
  - (b) causes or permits the falsification, concealment, destruction or disposal of, a document to which this paragraph applies.
- (2) This paragraph applies to any document that the person—
- (a) has been required by a notice under Part 1, 2, 3 or 5 of this Schedule, or an order under Part 6 of this Schedule, to deliver, or to deliver or make available for inspection, or
  - (b) has been given an opportunity in accordance with paragraph 1(3), 6(3), 11(3) or 14(3) to deliver, or to deliver or make available for inspection.
- (3) A person does not commit an offence under this paragraph if he acts—
- (a) with the written permission of a General or Special Commissioner or an officer of the Board,
  - (b) after the document has been delivered or, in a case within Part 2 of this Schedule, inspected, or
  - (c) after a copy has been delivered in accordance with paragraph 23(1) or 27(3) and the original has been inspected.
- (4) A person does not commit an offence under this paragraph as it applies by virtue of sub-paragraph (2)(a) if he acts after the end of the period of two years beginning with the date on which the notice is given or the order is made, unless before the end of that period an officer of the Board has notified the person, in writing, that the notice or order has not been complied with to his satisfaction.
- (5) A person does not commit an offence under this paragraph as it applies by virtue of sub-paragraph (2)(b) if he acts—
- (a) after the end of the period of six months beginning with the date on which an opportunity to deliver the document was given, or

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- (b) after an application for consent to a notice being given in relation to the document has been refused.
- (6) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or to both.

## SCHEDULE 14

Section 99

### STAMP DUTY LAND TAX: DETERMINATION OF PENALTIES AND RELATED APPEALS

#### *Determination of penalties and appeals*

1           The provisions of this Schedule apply in relation to penalties under this Part.

#### *Determination of penalty by officer of the Board*

- 2           (1) An officer of the Board authorised for the purposes of this paragraph may make a determination—
- (a) imposing the penalty, and
  - (b) setting it at such amount as in the officer's opinion is correct or appropriate.
- (2) Notice of the determination must be served on the person liable to the penalty.
- (3) The notice must also state—
- (a) the date on which the notice is issued, and
  - (b) the time within which an appeal against the determination may be made.
- (4) A penalty determined under this paragraph is due and payable at the end of the period of 30 days beginning with the date of issue of the notice of determination.
- (5) Where an officer of the Board has decided to impose a penalty, and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the determination.

#### *Alteration of penalty determination*

- 3           (1) After notice has been served of the determination of a penalty, the determination cannot be altered except in accordance with this paragraph or on appeal.
- (2) If it is discovered by an authorised officer that the amount of the penalty is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which in the officer's opinion is correct or appropriate.
- (3) If in the case of a tax-related penalty it is discovered by an authorised officer that the amount taken into account as the amount of tax is or has become excessive, he may revise the determination so that the penalty is set at the amount that is correct.

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Where more than the correct amount has already been paid the appropriate amount shall be repaid.

- (4) In this paragraph an “authorised officer” means an officer of the Board authorised by the Board for the purposes of this paragraph.

#### *Liability of personal representatives*

- 4 If a person liable to a penalty has died—
- (a) any determination that could have been made in relation to that person may be made in relation to his personal representatives, and
  - (b) any penalty imposed on them is a debt due from and payable out of the person’s estate.

#### *Appeal against penalty determination*

- 5 (1) An appeal lies to the General or Special Commissioners against the determination of a penalty.
- (2) Notice of appeal must be given in writing to the officer of the Board by whom the determination was made within 30 days of the date of issue of the notice of determination.
- (3) The notice of appeal must specify the grounds of appeal, but on the hearing of the appeal the Commissioners may allow the appellant to put forward a ground not specified in the notice of appeal, and take it into consideration, if satisfied that the omission was not deliberate or unreasonable.
- (4) On an appeal under this paragraph the Commissioners may—
- (a) if it appears to them that no penalty has been incurred, set the determination aside;
  - (b) if the amount determined appears to them to be appropriate, confirm the determination;
  - (c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as appears to them to be appropriate;
  - (d) if the amount determined appears to them to be insufficient, increase it to such amount, not exceeding the permitted maximum, as they consider appropriate.

#### *Further appeal*

- 6 (1) An appeal lies against the amount of a penalty determined by the Commissioners on an appeal under paragraph 5, at the instance of the person liable to the penalty—
- (a) to the High Court, or
  - (b) in Scotland, to the Court of Session sitting as the Court of Exchequer.
- (2) On an appeal under this paragraph the court has the same powers as are conferred on the Commissioners by paragraph 5(4) above.
- (3) The right of appeal under this paragraph is in addition to any right of appeal conferred by regulations under paragraph 9 of Schedule 17 (general power to provide for appeals on points of law).

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*Penalty proceedings before the court*

- 7 (1) Where in the opinion of the Board the liability of a person for a penalty arises by reason of his fraud, or the fraud of another person, proceedings for the penalty may be brought—
- (a) in the High Court, or
  - (b) in Scotland, in the Court of Session sitting as the Court of Exchequer.
- (2) Proceedings under this paragraph in England and Wales shall be brought—
- (a) by and in the name of the Board as an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44), or
  - (b) in the name of the Attorney General.
- Any such proceedings shall be deemed to be civil proceedings by the Crown within the meaning of Part 2 of the Crown Proceedings Act 1947.
- (3) Proceedings under this paragraph in Scotland shall be brought in the name of the Advocate General for Scotland.
- (4) Proceedings under this paragraph in Northern Ireland shall be brought—
- (a) by and in the name of the Board as an authorised department for the purposes of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland, or
  - (b) in the name of the Advocate General for Northern Ireland.
- Any such proceedings shall be deemed to be civil proceedings within the meaning of Part 2 of the Crown Proceedings Act 1947 as for the time being in force in Northern Ireland.
- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.
- (6) Paragraph 2 (determination of penalty by officer of the Board) does not apply where proceedings are brought under this paragraph.
- (7) In relation to any time before the coming into force of section 2(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in sub-paragraph (4)(b) to the Advocate General for Northern Ireland shall be read as a reference to the Attorney General for Northern Ireland.

*Time limit for determination of penalties*

- 8 (1) The following time limits apply in relation to the determination of penalties under this Schedule.
- (2) The general rule is that—
- (a) no penalty may be determined under paragraph 2 (determination by officer of Board), and
  - (b) no proceedings for a penalty may be brought under paragraph 7 (penalty proceedings before the court),
- more than six years after the date on which the penalty was incurred or, in the case of a daily penalty, began to be incurred. This rule is subject to the following provisions of this paragraph.



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- (3) Where the amount of a penalty is to be ascertained by reference to the tax chargeable in respect of a transaction, a penalty may be determined under paragraph 2, or proceedings for a penalty may be begun under paragraph 7, at any time within three years after the final determination of the amount of tax by reference to which the amount of the penalty is to be determined.
- (4) Sub-paragraph (3) does not apply where a person has died and the determination would be made in relation to his personal representatives if the tax was charged in an assessment made more than six years after the effective date of the transaction to which it relates.
- (5) A penalty under section 96 (penalty for assisting in preparation of incorrect return) may be determined by an officer of the Board, or proceedings for such a penalty may be commenced before a court, at any time within 20 years after the date on which the penalty was incurred.

## SCHEDULE 15

Section 104

### STAMP DUTY LAND TAX: PARTNERSHIPS

#### PART 1

##### GENERAL PROVISIONS

##### *Partnerships*

- 1 In this Part of this Act a “partnership” means—
- (a) a partnership within the Partnership Act 1890 (c. 39),
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c. 24), or
  - (c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c. 12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c. 12 (N. I.)),
- or a firm or entity of a similar character to any of those mentioned above formed under the law of a country or territory outside the United Kingdom.

##### *Legal personality of partnership disregarded*

- 2 (1) For the purposes of this Part of this Act—
- (a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and
  - (b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners,
- and not by or on behalf of the partnership as such.
- (2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

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### *Continuity of partnership*

- 3 For the purposes of this Part of this Act a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

### *Partnership not to be regarded as unit trust scheme etc*

- 4 A partnership is not to be regarded for the purposes of this Part of this Act as a unit trust scheme or an open ended investment company.

## PART 2

### ORDINARY PARTNERSHIP TRANSACTIONS

#### *Introduction*

- 5 (1) This Part of this Schedule applies to transactions entered into as purchaser by or on behalf of the members of a partnership, other than transactions within Part 3 of this Schedule [<sup>F169</sup>(transactions to which special provisions apply)].

#### **Textual Amendments**

**F169** Words in Sch. 15 para. 5 substituted (with effect in accordance with Sch. 41 para. 3 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 41 para. 2\(c\)](#)

#### *Responsibility of partners*

- 6 (1) Anything required or authorised to be done under this Part of this Act by or in relation to the purchaser under the transaction is required or authorised to be done by or in relation to all the responsible partners.
- (2) The responsible partners in relation to a transaction are—
- (a) the persons who are partners at the effective date of the transaction, and
  - (b) any person who becomes a member of the partnership after the effective date of the transaction.
- (3) This paragraph has effect subject to paragraph 8 (representative partners).

#### *Joint and several liability of responsible partners*

- 7 (1) Where the responsible partners are liable—
- (a) to make a payment of tax or to interest on unpaid tax,
  - (b) to make a payment in accordance with an assessment under paragraph 29 of Schedule 10 (recovery of excessive repayment), or
  - (c) to a penalty under this Part of this Act or to interest on such a penalty,
- the liability is a joint and several liability of those partners.

[<sup>F170</sup>(1A) No amount may be recovered by virtue of sub-paragraph (1)(a) or (b) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable.]

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- (2) No amount may be recovered by virtue of sub-paragraph (1)(c) from a person who did not become a responsible partner until after the relevant time.
- (3) The relevant time for this purpose is—
  - (a) in relation to so much of a penalty as is payable in respect of any day, or to interest on so much of a penalty as is so payable, the beginning of that day;
  - (b) in relation to any other penalty, or interest on such a penalty, the time when the act or omission occurred that caused the penalty to become payable.

#### Textual Amendments

**F170** Sch. 15 para. 7(1A) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), s. 305

#### *Representative partners*

- 8 (1) Anything required or authorised to be done by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.
- (2) This includes making the declaration required by paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is complete and correct).
- (3) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Part of this Act.
- (4) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to the Inland Revenue.

### **[<sup>F171</sup>PART 3**

#### TRANSACTIONS TO WHICH SPECIAL PROVISIONS APPLY

#### Textual Amendments

**F171** Sch. 15 Pt. 3 substituted (with effect in accordance with Sch. 41 para. 3 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 41 para. 1](#)

#### *Introduction*

- 9 (1) This Part of this Schedule applies to certain transactions involving—
  - (a) the transfer of a chargeable interest to a partnership (paragraph 10),
  - (b) the transfer of an interest in a partnership (paragraphs 14, 17, 31 and 32), or
  - (c) the transfer of a chargeable interest from a partnership (paragraph 18).
- (2) References in this Part of this Schedule to the transfer of a chargeable interest include—
  - (a) the grant or creation of a chargeable interest,
  - (b) the variation of a chargeable interest, and
  - (c) the surrender, release or renunciation of a chargeable interest.

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*Transfer of chargeable interest to a partnership: general*

- 10 (1) This paragraph applies where—
- (a) a partner transfers a chargeable interest to the partnership, or
  - (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
  - (c) a person connected with—
    - (i) a partner, or
    - (ii) a person who becomes a partner as a result of or in connection with the transfer,
 transfers a chargeable interest to the partnership.

It applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

- (2) The chargeable consideration for the transaction shall (subject to paragraph 13) be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100SLP)\%$$

where SLP is the sum of the lower proportions.

- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 12 provides for determining the sum of the lower proportions.
- (6) Paragraph 11 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to a transaction to which this paragraph applies, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

*Transfer of chargeable interest to a partnership: chargeable consideration including rent*

- 11 (1) This paragraph applies in relation to a transaction to which paragraph 10 applies where the whole or part of the chargeable consideration for the transaction is rent.

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- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “the relevant chargeable proportion of the net present value of the rent payable over the term of the lease”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases”.
- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—
- $$(RCP \times MV) + (RCP \times AC)$$
- where—
- RCP is the relevant chargeable proportion,
- MV is the market value of the interest transferred, and
- AC is the actual chargeable consideration other than rent.
- (5) If there is no chargeable consideration other than rent—
- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
  - (b) that chargeable consideration shall be taken to be equal to—
- $$RCP \times MV$$
- where—
- RCP is the relevant chargeable proportion, and
- MV is the market value of the interest transferred.
- (6) The relevant chargeable proportion in relation to—
- (a) the net present value of the rent payable over the term of a lease, or
  - (b) the market value of the interest transferred,
- is—
- $$(100SLP)\%$$
- where SLP is the sum of the lower proportions.
- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—
- $$SLP\%$$
- where SLP is the sum of the lower proportions.
- (8) Paragraph 12 provides for determining the sum of the lower proportions.
- (9) This paragraph is subject to paragraph 13.

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*Transfer of chargeable interest to a partnership: sum of the lower proportions*

- 12 (1) The sum of the lower proportions in relation to a transaction to which paragraph 10 applies is determined as follows:—

*Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately before the transaction, he was entitled to a proportion of the chargeable interest, and
- (b) immediately after the transaction, he is a partner or connected with a partner.

*Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately after the transaction—

- (a) he is a partner, and
- (b) he is the relevant owner or is connected with the relevant owner.

*Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partner's partnership share immediately after the transaction.

The proportion of the chargeable interest attributable to the partner is—

- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

*Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled

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to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

*Transfer of chargeable interest to a partnership consisting wholly of bodies corporate*

- 13 (1) This paragraph applies where—
- (a) there is a transaction to which paragraph 10 applies;
  - (b) immediately after the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 10 and 11 have effect with these modifications.
- (3) In paragraph 10, for sub-paragraphs (2) to (5) substitute—
- “(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 10(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
- (5) In paragraph 11, omit sub-paragraphs (3) and (6) to (8).
- (6) In paragraph 11, for sub-paragraph (4) substitute—
- “(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (7) In paragraph 11, for sub-paragraph (5)(b) substitute—
- “(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (8) Paragraph 12 provides for determining the sum of the lower proportions.

*Transfer of partnership interest: consideration given and chargeable interest held*

- 14 (1) This paragraph applies where—
- (a) there is a transfer of an interest in a partnership,
  - (b) consideration is given for the transfer, and
  - (c) the relevant partnership property includes a chargeable interest.
- (2) The transfer—
- (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The purchaser under the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.
- (4) Consideration is regarded as given for the transfer—
- (a) in a case within paragraph 36(a), if consideration in money or money’s worth is given by or on behalf of the person acquiring the interest;
  - (b) in a case within paragraph 36(b), if there is a withdrawal of money or money’s worth from the partnership by the person reducing his interest or ceasing to be a partner.

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- (5) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
- (a) any interest that was transferred to the partnership in connection with the transfer;
  - (b) a lease to which paragraph 15 (exclusion of market rent leases) applies.
- (6) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value of the relevant partnership property.
- (7) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.

*Exclusion of market rent leases*

- 15 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 14(5) if the following four conditions are met.
- (2) The first condition is that—
- (a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and
  - (b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.
- (3) The second condition is that the rent payable under the lease as granted was a market rent at the time of the grant.
- (4) The third condition is that—
- (a) the term of the lease is 5 years or less, or
  - (b) if the term of the lease is more than 5 years—
    - (i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and
    - (ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.
- (5) The fourth condition is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less than a market rent.
- (6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.
- (7) A review date is a date from which the rent determined as a result of a rent review is payable.

*Partnership interests: application of provisions about exchanges etc.*

- 16 (1) Where paragraph 5 of Schedule 4 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing



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partner, the interest in the partnership shall be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.

- (2) In sub-paragraph (1) “relevant partnership property” has the meaning given by paragraph 14(5).
- (3) The provisions of paragraph 6 of Schedule 4 (partition etc: disregard of existing interest) do not apply where this paragraph applies.

*Transfer of partnership interest pursuant to earlier arrangements*

- 17 (1) This paragraph applies where—
  - (a) there is a transfer of a chargeable interest to a partnership (“the land transfer”);
  - (b) the land transfer falls within paragraph (a), (b) or (c) of paragraph 10(1);
  - (c) there is subsequently a transfer of an interest in the partnership (“the partnership transfer”);
  - (d) the partnership transfer is made—
    - (i) if the land transfer falls within paragraph 10(1)(a) or (b), by the person who makes the land transfer;
    - (ii) if the land transfer falls within paragraph 10(1)(c), by the partner concerned;
  - (e) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer;
  - (f) the partnership transfer is not (apart from this paragraph) a chargeable transaction.
- (2) The partnership transfer—
  - (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The partners shall be taken to be the purchasers under the transaction.
- (4) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.
- (5) That proportion is—
  - (a) if the person making the partnership transfer is not a partner immediately after the transfer, his partnership share immediately before the transfer;
  - (b) if he is a partner immediately after the transfer, the difference between his partnership share before and after the transfer.
- (6) The partnership transfer and the land transfer shall be taken to be linked transactions.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
  - (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

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*Transfer of chargeable interest from a partnership: general*

- 18 (1) This paragraph applies where a chargeable interest is transferred—
- (a) from a partnership to a person who is or has been one of the partners, or
  - (b) from a partnership to a person connected with a person who is or has been one of the partners.
- (2) The chargeable consideration for the transaction shall (subject to paragraph 24) be taken to be equal to—
- $$(RCP \times MV) + (RCP \times AC)$$
- where—
- RCP is the relevant chargeable proportion,
- MV is the market value of the interest transferred, and
- AC is the actual consideration for the transaction.
- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—
- $$(100SLP)\%$$
- where SLP is the sum of the lower proportions.
- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—
- $$SLP\%$$
- where SLP is the sum of the lower proportions.
- (5) Paragraph 20 provides for determining the sum of the lower proportions.
- (6) Paragraph 19 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist shall be treated as remaining partnership property until it is distributed.

*Transfer of chargeable interest from a partnership: chargeable consideration including rent*

- 19 (1) This paragraph applies in relation to a transaction to which paragraph 18 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “the relevant chargeable proportion of the net present value of the rent payable over the term of the lease”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases”.

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- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—

- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and  
(b) that chargeable consideration shall be taken to be equal to—

$$RCP \times MV$$

where—

RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—

- (a) the net present value of the rent payable over the term of a lease, or  
(b) the market value of the interest transferred,

is—

$$(100SLP)\%$$

where SLP is the sum of the lower proportions.

- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

- (8) Paragraph 20 provides for determining the sum of the lower proportions.

- (9) This paragraph is subject to paragraph 24.

*Transfer of chargeable interest from a partnership: sum of the lower proportions*

- 20 (1) The sum of the lower proportions in relation to a transaction to which paragraph 18 applies is determined as follows:—

*Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately after the transaction, he is entitled to a proportion of the chargeable interest, and

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- (b) immediately before the transaction, he was a partner or connected with a partner.

*Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately before the transaction—

- (a) he was a partner, and  
(b) he was the relevant owner or was connected with the relevant owner.

*Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he is entitled immediately after the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or  
(b) if lower, the partnership share attributable to the partner.

The proportion of the chargeable interest attributable to the partner is—

- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;  
(ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

Paragraph 21 provides for determining the partnership share attributable to the partner.

*Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

*Transfer of chargeable interest from a partnership: partnership share attributable to partner*

- 21 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 20 (1) (see Step Four).

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- (2) Paragraph 22 applies for determining the partnership share attributable to a partner where—
- (a) the effective date of the transfer of the relevant chargeable interest to the partnership was before 20th October 2003, or
  - (b) the effective date of the transfer of the relevant chargeable interest to the partnership was on or after that date and—
    - (i) the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty, or
    - (ii) any tax payable in respect of the transfer has been duly paid under this Part.
- (3) Where the effective date of the transfer of the relevant chargeable interest to the partnership was on or after 20th October 2003 but neither of the conditions in sub-paragraphs (i) and (ii) of sub-paragraph (2)(b) is met, the partnership share attributable to the partner is zero.
- (4) The relevant chargeable interest is—
- (a) the chargeable interest which ceases to be partnership property as a result of the transaction to which paragraph 18 applies, or
  - (b) where the transaction to which paragraph 18 applies is the grant or creation of a chargeable interest, the chargeable interest out of which that interest is granted or created.
- 22 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows:—

*Step One*

Find the partner's actual partnership share on the relevant date.

In a case falling within paragraph 21(2)(a), the relevant date—

- (a) if the partner was a partner on 19th October 2003, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

In a case falling within paragraph 21(2)(b), the relevant date—

- (a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

*Step Two*

Add to that partnership share any increases in the partner's partnership share which—

- (a) occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies, and
- (b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if—

- (i) where the transfer which resulted in the increase took place on or before the date on which the Finance Act 2004 was passed, the instrument by which

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the transfer was effected has been duly stamped with *ad valorem* stamp duty under the enactments relating to stamp duty;

- (ii) where the transfer which resulted in the increase took place after that date, any tax payable in respect of the transfer has been duly paid under this Part.

*Step Three*

Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies.

The result is the partnership share attributable to the partner.

- (2) If the effect of applying Step Three would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.
- (3) In a case falling within paragraph 21(2)(a), if the partner ceased to be a partner before 19th October 2003, the partnership share attributable to the partner is zero.
- (4) In a case falling within paragraph 21(2)(b), if the partner ceased to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.
- (5) Paragraph 21(4) (relevant chargeable interest) applies for the purposes of this paragraph.

*Transfer of chargeable interest from a partnership to a partnership*

- 23 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest from a partnership to a partnership, and
  - (b) the transfer is both—
    - (i) a transaction to which paragraph 10 applies, and
    - (ii) a transaction to which paragraph 18 applies.
- (2) Where none of the chargeable consideration for the transaction is rent—
- (a) paragraphs 10(2) to (5) and 18(2) to (5) do not apply;
  - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 10(2) to (5) had applied or, if greater, what it would have been if paragraph 18(2) to (5) had applied.
- (3) Where the whole or part of the chargeable consideration for the transaction is rent—
- (a) paragraphs 11 and 19 do not apply;
  - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 11 had applied or, if greater, what it would have been if paragraph 19 had applied.

*Transfer of chargeable interest from a partnership consisting wholly of bodies corporate*

- 24 (1) This paragraph applies where—
- (a) there is a transaction to which paragraph 18 applies;
  - (b) immediately before the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.

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- (2) Paragraphs 18, 19 and 23 have effect with these modifications.
- (3) In paragraph 18, for sub-paragraphs (2) to (5) substitute—
  - “(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 18(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
- (5) In paragraph 19, omit sub-paragraphs (3) and (6) to (8).
- (6) In paragraph 19, for sub-paragraph (4) substitute—
  - “(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (7) In paragraph 19, for sub-paragraph (5)(b) substitute—
  - “(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (8) In paragraph 23(2)—
  - (a) for “paragraphs 10(2) to (5) and 18(2) to (5)” substitute “ paragraphs 10(2) and 18(2) ”;
  - (b) for “paragraph 10(2) to (5)” substitute “ paragraph 10(2) ”;
  - (c) for “paragraph 18(2) to (5)” substitute “ paragraph 18(2) ”.
- (9) Paragraph 20 provides for determining the sum of the lower proportions.

#### *Application of exemptions and reliefs*

- 25
- (1) Where paragraph 10, 14, 17 or 18 applies, paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.
  - (2) But (subject to paragraphs 26 to 28) this Part of this Schedule has effect subject to any other provision affording exemption or relief from stamp duty land tax.

#### *Application of disadvantaged areas relief*

- 26
- (1) Schedule 6 (disadvantaged areas relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
  - (2) For paragraph 3 substitute—
    - “3 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if every chargeable interest comprising the relevant partnership property is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.
    - (2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.”.

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- (3) In paragraph 5, for sub-paragraphs (2) to (4) substitute—
- “(2) If the relevant consideration does not exceed £150,000 the transaction is exempt from charge.”.
- (4) For paragraph 6 substitute—
- “6 (1) This paragraph applies where the land is partly non-residential property and partly residential property.
- (2) The non-residential proportion of the chargeable consideration for the transaction does not count as chargeable consideration.
- (3) The non-residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is non-residential property.
- (4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the chargeable consideration counts as chargeable consideration.
- (5) The residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is residential property.”.
- (5) For paragraph 7 substitute—
- “7 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if—
- (a) some (but not all) of the chargeable interests comprising the relevant partnership property are chargeable interests in relation to land that is wholly situated in a disadvantaged area, or
- (b) any chargeable interest comprised in the relevant partnership property is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.
- (2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.
- (3) In this Part—
- (a) references to the disadvantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land situated in a disadvantaged area;
- (b) references to the advantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is situated outside a disadvantaged area.”.
- (6) In paragraph 8, for “consideration attributable to the land situated in the disadvantaged area” substitute “disadvantaged-area proportion of the chargeable consideration”.



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(7) In paragraph 9, for sub-paragraphs (2) to (4) substitute—

“(2) If the relevant consideration does not exceed £150,000 none of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.”.

(8) For paragraph 10 substitute—

“10 (1) This paragraph applies where the land situated in a disadvantaged area is partly non-residential property and partly residential property.

(2) The non-residential proportion of the disadvantaged-area proportion of the chargeable consideration for the transaction does not count as chargeable consideration.

(3) The non-residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is not residential property.

(4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.

(5) The residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is residential property.”.

(9) After paragraph 11 (1) insert—

“(1A) In this Schedule—

“the land transfer” means the transaction that is the land transfer for the purposes of paragraph 17 of Schedule 15;

“the relevant partnership property” has the meaning given by paragraph 14(5) of Schedule 15;

“the relevant property”—

(a) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15, means the relevant partnership property;

(b) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15, means the subject matter of the land transfer.

(1B) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).”.

(10) Omit paragraphs 11(2) and 12.

#### *Application of group relief*

27 (1) Part 1 of Schedule 7 (group relief) applies to—

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- (a) a transaction to which paragraph 10 applies, and
  - (b) a transaction that is a chargeable transaction by virtue of paragraph 17,
- with these modifications.
- (2) In paragraph 3(1)(a), for “the purchaser” substitute “ a partner who was a partner at the effective date of the relevant transaction (“the relevant partner”) ”.
- (3) In paragraph 3(1), for paragraph (b) substitute—
- “(b) at the time the relevant partner ceases to be a member of the same group as the vendor (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—
    - (i) was acquired by or on behalf of the partnership under the relevant transaction, or
    - (ii) is derived from a chargeable interest so acquired,
 and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.
- (4) In paragraph 3(3), for the words from “the transferee company” to the end substitute “ or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership. ”.
- (5) In paragraph 3(4), omit the definition of “relevant associated company”.
- (6) In paragraphs 4 to 6, for “the purchaser” (wherever appearing) substitute “ the relevant partner ”.

#### *Application of charities relief*

- 28 (1) Schedule 8 (charities relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) In paragraph 1(1), for “A land transaction is exempt from charge if the purchaser is a charity” substitute “ A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 of Schedule 15 is exempt from charge if the transferee is a charity ”.
- (3) In paragraph 1(2)—
- (a) for “the purchaser must intend to hold the subject-matter of the transaction” substitute “ every chargeable interest held as partnership property immediately after the transfer must be held ”;
  - (b) in paragraphs (a) and (b) for “the purchaser” substitute “ the transferee ”.
- (4) In paragraph 1(3) for “the purchaser” substitute “ the transferee ”.
- (5) In paragraph 2(1), for paragraph (b) substitute—
- “(b) at the time of the disqualifying event the partnership property includes a chargeable interest—
    - (i) that was held as partnership property immediately after the relevant transaction, or
    - (ii) that is derived from an interest held as partnership property at that time.”.

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- (6) In paragraph 2(3)(a), for “the purchaser” substitute “ the transferee ”.
- (7) In paragraph 2(3), for paragraph (b) substitute—
- “ (b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.
- (8) For paragraph 2(4) substitute—
- “ (4) In sub-paragraphs (1) and (2) an “appropriate proportion” means an appropriate proportion having regard to—
- (a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and
- (b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.
- (9) After paragraph 2 insert—

*“Interpretation*

- 3 (1) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).
- (2) Paragraph 34 (1) of Schedule 15 (meaning of references to partnership property) applies for the purposes of this Schedule as it applies for the purposes of Part 3 of that Schedule.”.

*Acquisition of interest in partnership not chargeable except as specially provided*

- 29 Except as provided by—
- (a) paragraph 10 (transfer of chargeable interest to a partnership), or
- (b) paragraph 14 (transfer of partnership interest: consideration given and chargeable interest held), or
- (c) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements),
- the acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land.

*Transactions that are not notifiable*

- 30 (1) A transaction which is a chargeable transaction by virtue of paragraph 14 or 17 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the zero rate threshold.
- (2) The consideration for a transaction exceeds the zero rate threshold if either or both of the following conditions are met—
- (a) the relevant consideration for the purposes of section 55 (amount of tax chargeable: general) is such that the rate of tax chargeable under that section is 1% or higher;

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- (b) the relevant rental value for the purposes of Schedule 5 (amount of tax chargeable: rent) is such that the rate of tax chargeable under that Schedule is 1% or higher.

*Stamp duty on transfers of partnership interests: continued application*

- 31 (1) Nothing in section 125 (abolition of stamp duty except in relation to stock or marketable securities), or in Part 2 of Schedule 20 (amendments and repeals consequential on that section), affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected.
- (2) In Part 1 of Schedule 20 (provisions supplementing section 125) references to stock or marketable securities shall be read as including any property that is the subject-matter of a transaction by which an interest in a partnership is transferred.
- (3) In their application in relation to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect subject to paragraphs 32 and 33.

*Stamp duty on transfers of partnership interests: modification*

- 32 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
- (b) the relevant partnership property includes a chargeable interest.
- (2) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer.
- (3) The consideration for the transaction shall (subject to sub-paragraph (8)) be taken to be equal to the actual consideration for the transaction less the excluded amount.
- (4) The excluded amount is a proportion of the net market value of the relevant partnership property immediately after the transfer.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
- (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of a chargeable interest at a particular date is—

MVSL

where—

MV is the market value of the chargeable interest at that date, and

SL is the amount outstanding at that date on any loan secured solely on the chargeable interest.

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- (7) If, in relation to a chargeable interest, SL is greater than MV, the net market value of the chargeable interest shall be taken to be nil.
- (8) If the excluded amount is greater than the actual consideration for the transaction, the consideration for the transaction shall be taken to be nil.
- (9) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- 33 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
  - (b) the relevant partnership property includes stock or marketable securities.
- (2) The relevant partnership property, in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer.
- (3) The stamp duty chargeable on the instrument shall not exceed the stamp duty that would be chargeable if—
- (a) the instrument were an instrument effecting a transfer of the stock and marketable securities comprised in the relevant partnership property, and
  - (b) the consideration for the transfer were equal to the net market value of that stock and those securities immediately after the transfer, less the excluded amount.
- (4) The excluded amount is a proportion of the net market value of that stock and those securities immediately after the transfer.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of stock or securities at a particular date is—
- MVSL
- where—
- MV is the market value of the stock or securities at that date, and
- SL is the amount outstanding at that date on any loan secured solely on the stock or securities.
- (7) If, in relation to any stock or securities, SL is greater than MV, the net market value of the stock or securities shall be taken to be nil.
- (8) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.

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(9) This paragraph shall be construed as one with the Stamp Act 1891.

*Interpretation: partnership property and partnership share*

- 34 (1) Any reference in this Part of this Schedule to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.
- (2) Any reference in this Part of this Schedule to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profits of the partnership.

*Interpretation: transfer of chargeable interest to a partnership*

- 35 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

*Interpretation: transfer of interest in a partnership*

- 36 For the purposes of this Part of this Schedule, there is a transfer of an interest in a partnership where arrangements are entered into under which—
- (a) a partner transfers the whole or part of his interest as partner to another person (who may be an existing partner), or
  - (b) a person becomes a partner and an existing partner reduces his interest in the partnership or ceases to be a partner.

*Interpretation: transfer of chargeable interest from a partnership*

- 37 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest from a partnership in any case where—
- (a) a chargeable interest that was partnership property ceases to be partnership property, or
  - (b) a chargeable interest is granted or created out of partnership property and the interest is not partnership property.

*Interpretation: market value of leases*

- 38 (1) This paragraph applies in relation to a lease for the purposes of this Part of this Schedule if—
- (a) the grant of the lease is or was a transaction to which paragraph 10 applies or applied (or a transaction to which paragraph 10 would have applied if that paragraph had been in force at the time of the grant), or
  - (b) the grant of the lease is a transaction to which paragraph 18 applies.
- (2) In determining the market value of the lease, an obligation of the tenant under the lease is to be taken into account if (but only if)—
- (a) it is an obligation such as is mentioned in paragraph 10 (1) of Schedule 17A, or
  - (b) it is an obligation to make a payment to a person.

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*Interpretation: connected persons*

- 39 (1) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Part of this Schedule.
- (2) As applied by sub-paragraph (1), that section has effect with the omission of subsection (4) (partners connected with each other).

*Interpretation: arrangements*

- 40 In this Part of this Schedule “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.]

SCHEDULE 16

Section 105

STAMP DUTY LAND TAX: TRUSTS AND POWERS

*Meaning of “settlement” and “bare trust”*

- 1 (1) In this Part “settlement” means a trust that is not a bare trust.
- (2) In this Part a “bare trust” means a trust under which property is held by a person as trustee—
- (a) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being a minor or other person under a disability, or
  - (b) for two or more persons who are or would be jointly so entitled,
- and includes a case in which a person holds property as nominee for another.
- (3) In sub-paragraph (2)(a) and (b) the references to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee, to resort to the property for payment of duty, taxes, costs or other outgoings or to direct how the property is to be dealt with.
- (4) In sub-paragraph (2) “minor”, in relation to Scotland, means a person under legal disability by reason of nonage.

*Interests of beneficiaries under certain trusts*

- 2 Where property is held in trust under the law of Scotland, or of a country or territory outside the United Kingdom, on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property—
- (a) that beneficiary shall be treated for the purposes of this Part as having such an interest notwithstanding that no such interest is recognised by the law of Scotland or, as the case may be, the country or territory outside the United Kingdom, and
  - (b) an acquisition of the interest of a beneficiary under the trust shall accordingly be treated as involving the acquisition of an interest in the trust property.

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*Acquisition etc by bare trustee attributed to beneficial owner*

- 3 Where a person acquires a chargeable interest as bare trustee, this Part applies as if the interest were vested in, and the acts of the trustee in relation to it were the acts of, the person or persons for whom he is trustee.

*Acquisition by trustees of settlement*

- 4 Where persons acquire a chargeable interest as trustees of a settlement, they are treated for the purposes of this Part, as it applies in relation to that acquisition, as purchasers of the whole of the interest acquired (including the beneficial interest).

*Responsibility of trustees of settlement*

- 5 (1) Where the trustees of a settlement are liable—
- (a) to make a payment of tax or interest on unpaid tax,
  - (b) to make a payment in accordance with an assessment under paragraph 29 of Schedule 10 (recovery of excessive repayment), or
  - (c) to a penalty under this Part or to interest on such a penalty,
- the payment, penalty or interest may be recovered (but only once) from any one or more of the responsible trustees.
- (2) No amount may be recovered by virtue of sub-paragraph (1)(c) from a person who did not become a responsible trustee until after the relevant time.
- (3) The responsible trustees, in relation to a land transaction, are the persons who are trustees at the effective date of the transaction and any person who subsequently becomes a trustee.
- (4) The relevant time for this purpose is—
- (a) in relation to so much of a penalty as is payable in respect of any day, or to interest on so much of a penalty as is so payable, the beginning of that day;
  - (b) in relation to any other penalty, or interest on such a penalty, the time when the act or omission occurred that caused the penalty to become payable.

*Relevant trustees for purposes of return etc*

- 6 (1) A return or self-certificate in relation to a land transaction may be made or given by any one or more of the trustees who are the responsible trustees in relation to the transaction.
- The trustees by whom such a return or self-certificate is made are referred to below as “the relevant trustees”.
- (2) The declaration required by paragraph 1(1)(c) of Schedule 10 or paragraph 2(1)(c) of Schedule 11 (declaration that return or self-certificate is complete and correct) must be made by all the relevant trustees.
- (3) If the Inland Revenue give notice of an enquiry into the return or self-certificate—
- (a) the notice must be given to each of the relevant trustees,
  - (b) the powers of the Inland Revenue as to the production of documents and provision of information for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the relevant trustees,



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- (c) any of the relevant trustees may apply for a direction that a closure notice be given (and all of them are entitled to appear and be heard on the application), and
- (d) the closure notice must be given to each of the relevant trustees.

Provided that a notice is not invalidated by virtue of paragraph (a) or (d) if it is given to each of the relevant trustees whose identity is known to the Inland Revenue.

- (4) A Revenue determination or discovery assessment relating to the transaction must be made against all of the relevant trustees and is not effective against any of them unless notice of it is given to each of them whose identity is known to the Inland Revenue.
- (5) In the case of an appeal arising from proceedings under this Part relating to the transaction—
  - (a) the appeal may be brought by any of the relevant trustees,
  - (b) notice of the appeal must be given to any of them by whom it is not brought,
  - (c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,
  - (d) if it is not settled, any of them are entitled to appear and be heard, and
  - (e) the decision on the appeal binds all of them.

*Consideration for exercise of power of appointment or discretion*

7 Where a chargeable interest is acquired by virtue of—

- (a) the exercise of a power of appointment, or
- (b) the exercise of a discretion vested in trustees of a settlement,

there shall be treated as consideration for the acquisition of the interest or right by virtue of the exercise of the power or discretion any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion.

SCHEDULE 17

Section 115

STAMP DUTY LAND TAX: GENERAL AND SPECIAL  
COMMISSIONERS, APPEALS AND OTHER PROCEEDINGS

*General and Special Commissioners: application of general provisions*

1 Part 1 of the Taxes Management Act 1970 (c. 9) (administration) has effect as if this Part of this Act were part of the Taxes Acts.

*Prescribed matters to be determined by Commissioners or Lands Tribunal*

- 2 (1) The Lord Chancellor may make regulations providing that a question, dispute, appeal or other matter that is of a prescribed description and arises in relation to the provisions of this Part is to be determined—
  - (a) by the General Commissioners,
  - (b) by the Special Commissioners,
  - (c) by the General or Special Commissioners, or

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(d) by the relevant Lands Tribunal.

(2) In this paragraph—

“prescribed” means prescribed in regulations under this paragraph;

“relevant Lands Tribunal” means—

- (a) in relation to land in England and Wales, the Lands Tribunal;
- (b) in relation to land in Scotland, the Lands Tribunal for Scotland;
- (c) in relation to land in Northern Ireland, the Lands Tribunal for Northern Ireland.

*General or Special Commissioners: jurisdiction*

- 3
- (1) Where the General or Special Commissioners have jurisdiction in respect of a matter, the Lord Chancellor may make regulations for determining—
    - (a) whether the General or Special Commissioners, or both of them, are to have the jurisdiction, and
    - (b) if both of them are to have the jurisdiction, how it is to be divided between them.
  - (2) Where the General Commissioners have jurisdiction in respect of a matter, the General Commissioners for that division which is determined in accordance with regulations made by the Lord Chancellor under this paragraph are to have the jurisdiction.
  - (3) The Lord Chancellor may make regulations—
    - (a) providing that, in certain circumstances, the Special Commissioners are to have jurisdiction in respect of a matter instead of the General Commissioners or the General Commissioners are to have jurisdiction instead of the Special Commissioners;
    - (b) providing that, in certain circumstances, the General Commissioners for one division are to have jurisdiction in respect of a matter instead of the General Commissioners for another division.

*Proceedings brought out of time*

- 4
- (1) An appeal under this Part to the General or Special Commissioners may be brought out of time with the consent in writing of an officer of the Board or the Board.
  - (2) Consent shall be given if the officer or, as the case may be, the Board are satisfied—
    - (a) that there was a reasonable excuse for not bringing the appeal within the time limit, and
    - (b) that an application for consent was made without unreasonable delay.
  - (3) If the officer or, as the case may be, the Board are not so satisfied, they shall refer the matter for determination by the Commissioners.
  - (4) If there is a right to elect to bring the appeal before the Special Commissioners instead of before the General Commissioners, the Commissioners to whom an application under this paragraph is to be referred are the General Commissioners, unless the election has been made before the application is referred.

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### *Quorum etc of the Commissioners*

- 5 The Lord Chancellor may make regulations about the number of General or Special Commissioners required or permitted to perform functions in relation to a relevant matter.

### *Procedure*

- 6 (1) The Lord Chancellor may make regulations about the practice and procedure to be followed in connection with matters in respect of which the Special or General Commissioners have jurisdiction.
- (2) The regulations may, in particular, include provision—
- (a) enabling the Commissioners to join as a party to the proceedings a person who would not otherwise be a party;
  - (b) for requiring a party to the proceedings to provide information and make documents available for inspection by—
    - (i) the Commissioners,
    - (ii) any party to the proceedings, or
    - (iii) an officer of the Board;
  - (c) for requiring persons to attend the hearing to give evidence and produce documents;
  - (d) as to evidence generally in relation to proceedings;
  - (e) enabling the Commissioners to review their decisions;
  - (f) for the imposition of penalties not exceeding an amount specified in the regulations;
  - (g) for the determination and recovery of penalties imposed by virtue of paragraph (f) and for appeals against such penalties.

### *Consequences of determination by the Commissioners*

- 7 The Lord Chancellor may make regulations prescribing the consequences of any determination by the General or Special Commissioners in respect of a relevant matter.

### *Costs*

- 8 The Lord Chancellor may make regulations about—
- (a) the award by the General or Special Commissioners of the costs of, or incidental to, a determination by them in respect of a relevant matter;
  - (b) the recovery of costs so awarded.

### *Finality of decisions of the Commissioners*

- 9 (1) The Lord Chancellor may make regulations about the following matters—
- (a) the circumstances in which—
    - (i) a determination by the General or Special Commissioners in respect of a relevant matter, or
    - (ii) an award of costs under regulations under paragraph 8, may or may not be questioned;
  - (b) if a determination or award may be questioned, how it may be questioned.

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- (2) The regulations may—
- (a) authorise or require the Commissioners, in circumstances specified in the regulations, to state a case for the opinion of a court;
  - (b) make provision as to the practice and procedure to be followed in connection with cases so stated;
  - (c) make provision in relation to cases so stated corresponding to any provision made by section 56 of the Taxes Management Act 1970 (c. 9) (statement of case for opinion of High Court) or by that section as modified in its application to Northern Ireland by section 58 of that Act.
- (3) The regulations may—
- (a) provide for an appeal to lie to a court on a question of law arising from a decision of the Commissioners;
  - (b) make provision as to the practice and procedure to be followed in connection with such appeals;
  - (c) make provision in relation to such appeals corresponding to any provision made by section 56A of the Taxes Management Act 1970 (c. 9) (appeals from the Special Commissioners) or by that section as modified in its application to Northern Ireland by section 58 of that Act.

*Publication of reports of decisions*

- 10 (1) The Lord Chancellor may make regulations authorising the Special Commissioners to publish reports of such of their decisions as they consider appropriate.
- (2) The regulations shall provide that any report published that is not a report of proceedings heard in public must be in a form that so far as possible prevents the identification of any person whose affairs are dealt with in the report.
- (3) No obligation of secrecy to which the Special Commissioners are subject prevents their publishing reports of their decisions in accordance with provision made by virtue of this paragraph.

*Supplementary provisions*

- 11 (1) Any power to make regulations under this Schedule is exercisable only with the consent of the Scottish Ministers.
- (2) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Regulations under this Schedule may—
- (a) apply any other enactment, with or without modifications;
  - (b) make different provision for different cases or different circumstances;
  - (c) contain such supplementary, incidental, consequential and transitional provision as the Lord Chancellor thinks appropriate.
- (4) In this Schedule—
- (a) “relevant matter”, in relation to the General or Special Commissioners, means a matter in respect of which they have jurisdiction;
  - (b) references to the provisions of this Part include any instrument made under such a provision;

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- (c) references to the General or Special Commissioners having jurisdiction are to the Commissioners having jurisdiction by virtue of the provisions of this Part;
- (d) references to the General or Special Commissioners having jurisdiction in respect of a matter include cases where a question, dispute, appeal or other matter that arises in relation to the provisions of this Part is to be determined by the Commissioners.

## [<sup>F172</sup>SCHEDULE 17A

Section 120

### FURTHER PROVISIONS RELATING TO LEASES

#### Textual Amendments

**F172** Sch. 17A inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 22\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14) (with Sch. 39 paras. 11, 13(5))

#### Meaning of “lease”

- 1 In the application of this Part to England and Wales or Northern Ireland “lease” means—
- (a) an interest or right in or over land for a term of years (whether fixed or periodic), or
  - (b) a tenancy at will or other interest or right in or over land terminable by notice at any time.

#### Leases for a fixed term

- 2 In the application of the provisions of this Part to a lease for a fixed term, no account shall be taken of—
- (a) any contingency as a result of which the lease may determine before the end of the fixed term, or
  - (b) any right of either party to determine the lease or renew it.

#### Leases that continue after a fixed term

- 3 (1) This paragraph applies to—
- (a) a lease for a fixed term and thereafter until determined, or
  - (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Part (except section 77 (notifiable transactions)), a lease to which this paragraph applies is treated—
- (a) in the first instance as if it were a lease for the original fixed term and no longer,

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- (b) if the lease continues after the end of that term, as if it were a lease for a fixed term one year longer than the original fixed term,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term two years longer than the original fixed term,
- and so on.
- (3) Where the effect of sub-paragraph (2) in relation to the continuation of the lease after the end of a fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,
  - (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
- (5) For the purposes of section 77 (notifiable transactions) a lease to which this paragraph applies is a lease for whatever is its fixed term.

*Treatment of leases for indefinite term*

- 4 (1) For the purposes of this Part (except section 77 (notifiable transactions))—
- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of a year,
  - (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of two years,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of three years,
- and so on.
- (2) No account shall be taken for the purposes of this Part of any other statutory provision in England and Wales or Northern Ireland deeming a lease for an indefinite period to be a lease for a different term.
- (3) Where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that additional tax is payable in respect of a transaction or that tax is payable in respect of a transaction where none was payable before—
- (a) the purchaser must deliver a return or further return in respect of that transaction before the end of the period of 30 days after the end of that term,

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- (b) the return must include a self-assessment of the amount of tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of the tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessments and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to deliver land transaction return), with the adaptation that references to the effective date of the transaction shall be read as references to the day on which the lease becomes treated as being for a longer fixed term.
- (4A) For the purposes of section 77 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than seven years.
- (5) References in this paragraph to a lease for an indefinite period include—
- (a) a periodic tenancy or other interest or right terminable by a period of notice,
  - (b) a tenancy at will in England and Wales or Northern Ireland, or
  - (c) any other interest or right terminable by notice at any time.

#### *Treatment of successive linked leases*

- 5 (1) This paragraph applies where—
- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) those grants are linked transactions.
- (2) This Part applies as if the series of leases were a single lease—
- (a) granted at the time of the grant of the first lease in the series,
  - (b) for a term equal to the aggregate of the terms of all the leases, and
  - (c) in consideration of the rent payable under all of the leases.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Part except section 81A (return or further return in consequence of later linked transaction).

#### *Rent*

- 6 (1) For the purposes of this Part a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, shall be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of Schedule 4 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

#### *Variable or uncertain rent*

- 7 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
- (a) varies in accordance with provision in the lease, or

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- (b) is contingent, uncertain or unascertained.
- (2) As regards rent payable in respect of any period before the end of the fifth year of the term of the lease—
  - (a) the provisions of this Part apply as in relation to other chargeable consideration, and
  - (b) the provisions of section 51 (1) and (2) accordingly apply if the amount is contingent, uncertain or unascertained.
- (3) As regards rent payable in respect of any period after the end of the fifth year of the term of the lease, the annual amount is assumed for the purposes of this Part to be, in every case, equal to the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term.

In determining that amount take into account (if necessary) any amounts determined as mentioned in sub-paragraph (2)(b), but disregard paragraph 9(2) (deemed reduction of rent for overlap period in case of grant of further lease).

- (4) This paragraph has effect subject to paragraph 8 (adjustment where rent payable ceases to be uncertain).
- (5) No account shall be taken for the purposes of this Part of any provision for rent to be adjusted in line with the retail prices index.

*First rent review in final quarter of fifth year*

- 7A Where—
- (a) a lease contains provision under which the rent may be adjusted,
  - (b) under that provision the first (or only) such adjustment—
    - (i) is to an amount that (before the adjustment) is uncertain, and
    - (ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,
  - and
  - (c) the specified date falls within the three months before the beginning of the term of the lease,

this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date. References to the fifth year of the term of the lease shall be read accordingly.

*Adjustment where rent ceases to be uncertain*

- 8 (1) Where the provisions of section 51 (1) and (2) (contingent, uncertain or unascertained consideration) apply in relation to a transaction by virtue of paragraph 7 (uncertain rent) and—
- (a) the end of the fifth year of the term of the lease is reached, or
  - (b) the amount of rent payable in respect of the first five years of the term of the lease ceases to be uncertain at an earlier date,
- the following provisions have effect to require or permit reconsideration of how this Part applies to the transaction (and to any transaction in relation to which it is a linked transaction).



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- (2) For the purposes of this paragraph the amount of rent payable ceases to be uncertain when—
  - (a) in the case of contingent rent, the contingency occurs or it becomes clear that it will not occur, and
  - (b) in the case of uncertain or unascertained rent, the amount becomes ascertained.
- (3) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that a transaction becomes notifiable, or that additional tax is payable in respect of a transaction or that tax is payable where none was payable before—
  - (a) the purchaser must make a return to the Inland Revenue within 30 days of the date referred to in sub-paragraph (1)(a) or (b),
  - (b) the return must contain a self-assessment of the tax chargeable in respect of the transaction on the basis of the information contained in the return,
  - (c) the tax so chargeable is to be calculated by reference to the rates in force at the effective date of the transaction, and
  - (d) the return must be accompanied by payment of any tax or additional tax payable.
- (4) The provisions of Schedule 10 (returns, enquiries, assessment and other matters) apply to a return under this paragraph as they apply to a return under section 76 (general requirement to make land transaction return), subject to the adaptation that references to the effective date of the transaction shall be read as references to the date referred to in sub-paragraph (1)(a) or (b).
- (5) If the result as regards the rent paid or payable in respect of the first five years of the term of the lease is that less tax is payable in respect of the transaction than has already been paid—
  - (a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
  - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid.

*Rent for overlap period in case of grant of further lease*

- 9 (1) This paragraph applies where—
- (a) A surrenders an existing lease to B (“the old lease”) and in consideration of that surrender B grants a lease to A of the same or substantially the same premises (“the new lease”),
  - (b) the tenant under a lease (“the old lease”) of premises to which Part 2 of the Landlord and Tenant Act 1954 or the Business Tenancies (Northern Ireland) Order 1996 applies makes a request for a new tenancy (“the new lease”) which is duly executed,
  - (c) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in his original lease (“the old lease”)—
    - (i) in pursuance of an order of a court on a claim for relief against re-entry or forfeiture, or

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- (ii) in pursuance of a contractual entitlement arising in the event of the head lease being terminated,
- or
- (d) a person who has guaranteed the obligations of a lessee under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Part the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.
- (3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.
- (4) The rent that would have been payable under the old lease shall be taken to be the amount taken into account in determining the stamp duty land tax chargeable in respect of the acquisition of the old lease.
- (5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

*Tenants' obligations etc that do not count as chargeable consideration*

- 10 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—
- (a) any undertaking by the tenant to repair, maintain or insure the demised premises (in Scotland, the leased premises);
  - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management;
  - (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market;
  - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease;
  - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease.
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligation as is mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the surrender of the lease.

*Cases where assignment of lease treated as grant of lease*

- 11 (1) This paragraph applies where—
- (a) the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), or
  - (b) a lease is granted to a person as bare trustee of the grantor, with the result that the lease is treated as vested in the grantor by virtue of paragraph 3 of Schedule 16.

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- (2) The first assignment of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Part as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
  - (b) on the same terms as those on which the assignee holds that lease after the assignment.
- (3) The provisions are—
- (a) section 57A (sale and leaseback arrangements);
  - (b) Part 1 or 2 of Schedule 7 (group relief or reconstruction or acquisition relief);
  - (c) section 66 (transfers involving public bodies);
  - (d) Schedule 8 (charities relief);
  - (e) any such regulations as are mentioned in section 123(3) (regulations reproducing in relation to stamp duty land tax the effect of enactments providing for exemption from stamp duty).
- (4) This paragraph does not apply where the relief in question is group relief, reconstruction or acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment.
- (5) For the purposes of sub-paragraph (4) “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the purchaser ceasing to be a member of the same group as the vendor (within the meaning of Part 1 of Schedule 7);
  - (b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company mentioned in paragraph 9(1)(a) of that Schedule or, as the case may be, the event mentioned in paragraph 11(1)(a) or (2)(a) of that Schedule;
  - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 2(3) or 3(2) of Schedule 8.

*Assignment of lease: responsibility of assignee for returns etc*

- 12 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of—
- (a) section 80 (adjustment where contingency ceases or consideration is ascertained),
  - (b) section 81A (return or further return in consequence of later linked transaction),
  - (c) paragraph 3 or 4 of this Schedule (return or further return required where lease for indefinite period continues), or
  - (d) paragraph 8 of this Schedule (adjustment where rent ceases to be uncertain),
- shall, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor shall be treated as if it had been done by or in relation to the assignee.

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- (3) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 11).

*Agreement for lease*

- 12A (1) This paragraph applies where in England and Wales or Northern Ireland—
- (a) an agreement for a lease is entered into, and
  - (b) the agreement is substantially performed without having been completed.
- (2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.
- The effective date of the transaction is that date.
- (3) Where a lease is subsequently granted in pursuance of the agreement—
- (a) the notional lease is treated as if it were surrendered at that time, and
  - (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (4) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.
- Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.
- (5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

*Assignment of agreement for lease*

- 12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights), where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.
- (2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if—
- (a) the contract were with the assignee and not the assignor, and
  - (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.
- (3) If the assignment occurs after the agreement has been substantially performed—
- (a) the assignment is a separate land transaction, and
  - (b) the effective date of that transaction is the date of the assignment.
- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.

*Increase of rent treated as grant of new lease: variation of lease*

- 13 (1) Where a lease is varied so as to increase the amount of the rent, the variation is treated for the purposes of this Part as if it were the grant of a lease in consideration of the additional rent made payable by it.

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- (2) Sub-paragraph (1) does not apply to an increase of rent in pursuance of a provision contained in the lease (but see paragraph 14).

*Increase of rent treated as grant of new lease: abnormal increase after fifth year*

- 14 (1) This paragraph applies if, after the end of the fifth year of the term of a lease—
- (a) the amount of rent payable increases (or is increased) in accordance with the provisions of the lease, and
  - (b) the rent payable as a result (“the new rent”) is such that the increase falls to be regarded as abnormal (see paragraph 15).
- (2) The increase in rent is treated as if it were the grant of a lease in consideration of the excess rent.
- (3) The excess rent is the difference between the new rent and the rent previously taxed.
- (4) The rent previously taxed is—
- (a) where the provisions of this paragraph have not previously applied to a rent increase under the lease, the rent that is assumed to be payable after the fifth year of the term of the lease (in accordance with paragraph 7(3));
  - (b) where the provisions of this paragraph have previously so applied, the rent payable as a result of the last increase in relation to which the provisions of this paragraph applied.
- (5) The deemed grant is treated as—
- (a) made on the date on which the increased rent first became payable, and
  - (b) for a term equal to the unexpired part of the original lease,
- and as linked with the grant of the original lease (and with any other transaction with which that transaction is linked).
- (6) The assumption in paragraph 7(3) (that the rent does not change after the end of the fifth year of the term of a lease) does not apply for the purposes of this paragraph or paragraph 15 except for the purpose of determining the rent previously taxed.

*Increase of rent after fifth year: whether regarded as abnormal*

- 15 Whether an increase in rent is to be regarded for the purposes of paragraph 14 as abnormal is determined as follows:— *Step One*

Find the start date, which is—

- (a) where the provisions of that paragraph have not previously applied to a rent increase under the lease, the beginning of the period by reference to which the rent assumed to be payable after the fifth year of the term of the lease is determined in accordance with paragraph 7(3);
- (b) where the provisions of that paragraph have previously so applied, the date of the last increase in relation to which the provisions of that paragraph applied.

*Step Two*

Divide the period between the start date and the date on which the new rent first becomes payable (“the reference period”) into—

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- (a) successive periods of twelve months running from the start date (if any), and
- (b) any remaining period which does not fall within paragraph (a).

*Step Three*

Find the factor by which the retail prices index has increased over each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

If, in relation to any period, RD is equal to or less than RI, the factor by which the retail prices index has increased over the period in question shall be treated as nil.

If, in relation to any period, the figure determined in accordance with the formula would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

*Step Four*

Find the relevant factor for each period identified in step two.

This is a figure expressed as a decimal and determined by the formula—

where—

- m is the number of months in the period in question (treating part of a month as a whole month), and
- r is the factor by which the retail prices index has increased over the period in question, determined under step three.

If, in relation to any period, the figure determined in accordance with the formula would have more than 3 decimal places, round it to the nearest third decimal place.

*Step Five*

Find the uplift factor for the reference period as follows.

If there is only one period identified in step two, the uplift factor for the reference period is the relevant factor for that period.

If there are only two periods identified in step two, the uplift factor for the reference period is calculated by multiplying the relevant factors for those periods.

If there are more than two periods identified in step two, the uplift factor for the reference period is calculated by—

- (a) multiplying the relevant factors for the first two periods,
- (b) multiplying the result by the relevant factor for the next period,
- (c) if there are further periods, multiplying the result by the relevant factor for the next period,

until all periods have been taken into account.

If the uplift factor for the reference period would be a figure having more than 3 decimal places, round it to the nearest third decimal place.

*Step Six*

The rent increase is regarded as abnormal if the new rent is greater than:

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### *Reduction of rent or term*

- 15A (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessee.
- (2) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessor.

### *Surrender of existing lease in return for new lease*

- 16 Where a lease is granted in consideration of the surrender of an existing lease between the same parties—
- (a) the grant of the new lease does not count as chargeable consideration for the surrender, and
  - (b) the surrender does not count as chargeable consideration for the grant of the new lease.

Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.

### *Assignment of lease: assumption of obligations by assignee*

- 17 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
  - (b) to perform or observe any other undertaking of the tenant under the lease, does not count as chargeable consideration for the assignment.

### *Reverse premium*

- 18 (1) In the case of the grant, assignment or surrender of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant;
  - (b) in relation to the assignment of a lease, a premium moving from the assignor to the assignee;
  - (c) in relation to the surrender of a lease, a premium moving from the tenant to the landlord.

### *Provisions relating to leases in Scotland*

- 19 (1) In the application of this Part to Scotland—
- (a) any reference to the term of a lease is to the period of the lease, and
  - (b) any reference to the reversion on a lease is to the interest of the landlord in the property subject to the lease.
- (2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”)—
- (a) the first lease is treated as if it were surrendered at that time, and

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- (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
- (3) Where in Scotland—
- (a) there is an agreement (including missives of let not constituting a lease) under which a lease is to be executed, and
- (b) the agreement is substantially performed without a lease having been executed,
- the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.
- The effective date of the transaction is when the agreement is substantially performed.
- (4) Where sub-paragraph (3) applies and at some later time a lease is executed—
- (a) the notional lease is treated as if it were surrendered at that time, and
- (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
- (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same property and period as, the missives of let or other agreement.
- (6) Where sub-paragraph (3) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph shall (to that extent) be repaid by the Inland Revenue.
- Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.]

## SCHEDULE 18

Section 123

### STAMP DUTY LAND TAX: CONSEQUENTIAL AMENDMENTS

#### *Provisional Collection of Taxes Act 1968*

- 1 In section 1(1) of the Provisional Collection of Taxes Act 1968 (c. 2), after “stamp duty reserve tax,” insert “ stamp duty land tax, ”.

#### *Inheritance Tax Act 1984*

- 2 In section 190(4) of the Inheritance Tax Act 1984 (c. 51) (sale of land from deceased’s estate: determination of price), after “stamp duty” insert “ or stamp duty land tax ”.

#### *Income and Corporation Taxes Act 1988*

- 3 (1) The Income and Corporation Taxes Act 1988 (c. 1) is amended as follows.
- (2) In section 209B(4) (hedging arrangements), in subsection (4) for “or stamp duty” substitute “ (including stamp duty or stamp duty land tax) ”.



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- (3) In section 213 (exempt distributions), in subsection (11)(a) for “stamp duty” substitute “ stamp duty or stamp duty land tax ”.
- (4) In section 214 (chargeable payments connected with exempt distributions), in subsection (2) for “stamp duty” substitute “ stamp duty or stamp duty land tax ”.
- (5) In section 215 (advance clearance by Board of distributions and payments), in subsection (2) for “stamp duty” substitute “ stamp duty or stamp duty land tax ”.
- (6) In section 827 (penalties and interest not allowed as deductions for tax purposes), after subsection (1F) insert—
  - “(1G) Where a person is liable to make a payment by way of—
    - (a) any penalty under Part 4 of the Finance Act 2003 (stamp duty land tax), or
    - (b) interest under any provision of that Part,the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”.

#### *Finance Act 1989*

- 4 In section 178(2) of the Finance Act 1989 (c. 26) (power of Treasury to set rates of interest: enactments to which the section applies), after paragraph (s) add—
  - “(t) sections 87, 88 and 89 of the Finance Act 2003.”.

#### *Taxation of Chargeable Gains Act 1992*

- 5 In section 38(2) of the Taxation of Chargeable Gains Act 1992 (c. 12) (incidental costs of acquisition or disposal), after “stamp duty” insert “ or stamp duty land tax ”.

#### *Income Tax (Earnings and Pensions) Act 2003*

- 6 In section 277 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (removal benefits and expenses: acquisition of property), in subsection (3)(e) after “stamp duty” insert “ or stamp duty land tax ”.

## SCHEDULE 19

Section 124

### STAMP DUTY LAND TAX: COMMENCEMENT AND TRANSITIONAL PROVISIONS

#### *Introduction*

- 1 (1) Subject to the provisions of this Schedule, the provisions of this Part come into force on the passing of this Act.
- (2) The following provisions have effect as regards what transactions are SDLT transactions, that is, are chargeable or notifiable or are transactions in relation to which section 79 (registration etc) applies.

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- (3) Nothing in this Schedule shall be read as meaning that other transactions, whether effected before or after the passing of this Act, are to be disregarded in applying the provisions of this Part.

**Commencement Information**

**I105** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*The implementation date*

- 2 (1) A transaction is not an SDLT transaction unless the effective date of the transaction is on or after the implementation date.
- (2) In this Part “the implementation date” means the date appointed by Treasury order as the implementation date for the purposes of stamp duty land tax.

**Commencement Information**

**I106** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Contract entered into before first relevant date*

- 3 (1) Subject to the following provisions of this paragraph, a transaction is not an SDLT transaction if it is effected in pursuance of a contract entered into before the first relevant date.
- (2) The “first relevant date” is the day after the passing of this Act.
- (3) The exclusion of transactions effected in pursuance of contracts entered into before the first relevant date does not apply—
- (a) if there is any variation of the contract or assignment of rights under the contract on or after that date;
  - (b) if the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right;
  - <sup>[F173]</sup>(c) if on or after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.]

**Textual Amendments**

**F173** Sch. 19 para. 3(3)(c) substituted (with effect in accordance with Sch. 39 para. 13(3)-(6) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 12](#)

**Commencement Information**

**I107** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Contract substantially performed before implementation date*

- 4 (1) This paragraph applies where a transaction—

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- (a) is completed on or after the implementation date,
  - (b) is effected in pursuance of a contract entered into and substantially performed before that date, and
  - (c) is not excluded from being an SDLT transaction by paragraph 3.
- (2) The transaction is not an SDLT transaction if the contract was substantially performed before the first relevant date.
- (3) In any other case, the fact that the contract was substantially performed before the implementation date does not affect the matter.

Accordingly, the effective date of the transaction is the date of completion.

#### Commencement Information

**I108** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

#### <sup>F174</sup>*Contracts substantially performed after implementation date*

#### Textual Amendments

**F174** Sch. 19 paras. 4A, 4B and cross-heading inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 24](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

- 4A Where—
- (a) a transaction is effected in pursuance of a contract entered into before the first relevant date,
  - (b) the contract is substantially performed, without having been completed, after the implementation date, and
  - (c) there is subsequently an event within paragraph 3(3) by virtue of which the transaction is an SDLT transaction,
- the effective date of the transaction shall be taken to be the date of the event referred to in paragraph (c) (and not the date of substantial performance).

#### *Application of provisions in case of transfer of rights*

- 4B (1) This paragraph applies where section 44 (contract and conveyance) has effect in accordance with section 45 (effect of transfer of rights).
- (2) Any reference in paragraph 3, 4 or 4A to the date when a contract was entered into (or made) shall be read, in relation to a contract deemed to exist by virtue of section 45(3) (deemed secondary contract with transferee), as a reference to the date of the assignment, subsale or other transaction in question.]

#### *Credit for ad valorem stamp duty paid*

- 5 (1) Where a transaction chargeable to stamp duty land tax is effected in pursuance of a contract entered into before the implementation date, any *ad valorem* stamp duty

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paid on the contract shall go to reduce the amount of tax payable (but not so as to give rise to any repayment).

- (2) Where the application or operation of any exemption or relief from stamp duty land tax turns on whether tax was paid or payable in respect of an earlier transaction, that requirement is treated as met if *ad valorem* stamp duty was paid or (as the case may be) payable in respect of the instrument by which that transaction was effected.

#### Commencement Information

**I109** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Effect for stamp duty purposes of stamp duty land tax being paid or chargeable*

6 <sup>F175</sup>(1) .....

- (2) The references in section 111(1)(c) of, and paragraph 4(3) of Schedule 34 to, the Finance Act 2002 (c. 23) (which relate to the circumstances in which stamp duty group relief is withdrawn) to a transfer at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which group relief was not claimed shall be read, on or after the implementation date, as including a reference to a transfer at market value by a chargeable transaction in respect of which relief under Part 1 of Schedule 7 to this Act was available but was not claimed.
- (3) The references in section 113(1)(c) of, and in paragraph 3(3) or 4(3) of Schedule 35 to, the Finance Act 2002 (which relate to the circumstances in which stamp duty company acquisitions relief is withdrawn) to a transfer at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which section 76 relief was not claimed shall be read, on or after the implementation date, as including a reference to a transfer at market value by a chargeable transaction on which stamp duty land tax was chargeable and in respect of which relief under Part 2 of Schedule 7 to this Act was available but was not claimed.

#### Textual Amendments

**F175** Sch. 19 para. 6(1) repealed (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 4\(2\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

#### Commencement Information

**I110** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

*Earlier related transactions under stamp duty*

- 7 (1) In relation to a transaction that is not an SDLT transaction but which is linked to an SDLT transaction and accordingly falls to be taken into account in determining the rate of stamp duty land tax chargeable on the latter transaction, any reference in this Part to the chargeable consideration for the first-mentioned transaction shall be read as a reference to the consideration by reference to which *ad valorem* stamp duty was payable in respect of the instrument by which that transaction was effected.

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- [<sup>F176</sup>(2) In paragraph 3 of Schedule 9 (relief for transfer of reversion under shared ownership lease where election made for market value treatment) and paragraph 4A of that Schedule (shared ownership lease: treatment of staircasing transaction) as they apply in a case where the original lease was granted before the implementation date—
- (a) a reference to a lease to which paragraph 2 of that Schedule applies shall be read as a reference to a lease to which section 97 of the Finance Act 1980 applied (which made provision for stamp duty corresponding to that paragraph), and
  - (b) a reference to an election having been made for tax to be charged in accordance with paragraph 2 or 4 of that Schedule shall be read as a reference to the lease having contained a statement of the parties' intention such as is mentioned in section 97(2)(d) of the Finance Act 1980 or, as the case may be, paragraph (d) of section 108(5) of the Finance Act 1981 (which made provision for stamp duty corresponding to paragraph 4).]
- (3) In section 54 (exceptions from deemed market value rule for transactions with connected company) the reference in subsection (4)(b) to group relief having been claimed in respect of a transaction shall be read in relation to a transaction carried out before the implementation date as a reference to relief having been claimed under section 42 of the Finance Act 1930 (c. 28), section 11 of the Finance Act (Northern Ireland) 1954 (c. 23 (N. I.)) or section 151 of the Finance Act 1995 (c. 4) in respect of stamp duty on the instrument by which the transaction was effected.
- [<sup>F177</sup>(4) For the purposes of paragraph 5 of Schedule 17A (treatment of successive linked leases) no account shall be taken of any transaction that is not an SDLT transaction.]

#### Textual Amendments

- F176** Sch. 19 para. 7(2) substituted (retrospective to 1.12.2003) by [Finance Act 2004 \(c. 12\), s. 303\(3\)](#)
- F177** Sch. 19 para. 7(4) added (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 39 para. 22\(8\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

#### Commencement Information

- I111** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

[<sup>F178</sup>*Stamping of contract where transaction on completion subject to stamp duty land tax*

#### Textual Amendments

- F178** Sch. 19 para. 7A and cross-heading inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\), Sch. 39 para. 25\(1\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

7A (1) This paragraph applies where—

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- (a) a contract that apart from paragraph 7 of Schedule 13 to the Finance Act 1999 (contracts chargeable as conveyances on sale) would not be chargeable with stamp duty is entered into before the implementation date,
  - (b) a conveyance made in conformity with the contract is effected on or after the implementation date, and
  - (c) the transaction effected on completion is an SDLT transaction or would be but for an exemption or relief from stamp duty land tax.
- (2) If in those circumstances the contract is presented for stamping together with a Revenue certificate as to compliance with the provisions of this Part of this Act in relation to the transaction effected on completion—
- (a) the payment of stamp duty land tax on that transaction or, as the case may be, the fact that no such tax was payable shall be denoted on the contract by a particular stamp, and
  - (b) the contract shall be deemed thereupon to be duly stamped.
- (3) In this paragraph “conveyance” includes any instrument.]

*[<sup>F179</sup>Stamping of agreement for lease where grant of lease subject to stamp duty land tax]*

#### Textual Amendments

**F179** Sch. 19 para. 8 heading substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 39 para. 25\(2\)\(a\)](#) (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

- 8 (1) [<sup>F180</sup>This paragraph applies where—]
- (a) an agreement for a lease is entered into before the implementation date,
  - (b) a lease giving effect to the agreement is executed on or after that date, and
  - (c) the transaction effected on completion is an SDLT transaction or would be but for an exemption or relief from stamp duty land tax.
- [<sup>F181</sup>(2) If in those circumstances the agreement is presented for stamping together with a Revenue certificate as to compliance with the provisions of this Part of this Act in relation to the grant of the lease—
- (a) the payment of stamp duty land tax in respect of the grant of the lease or, as the case may be, the fact that no such tax was payable shall be denoted on the agreement by a particular stamp, and
  - (b) the agreement shall be deemed thereupon to be duly stamped.]
- (3) For the purposes of this paragraph a lease gives effect to an agreement if the lease either is in conformity with the agreement or relates to substantially the same property and term as the agreement.
- (4) References in this paragraph to an agreement for a lease include missives of let in Scotland.

*Status: Point in time view as at 18/04/2005.*

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### Textual Amendments

**F180** Words in Sch. 19 para. 8(1) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 39 para. 25(2)(b)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

**F181** Sch. 19 para. 8(2) substituted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), **Sch. 39 para. 25(3)** (which amending provision re-enacts, subject to certain changes, a corresponding amendment made by the now revoked [Stamp Duty and Stamp Duty Land Tax \(Variation of the Finance Act 2003\) \(No. 2\) Regulations 2003 \(S.I. 2003/2816\)](#), see Sch. 39 para. 14)

### Commencement Information

**I112** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

#### *Exercise of option or right of pre-emption acquired before implementation date*

- 9 (1) This paragraph applies where—
- an option binding the grantor to enter into a land transaction, or
  - a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,
- is acquired before the implementation date and exercised on or after that date.
- (2) Where the option or right was acquired on or after 17th April 2003, any consideration for the acquisition is treated as part of the chargeable consideration for the transaction resulting from the exercise of the option or right.
- (3) Where the option or right was varied on or after 17th April 2003 and before the implementation date, any consideration for the variation is treated as part of the chargeable consideration for the transaction resulting from the exercise of the option or right.
- (4) Whether or not sub-paragraph (2) or (3) applies, the acquisition of the option or right and any variation of the option or right is treated as linked with the land transaction resulting from the exercise of the option or right.
- But not so as to require the consideration for the acquisition or variation to be counted twice in determining the rate of tax chargeable on the land transaction resulting from the exercise of the option or right.
- (5) Where this paragraph applies any *ad valorem* stamp duty paid on the acquisition or variation of the option or right shall go to reduce the amount of tax payable on the transaction resulting from the exercise of the option or right (but not so as to give rise to any repayment).

### Commencement Information

**I113** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

#### *Supplementary*

- 10 In this Schedule “contract” includes any agreement.

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**Commencement Information**

**II14** Sch. 19 wholly in force at Royal Assent subject to Sch. 19, see s. 124, Sch. 19 para. 1(1)

SCHEDULE 20

Section 125

STAMP DUTY: RESTRICTION TO INSTRUMENTS  
 RELATING TO STOCK OR MARKETABLE SECURITIES

**PART 1**

SUPPLEMENTARY PROVISIONS

*Reduction of stamp duty where instrument partly relating to stock or marketable securities*

- 1 (1) This paragraph applies where stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (c. 16) (transfer on sale) is chargeable on an instrument that relates partly to stock or marketable securities and partly to property other than stock or marketable securities.
- (2) In such a case—
- (a) the consideration in respect of which duty would otherwise be charged shall be apportioned, on a just and reasonable basis, as between the stock or marketable securities and the other property, and
  - (b) the instrument shall be charged only in respect of the consideration attributed to the stock or marketable securities.

*Apportionment of consideration for stamp duty purposes*

- 2 (1) Where part of the property referred to in section 58(1) of the Stamp Act 1891 (c. 39) (consideration to be apportioned between different instruments as parties think fit) consists of stock or marketable securities, that provision shall have effect as if “the parties think fit” read “is just and reasonable”.
- (2) Where—
- (a) part of the property referred to in section 58(2) of the Stamp Act 1891 (property contracted to be purchased by two or more persons etc) consists of stock or marketable securities, and
  - (b) both or (as the case may be) all the relevant persons are connected with one another,
- that provision shall have effect as if the words from “for distinct parts of the consideration” to the end of the subsection read “, the consideration shall be apportioned in such manner as is just and reasonable, so that a distinct consideration for each part of the property transferred is set forth in the transfer relating to that part, and the transfer shall be charged with *ad valorem* duty in respect of that consideration.”.



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- (3) If in a case where sub-paragraph (1) or (2) applies the consideration is apportioned in a manner that is not just and reasonable, the enactments relating to stamp duty shall have effect as if—
- (a) the consideration had been apportioned in a manner that is just and reasonable, and
  - (b) the amount of any distinct consideration set forth in any transfer relating to a part of the property transferred were such amount as is found by a just and reasonable apportionment (and not the amount actually set forth).
- (4) For the purposes of sub-paragraph (2)—
- (a) a person is a relevant person if he is a person by or for whom the property is contracted to be purchased;
  - (b) the question whether persons are connected with one another shall be determined in accordance with section 839 of the Taxes Act 1988.

## PART 2

### CONSEQUENTIAL AMENDMENTS AND REPEALS

#### *Removal of unnecessary references to “conveyance”*

- 3 In the enactments relating to stamp duty for “conveyance or transfer”, wherever occurring, substitute “ transfer ”.

#### *Finance Act 1895*

- 4 In section 12 of the Finance Act 1895 (c. 16) (collection of stamp duty in cases of property vested by Act or purchased under statutory powers)—
- (a) in paragraph (a) for “property is” substitute “ stock or marketable securities are ”;
  - (b) in paragraph (b) for “property” substitute “ stock or marketable securities ”;
  - (c) in the closing words for “conveyance”, in both places where that word occurs, substitute “ transfer ”.

#### *Finance Act 1990*

- 5 In section 108 of the Finance Act 1990 (c. 29) (transfer of securities: abolition of stamp duty), for subsections (1) to (6) substitute—
- “(1) Stamp duty shall not be chargeable under Schedule 13 to the Finance Act 1999 (transfer of securities).”.

#### *Finance Act 1999*

- 6 In paragraph 1(2) of Schedule 13 to the Finance Act 1999 (c. 16) for “conveyance on sale” substitute “ transfer on sale ”.

#### *Power to make further consequential amendments or repeals*

- 7 (1) The Treasury may by regulations make such other amendments or repeals of enactments relating to stamp duty or stamp duty reserve tax as appear to them

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appropriate in consequence of the abolition of stamp duty except on instruments relating to stock or marketable securities.

- (2) The regulations may include such transitional provisions and savings as appear to the Treasury to be appropriate.
- (3) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

## SCHEDULE 21

Section 139

### APPROVED SHARE PLANS AND SCHEMES

#### PART 1

#### SHARE INCENTIVE PLANS

##### *Introductory*

- 1 Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (approved share incentive plans) is amended as follows.

##### *Participation in more than one connected plan in a tax year*

- 2 After paragraph 18 insert—

##### *“Participation in more than one connected SIP in a tax year*

- 18A(1) The plan must provide that, if an individual participates in an award of shares under the plan in a tax year in which he has already participated in an award of shares under one or more other approved SIPs established by the company or a connected company—

- (a) paragraph 35 (maximum annual award of free shares),
- (b) paragraph 46 (maximum amount of partnership share money deductions), and
- (c) paragraph 64 (limit on amount reinvested),

apply as if the plan and the other plan or plans were a single plan.

- (2) In this paragraph “connected company” has the same meaning as in paragraph 18.”.

- 3 In paragraph 13 (eligibility of individuals: introduction), for the entry relating to paragraph 18 substitute—

“paragraph 18 (requirement not to participate simultaneously in connected SIPs), paragraph 18A (successive participation in connected SIPs), and”.

- 4 In paragraph 14(7) (eligibility to participate dependent on certain requirements of plan being met), for paragraph (b) substitute—

“(b) not participating simultaneously in connected SIPs (see paragraph 18),

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(ba) successive participation in connected SIPs (see paragraph 18A), and”.

5 In paragraph 18 (requirement not to participate in connected SIPs), omit sub-paragraph (1)(a) (successive participation in connected SIPs).

6 After paragraph 71 insert—

*“Duty to monitor participants in connected schemes*

71A The trust instrument must require the trustees to maintain records of participants who have participated in one or more other approved SIPs established by the company or a connected company.”.

*Partnership shares*

7 (1) Paragraph 46 (maximum amount of partnership share money deductions) is amended as follows.

(2) In sub-paragraph (1), for the words after “must not exceed” substitute “ £1,500 in any tax year. ”.

(3) In sub-paragraph (2), for the words after “an employee’s salary” substitute “ for any tax year must not exceed 10% of the employee’s salary for the tax year. ”.

(4) After that sub-paragraph insert—

“(4A) A limit lower than that specified in sub-paragraph (2) may be framed—

(a) as a proposition substituting a percentage lower than that so specified, or

(b) as a proposition that a particular description of earnings is not to be regarded as forming part of an employee’s salary for the purposes of that sub-paragraph.”.

(5) Sub-paragraphs (2) and (3) have effect for the year 2003-04 and subsequent years of assessment.

8 In paragraph 47 (minimum amount of deductions)—

(a) for “in any month” substitute “ on any occasion ”, and

(b) omit sub-paragraph (3).

**PART 2**

SAYE OPTION SCHEMES

*Introductory*

9 Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (approved SAYE option schemes) is amended as follows.

*Minor correction*

10 In paragraph 25(3)(a) (limit on contributions under CCS schemes linked to approved SAYE schemes), after “SAYE” insert “ option ”.

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*Exercise of options: scheme-related employment ends because of change of control or transfer*

- 11 (1) Paragraph 34 (exercise of options: scheme-related employment ends) is amended as follows.
- (2) In sub-paragraph (2)(a), after “1996” insert “ or ER(NI)O 1996 ”.
- (3) In sub-paragraph (5)—
- (a) for “provide that,” substitute “ make provision about the time when the options may be exercised ”, and
- (b) omit the words following paragraph (b).
- (4) After that sub-paragraph insert—
- “(5A) If the scheme makes provision by virtue of sub-paragraph (5), the provision must be either—
- (a) that the options may be exercised within 6 months after the termination date, or
- (b) that the options may be exercised within 6 months after the date (if any) when P ceases to hold the employment which (before the termination date) was the scheme-related employment for a reason within sub-paragraph (2)(a) or (b).”.

*Alteration of schemes*

- 12 (1) Paragraph 42 (withdrawal of approval) is amended as follows.
- (2) In sub-paragraph (2), after “to be met;” insert—
- “(aa) an alteration is made in a key feature of the scheme without the approval of the Inland Revenue;”.
- (3) After that sub-paragraph insert—
- “(2A) For the purposes of sub-paragraph (2)(aa) the Inland Revenue may not withhold their approval unless it appears to them at the time in question that the scheme as proposed to be altered would not then be approved on an application under paragraph 40.
- (2B) For the purposes of that sub-paragraph a “key feature” of a scheme is a provision of the scheme which is necessary in order to meet the requirements of this Schedule.”.
- (4) For paragraph 43 (approval ineffective after unapproved alteration and notice of decisions) and the heading before it substitute—

*“Notice of decision about alteration*

- 43 Where the Inland Revenue—
- (a) have been requested to approve any alteration in a SAYE option scheme that has been approved, and
- (b) have decided whether or not to approve the alteration,
- they must give notice of their decision to the scheme organiser.”.
- (5) For paragraph 44(1)(b) (appeal against decision not to approve alteration) substitute—

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“(b) decide to refuse approval under paragraph 42(2)(aa).”.

### PART 3

#### CSOP SCHEMES

##### *Introductory*

13 The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

##### *Exercise of options: exclusion of income tax liability*

14 (1) Section 524 (no charge in respect of exercise of option under CSOP scheme) is amended as follows.

(2) For subsection (1)(b) substitute—

“(b) Condition A or B is met.”.

(3) For subsections (2) and (3) substitute—

“(2) Condition A is that the option is exercised—

(a) on or after the third anniversary of the date on which it was granted, but

(b) not later than the tenth anniversary of that date.

(2A) Condition B is that the option—

(a) is exercised before the third anniversary of the date on which it was granted, and

(b) is so exercised by virtue of a provision included in the scheme under paragraph 24 of Schedule 4 (exercise of options after ceasing to be director or employee) in circumstances in which subsection (2B) applies.

(2B) This subsection applies if the individual exercising the option—

(a) has ceased to be a full-time director or qualifying employee of the scheme organiser (or, in the case of a group scheme, a constituent company) because of injury, disability, redundancy or retirement, and

(b) exercises the option within 6 months of the day on which he ceases to be such a director or employee.

(2C) In subsection (2B)—

“redundancy” means redundancy within the meaning of ERA 1996 or ER(NI)O 1996, and

“retirement” means retirement on or after reaching a retirement age specified in the scheme.”.

(4) For section 525(1)(b) (no charge in respect of post-acquisition benefits) substitute—

“(b) Condition A or B (as set out in section 524(2) or (2A)) is met.”.

(5) This paragraph has effect in relation to any exercise of an option on or after 9th April 2003.

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- 15 (1) Schedule 4 (approved CSOP schemes) is amended as follows.  
(2) After paragraph 35 insert—

*“Retirement age*

- 35A A retirement age specified in a CSOP scheme—  
(a) must be the same for men and women, and  
(b) must not be less than 55.”.

*Meaning of “material interest”*

- 16 (1) In paragraphs 10(2) and (3), 11(3) and (4) and 13(2) (material interest), for “10%” substitute “25%”.  
(2) This paragraph has effect for the purpose of determining whether a person is eligible to participate in a scheme on the date on which this Act is passed or any later date (by altering what constitutes a material interest on that date and within the 12 months preceding that date).

*Alteration of schemes*

- 17 (1) Paragraph 30 (withdrawal of approval) is amended as follows.  
(2) In sub-paragraph (2), after “to be met;” insert—  
“*(aa)* an alteration is made in a key feature of the scheme without the approval of the Inland Revenue;”.  
(3) After that sub-paragraph insert—  
“*(3)* For the purposes of sub-paragraph (2)(*aa*) the Inland Revenue may not withhold their approval unless it appears to them at the time in question that the scheme as proposed to be altered would not then be approved on an application under paragraph 28.  
*(4)* For the purposes of that sub-paragraph a “key feature” of a scheme is a provision of the scheme which is necessary in order to meet the requirements of this Schedule.”.  
(4) For paragraph 31 (approval ineffective after unapproved alteration and notice of decisions) and the heading before it substitute—

*“Notice of decision about alteration*

- 31 Where the Inland Revenue—  
(a) have been requested to approve any alteration in a CSOP scheme that has been approved, and  
(b) have decided whether or not to approve the alteration,  
they must give notice of their decision to the scheme organiser.”.  
(5) For paragraph 32(1)(b) (appeal against decision not to approve alteration) substitute—  
“(b) decide to refuse approval under paragraph 30(2)(*aa*).”.

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*PAYE*

18 (1) Section 701(2)(c) (PAYE: exclusions from meaning of “asset”) is amended as follows.

(2) In sub-paragraph (i), omit “or 4 (approved CSOP schemes)”.

(3) After that sub-paragraph insert—

“(ia) any shares acquired by the employee (whether or not as a result of the exercise of a right to acquire shares) under a scheme approved under Schedule 4 (approved CSOP schemes), other than shares acquired as a result of the exercise of the right before the third anniversary of the date on which it was granted or later than the tenth anniversary of that date;”.

<sup>F182</sup>(4) .....

(5) This paragraph has effect in relation to shares acquired on or after 9th April 2003.

**Textual Amendments**

**F182** Sch. 21 para. 18(4) repealed (with effect in accordance with s. 88(11) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(11\)](#)

SCHEDULE 22

Section 140

EMPLOYEE SECURITIES AND OPTIONS

*Introductory*

1 The Income Tax (Earnings and Pensions) Act 2003 (c. 1) is amended as follows.

*Main provisions*

2 (1) For Chapter 1 of Part 7 (and the heading of that Part) substitute—

“EMPLOYMENT INCOME: INCOME AND EXEMPTIONS RELATING TO SECURITIES

**CHAPTER 1**

INTRODUCTION

*General*

**Scope of Part 7**

417 (1) This Part contains special rules about cases where securities, interests in securities or securities options are acquired in connection with an employment.

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- (2) The rules are contained in—
- Chapter 2 (restricted securities),
  - Chapter 3 (convertible securities),
  - Chapter 3A (securities with artificially depressed market value),
  - Chapter 3B (securities with artificially enhanced market value),
  - Chapter 3C (securities acquired for less than market value),
  - Chapter 3D (securities disposed of for more than market value),
  - Chapter 4 (post-acquisition benefits from securities),
  - Chapter 5 (securities options),
  - Chapter 6 (approved share incentive plans),
  - Chapter 7 (approved SAYE option schemes),
  - Chapter 8 (approved CSOP schemes),
  - Chapter 9 (enterprise management incentives), and
  - Chapter 10 (priority share allocations).
- (3) The following make provision for amounts to count as employment income—
- Chapters 2 to 6, and
  - Chapter 8.
- (4) The following make provision for exemptions and reliefs from income tax—
- Chapters 2 and 3, and
  - Chapters 5 to 10.
- (5) Chapter 11 contains supplementary provisions relating to employee benefit trusts.
- (6) Section 5(1) (application of employment income Parts to office-holders generally) does not apply to Chapters 6 to 10; and section 549(5) makes provision about its application to Chapter 11.

### **Other related provisions**

418 (1) In Part 3—

- Chapter 1 (earnings), and
- Chapter 10 (taxable benefits: residual liability to charge),

may also have effect in relation to securities and interests in securities (but not securities options).

- (2) Part 7 of Schedule 7 (transitional provisions relating to securities and securities options) may also be relevant.
- (3) In view of section 49 of FA 2000 (phasing out of APS schemes) the following are not rewritten in this Act and continue in force unaffected by the repeals made by this Act—
- section 186 of ICTA (APS schemes) and section 187 of that Act (interpretation) so far as relating to APS schemes, and
  - Schedule 9 to ICTA (approval of share schemes) so far as relating to APS schemes and Schedule 10 to that Act (further provisions about APS schemes).



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“APS schemes” means profit sharing schemes approved under Schedule 9 to ICTA.

- (4) Sections 138 to 140 of ICTA (share acquisitions by directors and employees) continue to apply in relation to shares or interests in shares acquired before 26th October 1987 (see paragraph 57 of Schedule 7).

### **Negative amounts treated as nil**

- 419 If the result given by any formula under any provision of this Part would otherwise be a negative amount, the result is to be taken to be nil instead.

### *Interpretation of Chapters 1 to 5*

### **Meaning of “securities” etc**

- 420 (1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are “securities”—

- (a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
- (c) warrants and other instruments entitling their holders to subscribe for securities (whether or not in existence or identifiable),
- (d) certificates and other instruments conferring rights in respect of securities held by persons other than the persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
- (e) units in a collective investment scheme,
- (f) futures, and
- (g) rights under contracts for differences or contracts similar to contracts for differences.

- (2) In subsection (1)(e) “collective investment scheme” means arrangements—

- (a) which are made with respect to property of any description, including money, and
- (b) the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

- (3) In subsection (1)(f) “futures” means rights under a contract for the sale of a commodity or other property under which delivery is to be made at a future date at a price agreed when the contract is made; and for this purpose a price is to be taken to be agreed when the contract is made—

- (a) if it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, and

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- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, even if provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (4) For the purposes of subsection (1)(g) a contract similar to a contract for differences is a contract—
  - (a) which is not a contract for differences, but
  - (b) the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property or an index or other factor designated in the contract.
- (5) The following are not “securities” for the purposes of this Chapter or Chapters 2 to 5—
  - (a) cheques and other bills of exchange, bankers' drafts and letters of credit (other than bills of exchange accepted by a banker),
  - (b) money and statements showing balances on a current, deposit or savings account,
  - (c) leases and other dispositions of property and heritable securities,
  - (d) rights under contracts of insurance (within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), and
  - (e) options.
- (6) The Treasury may by order amend subsections (1) to (5).
- (7) An order under subsection (6) may include any appropriate consequential provision (including provision amending any enactment).
- (8) In this Chapter and Chapters 2 to 5—
  - “interest”, in relation to securities (or shares), means an interest in them less than full beneficial ownership and includes an interest in proceeds of their sale, but does not include a right to acquire them,
  - “securities option” means a right to acquire securities, and
  - “shares” includes stock.

#### **Meaning of “market value” etc**

- 421 (1) In this Chapter and Chapters 2 to 5 “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) Where consideration for anything is given in the form of an asset (as opposed to a payment), any reference in this Chapter or any of Chapters 2 to 5 to the amount of the consideration is to the market value of the asset.

#### **Meaning of “consideration”**

- 421A(1) This section applies for determining for the purposes of Chapters 2 to 5 the amount of the consideration given for anything.
- (2) If any consideration is given partly in respect of one thing and partly in respect of another, the amount given in respect of the different things is to be determined on a just and reasonable apportionment.

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- (3) The consideration which is taken to be given wholly or partly for anything does not include the performance of any duties of, or in connection with, an employment.
- (4) No amount is to be counted more than once in calculating the amount of any consideration.

#### *Application of Chapters 2 to 4*

#### **Application of Chapters 2 to 4**

- 421B) Subject as follows (and to any provision contained in Chapters 2 to 4) those Chapters apply to securities, or an interest in securities, acquired by a person where the right or opportunity to acquire the securities or interest is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1)—
    - (a) securities are, or an interest in securities is, acquired at the time when the person acquiring the securities or interest becomes beneficially entitled to those securities or that interest (and not, if different, the time when the securities are, or interest is, conveyed or transferred), and
    - (b) “employment” includes a former or prospective employment.
  - (3) A right or opportunity to acquire securities or an interest in securities made available by a person’s employer, or by a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
    - (a) the person by whom the right or opportunity is made available is an individual, and
    - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
  - (4) Chapters 2 to 4 cease to apply to securities, or an interest in securities, when subsection (5), (6) or (7) is satisfied.
  - (5) This subsection is satisfied immediately after the securities are, or the interest in securities is, disposed of otherwise than to an associated person.
  - (6) This subsection is satisfied immediately before the death of the employee.
  - (7) This subsection is satisfied 7 years after the first date after the acquisition on which the employee is an employee of none of the following—
    - (a) the employer,
    - (b) (if the securities are, or the interest in securities is an interest in, securities issued by a company) the company by which they are issued, or
    - (c) a person connected with a person within paragraph (a) or (b).
  - (8) In this Chapter and Chapters 2 to 4—

“the acquisition”, in relation to employment-related securities, means the acquisition of the employment-related securities pursuant to the right or opportunity available by reason of the employment,

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“the employment”, in relation to employment-related securities, means the employment by reason of which the right or opportunity to acquire the employment-related securities is available (“the employee” and “the employer” being construed accordingly unless otherwise indicated), and

“employment-related securities” means securities or an interest in securities to which Chapters 2 to 4 apply (ignoring any provision of any of those Chapters which limits the application of the Chapter to a particular description or descriptions of employment-related securities).

### **Associated persons**

421(1) For the purposes of this Chapter and Chapters 2 to 4 the following are “associated persons” in relation to employment-related securities—

- (a) the person who acquired the employment-related securities on the acquisition,
- (b) (if different) the employee, and
- (c) any relevant linked person.

(2) A person is a relevant linked person if—

- (a) that person (on the one hand), and
- (b) either the person who acquired the employment-related securities on the acquisition or the employee (on the other),

are connected or, although not connected, are members of the same household.

(3) But a company which would otherwise be a relevant linked person is not if it is—

- (a) the employer,
- (b) the person from whom the employment-related securities were acquired,
- (c) the person by whom the right or opportunity to acquire the employment-related securities was made available, or
- (d) the person by whom the employment-related securities (or the securities in which they are an interest) were issued.

### **Replacement and additional securities and changes in interests**

421(1) Subsections (2) and (3) apply where an associated person is entitled to employment-related securities (the “original securities”) and either—

- (a) as a result of the conversion of the original securities (or the securities in which they are an interest), or of any other transaction or series of transactions, that person ceases to be entitled to the original securities but that person or another associated person acquires securities or an interest in securities (the “replacement securities”), or
- (b) by virtue of that person being entitled to the original securities, that person or another associated person acquires other securities or an interest in other securities (the “additional securities”).

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- (2) The replacement securities or the additional securities are to be regarded for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as acquired pursuant to the same right or opportunity as the original securities.
- (3) Where the market value of the original securities is reduced by reason of the issue of, or of securities including, the replacement securities or the additional securities (or the securities in which they are an interest), the amount of that reduction is to be treated for the purposes of Chapters 2 and 3 as consideration or additional consideration given for the acquisition of the replacement securities or the additional securities.
- (4) Subsections (2) and (3) apply whether or not the replacement securities, or the additional securities, were acquired for consideration.
- (5) Where Chapters 2 to 4 apply to an interest in securities, an increase of that interest is to be treated for the purposes of section 421B(1) (securities acquired pursuant to a right or opportunity available by reason of an employment) as a separate interest acquired pursuant to the same right or opportunity as the original interest.
- (6) Where Chapters 2 to 4 apply to an interest in securities, a reduction of that interest (otherwise than by a disposal to an associated person) is to be treated for the purposes of those Chapters as the disposal otherwise than to an associated person of a separate interest proportionate to the reduction.

#### **Exclusions: residence etc**

- 421E) Chapters 2, 3 and 4 do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK).
- (2) Chapters 3A to 3D do not apply in relation to employment-related securities if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 apply.
- (3) Chapters 2 to 4 do not apply in the case of a former employment if they would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (4) Chapters 2 to 4 do not apply in the case of a prospective employment if they would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (5) Where the employment-related securities are replacement securities or additional securities (within the meaning of section 421D), the references in this section to the acquisition are to the acquisition of the original securities (within the meaning of that section).

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### **Exclusions: public offers**

- 421(F) Chapters 2 to 4 do not apply in relation to employment-related securities that are shares acquired under the terms of an offer to the public or an interest in shares so acquired.
- (2) In a case within subsection (1) of section 544 (exemption for priority share allocations where offer to employees separate from public offer), any acquisition made under the terms of either the public offer or the employee offer within the meaning of that subsection is to be treated for the purposes of this section as made under the terms of an offer to the public.
- (3) Subsection (2) applies whether or not there is any benefit within section 544(2) (benefit derived from entitlement to priority allocation exempt from income tax).

### **Exclusions: approved plan or scheme securities**

- 421G Chapters 2 to 4 do not apply to—
- (a) shares awarded or acquired under an approved share incentive plan (within the meaning of Chapter 6 of this Part),
  - (b) shares acquired by the exercise of a share option granted under an approved SAYE option scheme (within the meaning of Chapter 7 of this Part), or
  - (c) shares acquired by the exercise of a share option granted under an approved CSOP scheme (within the meaning of Chapter 8 of this Part).

### **Meaning of “employee-controlled” etc**

- 421(H) For the purposes of Chapters 2 to 4 a company is “employee-controlled” by virtue of shares of a class if—
- (a) the majority of the company’s shares of that class (other than any held by or for the benefit of an associated company) are held by or for the benefit of employees of the company or a company controlled by the company, and
  - (b) those employees are together able as holders of the shares to control the company.

In this subsection “employee” includes a person who is to be or has been an employee.

- (2) In this section and Chapters 2 to 4 “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA.

### **Consideration for acquisition of employment-related securities**

- 421(I) This section applies for determining for the purposes of Chapters 2 to 3A the amount of the consideration given for the acquisition of employment-related securities.

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- (2) References to consideration given for the acquisition of the employment-related securities are to consideration given by—
  - (a) the employee, or
  - (b) (if not the employee) the person by whom the employment-related securities were acquired.
- (3) The amount of the consideration given by a person for the acquisition of the employment-related securities includes the amount of any consideration given for a right to acquire the employment-related securities.
- (4) If the right to acquire the employment-related securities (“the new option”) is the whole or part of the consideration for the assignment or release of another right to acquire them (“the old option”), the amount of the consideration given for the new option is to be treated as being the sum of—
  - (a) the amount by which the amount of the consideration given for the old option exceeds the amount of any consideration for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the new option, apart from the old option.
- (5) Two or more transactions are to be treated for the purposes of subsection (4) as a single transaction by which a right to acquire the employment-related securities is assigned for a consideration which consists of or includes another right to acquire the employment-related securities if—
  - (a) the transactions result in a person ceasing to hold a right to acquire the employment-related securities and that person or a connected person coming to hold another right to acquire them, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons who hold rights to acquire the employment-related securities, in respect of which there may be a liability to tax under Chapter 5 of this Part (securities options), are parties.
- (6) Subsection (5) applies regardless of the order in which the assignment and the acquisition occur.
- (7) In this section “release”, in relation to a right to acquire the employment-related securities, includes agreeing to the restriction of the exercise of the right.

### *Information*

#### **Duty to provide information**

- 421(I) This section applies in relation to reportable events.
  - (2) Section 421K explains what are reportable events for the purposes of this section.
  - (3) Each person who is a responsible person in relation to a reportable event must provide the Inland Revenue with particulars in writing of the reportable

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event before 7th July in the tax year following that in which the reportable event takes place.

- (4) The Inland Revenue may by notice require any person to provide them with such particulars of any reportable events—
  - (a) which take place in a period specified in the notice, and
  - (b) in relation to which that person is a responsible person,
 as are required by the notice or, if no reportable event in relation to which that person is a responsible person has taken place in that period, to state that fact.
- (5) A notice under subsection (4) must specify a date by which it must be complied with.
- (6) That date must not be less than 30 days after the date when the notice is given.
- (7) Once one person complies with the duty imposed by subsection (3) in relation to a reportable event, that subsection ceases to impose a duty on any other person in relation to the reportable event.
- (8) Once a person complies with the duty imposed by a notice under subsection (4) by providing the required particulars of a reportable event, subsection (3) ceases to impose a duty on that person or any other person in relation to that reportable event.
- (9) Section 421L explains who are the responsible persons in relation to a reportable event.
- (10) The particulars required by, or by a notice under, this section must be provided in a form specified by the Board of Inland Revenue.
- (11) A person need not provide particulars required by, or by a notice under, this section if they have been given in a notice under paragraph 44 of Schedule 5 (enterprise management incentives: notice of option to be given to Inland Revenue).

In other respects the obligations imposed by, or by a notice under, this section and by that paragraph are independent of each other.

- (12) Paragraph 52 of that Schedule contains a duty to deliver annual returns where a company's shares are subject to a qualifying option within the meaning of that Schedule.

### **Reportable events**

421K) This section applies for the purposes of section 421J (duty to provide information).

- (2) Each of the events mentioned in subsection (3) is a reportable event.
- (3) The events are—
  - (a) an acquisition (or an event treated as an acquisition) of securities, an interest in securities or a securities option pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities, interest in securities or securities option or of any other person,



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- (b) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
- (c) an event which is a chargeable event in relation to securities, or an interest in securities, for the purposes of section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
- (d) the doing of anything which gives rise to a taxable amount counting as employment income under section 446L (artificial enhancement of market value of securities),
- (e) an event which discharges a notional loan relating to securities, or an interest in securities, under section 446U (securities and interests in securities acquired for less than market value),
- (f) a disposal of securities, or an interest in securities, by virtue of which Chapter 3D of this Part applies (securities and interests in securities disposed of for more than market value),
- (g) the receipt of a benefit which gives rise to a taxable amount counting as employment income under section 447 (charge on benefit from securities or interest in securities),
- (h) the assignment or release of a securities option acquired pursuant to a right or opportunity available by reason of the employment of the person who acquires the securities option or any other person, and
- (i) the receipt of a benefit in money or money's worth which is (or by virtue of section 477(6) is to be regarded as being) received in connection with such a securities option.

### **Persons to whom section 421J applies**

- 421(1) This section applies for the purposes of section 421J (duty to provide information).
- (2) Each of the following persons is a responsible person in relation to a reportable event.
  - (3) The persons are—
    - (a) the employer in question,
    - (b) any host employer of the employee in question,
    - (c) the person from whom the securities in question were, or interest or option in question was, acquired, and
    - (d) in relation to a reportable event concerning securities or an interest in securities which are not excluded securities, the person by whom the securities were issued.
  - (4) In subsection (3)(b) “host employer” means a person other than the employer in question—
    - (a) for whom the employee in question works at the time of the reportable event, and
    - (b) who would, by virtue of subsection (2) of section 689 (employees of non-UK employers working for a person other than the employer), be treated for the purposes of PAYE regulations as making a

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payment of PAYE income of the employee in question if a payment to which subsection (5) would apply were made by the employer in question in respect of the period during which the employee works for the other person.

(5) For the purposes of subsection (4)(b) this subsection would apply to a payment if—

- (a) it were a payment of PAYE income of the employee, and
- (b) the conditions in subsection (1)(c) and (d) of section 689 were satisfied in relation to the payment.

(6) For the purposes of subsection (3)(d) securities are excluded securities in relation to a reportable event if they are—

- (a) loan stock, bonds or other instruments creating or acknowledging indebtedness issued by or on behalf of any national or regional government or local authority (in the United Kingdom or elsewhere) or any body whose members consists of states, national or regional governments or local authorities, or
- (b) securities which are issued by a person who, at the time of the reportable event, is not connected with the employer in question and which are listed or dealt in on a recognised stock exchange.”.

(2) So far as relating to—

- (a) each of the new Chapters substituted or inserted in Part 7 by the following paragraphs, and
- (b) each of the Chapters of that Part as originally enacted for which new Chapters are substituted by the following paragraphs,

sub-paragraph (1) has effect in accordance with the provision made by the following paragraphs for the taking effect of the substitution or insertion.

3 (1) For Chapter 2 of Part 7 substitute—

## “CHAPTER 2

### RESTRICTED SECURITIES

#### *Introduction*

#### **Application of this Chapter**

422 This Chapter applies to employment-related securities if they are—

- (a) restricted securities, or
- (b) a restricted interest in securities,

at the time of the acquisition.

#### **“Restricted securities” and “restricted interest in securities”**

423 (1) For the purposes of this Chapter employment-related securities are restricted securities or a restricted interest in securities if—

- (a) there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) applies, and

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- (b) the market value of the employment-related securities is less than it would be but for that provision.
- (2) This subsection applies to provision under which—
- (a) there will be a transfer, reversion or forfeiture of the employment-related securities, or (if the employment-related securities are an interest in securities) of the interest or the securities, if certain circumstances arise or do not arise,
  - (b) as a result of the transfer, reversion or forfeiture the person by whom the employment-related securities are held will cease to be beneficially entitled to the employment-related securities, and
  - (c) that person will not be entitled on the transfer, reversion or forfeiture to receive in respect of the employment-related securities an amount of at least their market value (determined as if there were no provision for transfer, reversion or forfeiture) at the time of the transfer, reversion or forfeiture.
- (3) This subsection applies to provision under which there is a restriction on—
- (a) the freedom of the person by whom the employment-related securities are held to dispose of the employment-related securities or proceeds of their sale,
  - (b) the right of that person to retain the employment-related securities or proceeds of their sale, or
  - (c) any other right conferred by the employment-related securities,
- (not being provision to which subsection (2) applies).
- (4) This subsection applies to provision under which the disposal or retention of the employment-related securities, or the exercise of a right conferred by the employment-related securities, may result in a disadvantage to—
- (a) the person by whom the employment-related securities are held,
  - (b) the employee (if not the person by whom they are held), or
  - (c) any person connected with the person by whom they are held or with the employee,
- (not being provision to which subsection (2) or (3) applies).

### Exceptions

- 424 Employment-related securities are not restricted securities or a restricted interest in securities by reason only that any one or more of the following is the case—
- (a) the employment-related securities (or the securities in which they are an interest) are unpaid or partly paid shares which may be forfeited for non-payment of calls and there is no restriction on the meeting of calls by the person by whom they are held,
  - (b) that person may be required to offer for sale or transfer the employment-related securities on the employee ceasing, as a result of misconduct, to be employed by the employer or a person connected with the employer, or
  - (c) the employment-related securities (or the securities in which they are an interest) may be redeemed on payment of any amount.

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### *Tax exemption on acquisition*

#### **No charge in respect of acquisition in certain cases**

- 425 (1) Subsection (2) applies if the employment-related securities—
- (a) are restricted securities, or a restricted interest in securities, by virtue of subsection (2) of section 423 (provision for transfer, reversion or forfeiture) at the time of the acquisition, and
  - (b) will cease to be restricted securities, or a restricted interest in securities, by virtue of that subsection within 5 years after the acquisition (whether or not they may remain restricted securities or a restricted interest in securities by virtue of the application of subsection (3) or (4) of that section).
- (2) No liability to income tax arises in respect of the acquisition, except as provided by—
- (a) Chapter 3 of this Part (acquisition by conversion),
  - (b) Chapter 3C of this Part (acquisition for less than market value), or
  - (c) Chapter 5 of this Part (acquisition pursuant to securities option).
- (3) But the employer and the employee may elect that subsection (2) is not to apply to the employment-related securities.
- (4) An election under subsection (3)—
- (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (5) Such an agreement—
- (a) must be made in a form approved by the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.

### *Tax charge on post-acquisition chargeable events*

#### **Charge on occurrence of chargeable event**

- 426 (1) This section applies if a chargeable event occurs in relation to the employment-related securities.
- (2) The taxable amount determined under section 428 counts as employment income of the employee for the relevant tax year.
  - (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
  - (4) Section 427 explains what are chargeable events for the purposes of this section.
  - (5) This section is subject to section 429 (case outside charge under this section).

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### Chargeable events

- 427 (1) This section applies for the purposes of section 426 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
- (3) The events are—
- (a) the employment-related securities ceasing to be restricted securities, or a restricted interest in securities, in circumstances in which an associated person is beneficially entitled to the employment-related securities after the event,
  - (b) the variation of any restriction relating to the employment-related securities in such circumstances (without the employment-related securities ceasing to be restricted securities or a restricted interest in securities), and
  - (c) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still restricted securities or a restricted interest in securities).
- (4) For the purposes of this Chapter there is a variation of a restriction relating to the employment-related securities if any restriction in relation to them is removed or varied.

### Amount of charge

- 428 (1) The taxable amount for the purposes of section 426 (charge on occurrence of chargeable event) is—

$$UMV \times (IUP - PCP - OP) - CE$$

- (2) UMV is what would be the market value of the employment-related securities immediately after the chargeable event but for any restrictions.
- (3) IUP is—

$$\frac{IUMV - DA}{IUMV}$$

where—

IUMV is what would have been the market value of the employment-related securities at the time of the acquisition but for any restrictions, and

DA is the total of any deductible amounts.

- (4) PCP is the aggregate of the result of the application of the formula—

$$IUP - PCP - OP$$

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on each previous event (if any) occurring since the acquisition that was a chargeable event for the purposes of section 426 in relation to the employment-related securities (and so is nil if there has not been such a previous event).

(5) OP is—

$$\frac{\text{UMV-AMV}}{\text{UMV}}$$

where AMV is the actual market value of the employment-related securities immediately after the chargeable event.

(6) CE is any expenses incurred by the holder of the employment-related securities in connection with—

- (a) the employment-related securities ceasing to be restricted securities or a restricted interest in securities,
- (b) the variation of a restriction relating to the employment-related securities, or
- (c) the disposal of the employment-related securities,

together (if the chargeable event is one within section 427(3)(a) or (b) (lifting of restrictions and variation of restriction)) with any consideration given for the employment-related securities ceasing to be restricted securities or a restricted interest in securities or the variation of a restriction relating to the employment-related securities.

(7) For the purposes of this section each of the following is a “deductible amount”—

- (a) the amount of any consideration given for the acquisition of the employment-related securities,
- (b) any amount that constituted earnings from the employee’s employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities,
- (c) any amount that counted as employment income in relation to the employment-related securities under Chapter 2 or 4 of this Part as originally enacted,
- (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counted as employment income of the employee under Chapter 3 of this Part (including that Chapter as originally enacted) (convertible securities) by reason of the conversion, and
- (e) if the acquisition of the employment-related securities was pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (or section 476 or 477 as originally enacted) (acquisition of securities pursuant to securities option) by reason of the acquisition.

(8) If the employment-related securities are convertible securities, or an interest in convertible securities, their market value is to be determined for the purposes of this section as if they were not.

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- (9) Where the chargeable event is one within section 427(3)(c) (disposal) and CD is less than AMV, the taxable amount for the purposes of section 426 is the amount determined under subsection (1) multiplied by—

$$\frac{CD}{AMV}$$

where—

CD is the consideration given for the employment-related securities, and

AMV is the actual market value of the employment-related securities immediately after the chargeable event.

#### **Case outside charge under section 426**

429 (1) Section 426 (charge on occurrence of chargeable event) does not apply if—

- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) the provision by virtue of which the employment-related securities are restricted securities, or a restricted interest in securities, applies to all the company's shares of the class,
  - (c) all the company's shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
  - (d) subsection (3) or (4) is satisfied.
- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
- (a) in the case of a chargeable event within section 427(3)(a) (lifting of restrictions), if the provision mentioned in subsection (1)(b) ceases to apply to them,
  - (b) in the case of a chargeable event within section 427(3)(b) (variation of restriction), if that provision is varied in relation to them in the same way as in relation to the employment-related securities, or
  - (c) in the case of a chargeable event within section 427(3)(c) (disposal), if they are disposed of.
- (3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not held by or for the benefit of any of the following—
- (a) employees of the company,
  - (b) persons who are related to an employee of the company,
  - (c) associated companies of the company,
  - (d) employees of any associated company of the company, or

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- (e) persons who are related to an employee of any such associated company.
- (5) For the purposes of subsection (4) a person is related to an employee if—
- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee’s employment, or
  - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm’s length from the employee or another person who is related to the employee.

### **Election for outstanding restrictions to be ignored**

- 430 (1) The employer and the employee may elect that—
- (a) on a chargeable event the taxable amount for the purposes of section 426 is to be determined by applying section 428(1) as if it did not include a reference to OP, and
  - (b) sections 426 to 429 are not to apply to the employment-related securities after that chargeable event.
- (2) An election under this section—
- (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (3) Such an agreement—
- (a) must be made in a form approved by the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the chargeable event.

### **Election for full or partial disapplication of this Chapter**

- 431 (1) The employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
- (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated as if they were not, and
  - (b) sections 425 to 430 are not to apply to the employment-related securities.
- (2) Or the employer and the employee may elect in relation to employment-related securities which are restricted securities or a restricted interest in securities that—
- (a) for the relevant tax purposes their market value at the time of the acquisition is to be calculated, and
  - (b) sections 425 to 430 are to apply to the employment-related securities,
- as if any specified restriction did not apply to the employment-related securities.
- (3) For the purposes of subsections (1) and (2) “the relevant tax purposes” are—
- (a) determining any amount that is to constitute earnings from the employment under Chapter 1 of Part 3 (earnings),



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- (b) determining the amount of any gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion),
  - (c) operating Chapter 3C of this Part (acquisition of securities for less than market value), and
  - (d) determining any amount that counts as employment income of the employee under Chapter 5 of this Part (securities acquired pursuant to securities option).
- (4) An election under this section—
- (a) is to be made by agreement by the employer and the employee, and
  - (b) is irrevocable.
- (5) Such an agreement—
- (a) must be made in a form approved by the Board of Inland Revenue, and
  - (b) may not be made more than 14 days after the acquisition.

### Definitions

432 (1) In this Chapter—

“interest”, in relation to securities,  
“securities”,  
“securities option”, and  
“shares”,  
have the meaning indicated in section 420.

(2) In this Chapter “market value” has the meaning indicated in section 421(1).

(3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.

(4) In this Chapter—

“the acquisition”,  
“the employee” (except in section 429),  
“the employer”,  
“the employment”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).

(5) In this Chapter “associated person” has the meaning indicated in section 421C.

(6) In this Chapter—

“associated company”, and  
“employee-controlled”,  
have the meaning indicated in section 421H.

(7) In this Chapter—

“restricted interest in securities”, and

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“restricted securities”,  
have the meaning indicated in sections 423 and 424.

- (8) In this Chapter “restriction”, in relation to securities or an interest in securities, means provision relating to the securities or interest which is made by any contract, agreement, arrangement or condition and to which any of subsections (2) to (4) of section 423 applies.
- (9) In this Chapter “variation”, in relation to a restriction, has the meaning indicated in section 427(4).
- (10) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).”.
- (2) Sub-paragraph (1) has effect on and after such day as the Treasury may by order made by statutory instrument appoint but does not affect any securities, or interests in securities, acquired before 16th April 2003.
- (3) Section 431 has effect in relation to securities, or interests in securities, acquired before the day appointed under sub-paragraph (2)—
- (a) with the substitution in subsections (1)(b) and (2)(b) for “sections 425 to 430” of “ section 426 as originally enacted and sections 426 to 430 as substituted by paragraph 3(1) of Schedule 22 to the Finance Act 2003 ”, and
  - (b) with the substitution in subsection (5)(b) for “the acquisition” of “ the day appointed under paragraph 3(2) of Schedule 22 to the Finance Act 2003 ”.
- (4) But sub-paragraph (3) does not apply where in relation to the securities or interest in securities an amount counts as employment income of the employee under section 427 or 449 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) as originally enacted.

#### Commencement Information

**I115** Sch. 22 para. 3(1) in force at 1.9.2003 for the purposes of the amendment made by that sub-paragraph by [S.I. 2003/1997](#), [art. 2](#)

- 4 (1) For Chapter 3 of Part 7 substitute—

### “CHAPTER 3

#### CONVERTIBLE SECURITIES

##### *Introduction*

#### **Application of this Chapter**

- 435 This Chapter applies to employment-related securities if they are—
- (a) convertible securities, or
  - (b) an interest in convertible securities,
- at the time of the acquisition.

*Status: Point in time view as at 18/04/2005.*

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### **“Convertible securities”**

- 436 For the purposes of this Chapter securities are convertible securities if—
- (a) they confer on the holder an immediate or conditional entitlement to convert them into securities of a different description,
  - (b) a contract, agreement, arrangement or condition authorises or requires the grant of such an entitlement to the holder if certain circumstances arise, or do not arise, or
  - (c) a contract, agreement, arrangement or condition makes provision for the conversion of the securities (otherwise than by the holder) into securities of a different description.

#### *Tax relief on acquisition*

### **Adjustment of charge**

- 437 For the purposes of—
- (a) any liability to tax under Chapter 1 of Part 3 (earnings), Chapter 10 of Part 3 (taxable benefits: residual liability to charge) or Chapter 5 of this Part (acquisition of securities pursuant to securities option), and
  - (b) the operation of Chapter 3C of this Part (acquisition of securities for less than market value),
- the market value of the employment-related securities is to be determined as if they were not convertible securities or an interest in convertible securities.

#### *Tax charge on post-acquisition chargeable events*

### **Charge on occurrence of chargeable event**

- 438 (1) This section applies if a chargeable event occurs in relation to the employment-related securities.
- (2) The taxable amount determined under section 440 counts as employment income of the employee for the relevant tax year.
  - (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
  - (4) Section 439 explains what are chargeable events for the purposes of this section.
  - (5) This section is subject to section 443 (case outside charge under this section).

### **Chargeable events**

- 439 (1) This section applies for the purposes of section 438 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities.
  - (3) The events are—

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- (a) the conversion of the employment-related securities (or the securities in which they are an interest) into securities of a different description in circumstances in which an associated person is beneficially entitled to the securities into which the employment-related securities are converted,
  - (b) the disposal for consideration of the employment-related securities, or any interest in them, by an associated person otherwise than to another associated person (at a time when they are still convertible securities or an interest in convertible securities),
  - (c) the release for consideration of the entitlement to convert the employment-related securities (or the securities in which they are an interest) into securities of a different description, and
  - (d) the receipt by an associated person of a benefit in money or money's worth in connection with the entitlement to convert (other than securities acquired on the conversion of the employment-related securities or consideration such as is mentioned in paragraph (b) or (c)).
- (4) A benefit received on account of any disability (within the meaning of the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(d).

#### **Amount of charge**

- 440 (1) The taxable amount for the purposes of section 438 (charge on occurrence of chargeable event) is—

### **AG - CE**

- (2) AG is the amount of any gain realised on the occurrence of the chargeable event.
- (3) CE is the amount of any consideration given for the entitlement to convert the employment-related securities or the securities in which they are an interest together with the amount of any expenses incurred by the holder of the employment-related securities in connection with the conversion, disposal, release or receipt.
- (4) Section 441 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (5) Section 442 explains whether consideration is given for the entitlement to convert the employment-related securities or the securities in which they are an interest and, if it is, what is its amount.

#### **Amount of gain realised on occurrence of chargeable event**

- 441 (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(a) (conversion) is—

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## CMVCS - (CMVERS + CC)

- (3) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(b) (disposal) is—

## DC - CMVERS

- (4) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(c) (release of entitlement to convert) is the amount of the consideration received by an associated person in respect of the release.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 439(3)(d) (receipt of benefit) is the amount or market value of the benefit.
- (6) CMVCS—
- (a) if the employment-related securities are securities, is the market value at the time of the chargeable event of the securities into which they are converted (determined, where those securities are themselves convertible securities, as if they were not), or
  - (b) if the employment-related securities are an interest in securities, is the same proportion of that market value as the market value of the interest in the securities in which the employment-related securities are an interest bears to the market value of those securities.
- (7) CMVERS is the market value of the employment-related securities at the time of the chargeable event determined as if they were not convertible securities or an interest in convertible securities.
- (8) CC is the amount of any consideration given for the conversion of the employment-related securities.
- (9) DC is the amount of the consideration given on the disposal.

### **Amount of consideration given for entitlement to convert**

- 442 (1) This section applies for the purposes of section 440 (amount of charge on occurrence of chargeable event).
- (2) Consideration is to be regarded as given for the entitlement to convert the employment-related securities (or the securities in which they are an interest) if (and only if) ACS exceeds NCMV.
- (3) The amount of the consideration to be regarded as so given is the amount of the excess.
- (4) ACS is the amount of the consideration given for the acquisition of the employment-related securities.
- (5) NCMV is the market value of the employment-related securities at the time of the acquisition, determined as if they were not convertible securities or an interest in convertible securities.

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### **Case outside charge under section 438**

- 443 (1) Section 438 (charge on occurrence of chargeable event) does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) all the company's shares of the class are convertible securities,
  - (c) all the company's shares of the class (other than the employment-related securities) are affected by an event similar to that which is a chargeable event in relation to the employment-related securities, and
  - (d) subsection (3) or (4) is satisfied.
- (2) For the purposes of subsection (1)(c) shares are affected by an event similar to that which is a chargeable event in relation to the employment-related securities—
- (a) in the case of a chargeable event within section 439(3)(a) (conversion), if they are converted into securities of a different description,
  - (b) in the case of a chargeable event within section 439(3)(b) (disposal), if they are disposed of,
  - (c) in the case of a chargeable event within section 439(3)(c) (release of entitlement to convert), if the entitlement to convert them into securities of a different description is released, or
  - (d) in the case of a chargeable event within section 439(3)(d) (receipt of benefit), if a similar benefit is received in respect of the entitlement to convert them.
- (3) This subsection is satisfied if, immediately before the event that would be a chargeable event, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, immediately before that event, the majority of the company's shares of the class are not held by or for the benefit of any of the following—
- (a) employees of the company,
  - (b) persons who are related to an employee of the company,
  - (c) associated companies of the company,
  - (d) employees of any associated company of the company, or
  - (e) persons who are related to an employee of any such associated company.
- (5) For the purposes of subsection (4) a person is related to an employee if—
- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee's employment, or
  - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

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## Supplementary

### Definitions

444 (1) In this Chapter—

“interest”, in relation to securities,

“securities”, and

“shares”,

have the meaning indicated in section 420.

(2) In this Chapter “market value” has the meaning indicated in section 421(1).

(3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.

(4) In this Chapter—

“the acquisition”,

“the employee” (except in section 443), and

“employment-related securities”,

have the meaning indicated in section 421B(8).

(5) In this Chapter “associated person” has the meaning indicated in section 421C.

(6) In this Chapter—

“associated company”, and

“employee-controlled”,

have the meaning indicated in section 421H.

(7) In this Chapter “convertible securities” has the meaning indicated in section 436.”.

(2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) (so that, apart from section 437, the provisions of Chapter 3 of Part 7 as substituted by that sub-paragraph apply on and after that day in relation to employment-related securities irrespective of the date of the acquisition).

5 (1) After Chapter 3 of Part 7 insert—

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## “CHAPTER 3A

### SECURITIES WITH ARTIFICIALLY DEPRESSED MARKET VALUE

#### *Introduction*

#### **Application of this Chapter**

- 446A) This Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
- (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm’s length (other than a payment for group relief).
- (3) In subsection (2)(b)—
- (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.

#### *Tax charge on acquisition*

#### **Charge on acquisition**

- 446B) This section applies where the market value of employment-related securities at the time of the acquisition has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
- (2) The taxable amount determined under section 446C counts as employment income of the employee for the tax year in which the acquisition occurs.
- (3) But this section does not apply if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities.
- (4) This section does not affect any liability to income tax arising in respect of the acquisition of the employment-related securities under—
- (a) Chapter 1 of Part 3 (earnings),
  - (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - (c) Chapter 3 of this Part (acquisition by conversion),
  - (d) Chapter 3C of this Part (acquisition for less than market value), or
  - (e) Chapter 5 of this Part (acquisition pursuant to securities option).



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### **Amount of charge**

446(C) The taxable amount for the purposes of section 446B (charge on acquisition) is—

### **FMV - MV**

- (2) FMV is what would be the market value of the employment-related securities at the time of the acquisition if the things mentioned in section 446B(1) had not been done.
- (3) MV is the actual market value of the employment-related securities at the time of the acquisition.
- (4) But where what would be MV is less than the amount of any consideration given for the acquisition of the employment-related securities, MV is the amount of that consideration.
- (5) This section is subject to section 446D (restricted securities and convertible securities).

### **Restricted securities and convertible securities**

- 446(D) Where the employment-related securities are restricted securities or a restricted interest in securities, FMV (but not MV) is to be determined as if the employment-related securities were not restricted securities or a restricted interest in securities; and, accordingly, sections 426 to 431 (post-acquisition charges on restricted securities) do not apply to the employment-related securities.
- (2) Where the employment-related securities are convertible securities or an interest in convertible securities, FMV and MV are to be determined as if they were not.

### *Other tax charges*

### **Charge on restricted securities**

- 446(E) This section applies where the market value of employment-related securities which are restricted securities or a restricted interest in securities is artificially low—
- (a) immediately after an event which is a chargeable event in relation to the employment-related securities for the purposes of section 426 (charge on restricted securities), or
  - (b) on 5th April in any year.
- (2) The market value of the employment-related securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the relevant period.
  - (3) The reference in subsection (2) of section 428 (amount of charge on restricted securities) to what would be the market value of the employment-related securities is, so far as it relates to subsection (1) of that section, a reference

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to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2) (and but for any restrictions).

- (4) In a case within subsection (1)(b), there shall be treated as occurring on the 5th April concerned a chargeable event within section 427(3)(a) (lifting of restrictions) in relation to the employment-related securities.
- (5) “The relevant period” is the period of 7 years ending with—
  - (a) in a case within subsection (1)(a), the chargeable event concerned, or
  - (b) in a case within subsection (1)(b), the 5th April concerned.
- (6) But if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applied in relation to the employment-related securities, the relevant period is the period beginning 7 years before the acquisition.

#### **Adjustment of market value: conditional interests**

- 446(F) This section applies where the market value of an employee’s interest in shares which is only conditional is artificially low immediately after a chargeable event relating to the shares under section 427 as originally enacted.
  - (2) The market value of the shares is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period beginning—
    - (a) 7 years before the chargeable event, or
    - (b) with 16th April 2003,
 whichever is later.
  - (3) There is a chargeable event in relation to shares if section 427 (as originally enacted) applies in relation to them.
  - (4) The reference in the definition of MV in section 428(1) (as originally enacted) to the market value of the employee’s interest is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).
  - (5) Expressions used in this section and in Chapter 2 of this Part as originally enacted have the same meaning in this section as in that Chapter.

#### **Adjustment of market value: consideration for entitlement to convert**

- 446(G) This section applies where the market value of employment-related securities which are convertible securities or an interest in convertible securities (determined as if they were not) has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the acquisition.
  - (2) The reference to the market value of the employment-related securities in the definition of NCMV in section 442(5) (value of convertible securities at time of acquisition) is to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (1) (and but for the fact that they are convertible securities or an interest in convertible securities).

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### **Adjustment of market value: charge on conversion**

446(1) This section applies where the market value of securities (“the converted securities”) into which employment-related securities (or securities in which employment-related securities are an interest) are converted is artificially low at the time of an event which is a chargeable event in relation to the employment-related securities by virtue of section 439(3)(a) (conversion).

- (2) The market value of the converted securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the chargeable event.
- (3) The references to the market value of the converted securities in the definition of CMVCS in section 441(6) (amount of gain realised by conversion) are to what would be the market value but for the reduction as a result of the things done as mentioned in subsection (2).

### **Adjustment of consideration or benefit received**

446(1) This section applies where any consideration or benefit mentioned in—

- (a) section 428(9) (consideration on disposal of restricted securities),
- (b) section 441(4), (5) or (9) (consideration for disposal of convertible securities or release of entitlement to convert or benefit received in respect of entitlement to convert),
- (c) section 446C(4) (securities with artificially depressed market value: MV to be amount of consideration),
- (d) sections 446X and 446Y(3) (consideration for disposal of securities exceeding market value), or
- (e) section 448 (securities benefit not otherwise subject to tax),

consists (in whole or in part) in the provision of securities or an interest in securities the market value of which is artificially low.

- (2) The market value of any securities or interest in securities is artificially low where it has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit.
- (3) The market value of the consideration or benefit consisting in the provision of the securities or interest in securities is for the purposes of the provision or provisions concerned to be taken to be what it would be but for the reduction as a result of the things done as mentioned in subsection (2).

### *Supplementary*

#### **Definitions**

446(1) In this Chapter—

- “interest”, in relation to securities, and  
“securities”,  
have the meaning indicated in section 420.

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*Status: Point in time view as at 18/04/2005.*

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- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
  - (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything and section 421I applies for determining the amount of the consideration given for the acquisition of employment-related securities.
  - (4) In this Chapter—
    - “the acquisition”,
    - “the employee”, and
    - “employment-related securities”,
 have the meaning indicated in section 421B(8).
  - (5) In this Chapter—
    - “restricted interest in securities”, and
    - “restricted securities”,
 have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
  - (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).
  - (7) In this Chapter “convertible securities” has the same meaning as in Chapter 3 of this Part (see section 436).”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003 (so that sections 446A, 446F to 446H, 446I(1)(b) to (e), (2) and (3) and 446J apply on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
  - (3) Sections 446E and 446I(1)(a) do not affect any securities, or interests in securities, acquired before 16th April 2003; and, in relation to any securities or interests in securities acquired on or after that date but before the day appointed under paragraph 3(2), those provisions apply only on or after that appointed day.
  - (4) Section 446F—
    - (a) applies in relation to conditional interests in shares acquired before 16th April 2003, and
    - (b) applies during the period beginning with that date and ending with the day preceding that appointed day in relation to conditional interests in shares acquired during that period.
- 6 (1) After Chapter 3A of Part 7 (inserted by paragraph 5(1)) insert—

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## “CHAPTER 3B

### SECURITIES WITH ARTIFICIALLY ENHANCED MARKET VALUE

#### *Introduction*

#### **Application of this Chapter**

- 446K1) This Chapter applies in certain cases where the market value of employment-related securities is increased by things done otherwise than for genuine commercial purposes.
- (2) The following are among the things that are, for the purposes of this Chapter, done otherwise than for genuine commercial purposes—
- (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm’s length (other than a payment for group relief).
- (3) In subsection (2)(b)—
- (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.
- (4) In this Chapter, in relation to the market value of the employment-related securities—
- “non-commercial increase” means an increase in the market value as a result of anything done otherwise than for genuine commercial purposes, and
  - “non-commercial reduction” means a reduction in the market value as a result of anything done otherwise than for genuine commercial purposes.

#### *Charge on non-commercial increases*

#### **Charge on non-commercial increases**

- 446L1) This section applies in relation to employment-related securities where on a date that is the valuation date in relation to a relevant period IMV is at least 10% greater than MV.
- (2) The taxable amount determined under subsection (4) counts as employment income of the employee for the relevant tax year (but subject to sections 446M and 446N).
- (3) The “relevant tax year” is the tax year in which the valuation date falls.
- (4) The taxable amount is—

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## IMV - MV

- (5) IMV is the market value of the employment-related securities on the valuation date.
- (6) MV is the amount that would be the market value of the employment-related securities on the valuation date if any non-commercial increases during the relevant period were disregarded.
- (7) For the purposes of subsections (5) and (6)—
  - (a) any restrictions having effect in relation to the employment-related securities on the valuation date, and
  - (b) any non-commercial reductions during the relevant period,
 are to be disregarded.

### Securities subject to restriction on valuation date

- 446M) This section applies where on the valuation date the employment-related securities are relevant restricted securities.
- (2) The amount determined under section 446L(4) is to be multiplied by CP.
- (3) CP is—

## 1-OP

where OP is the amount that would be determined under section 428(5) (amount of charge on chargeable event in relation to restricted securities) on the valuation date if there were on that date a chargeable event (resulting in no tax charge).

- (4) For the purposes of this section the employment-related securities are relevant restricted securities if they are restricted securities or a restricted interest in securities but are not subject to—
  - (a) an election under section 430 (election to ignore outstanding restrictions) in relation to a chargeable event which occurred before the valuation date, or
  - (b) an election under section 431(1) (election to treat securities as not subject to restrictions).
- (5) If sections 425 to 430 apply to the employment-related securities in accordance with section 431(2) (election to treat securities as not subject to specified restrictions), the reference in subsection (3) to the amount that would be determined under section 428(5) is to the amount that would be so determined in accordance with section 431(2).

### Securities subject to restriction during relevant period

- 446N) This section applies where the employment-related securities have been restricted securities or a restricted interest in securities at any time during the relevant period.

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- (2) DA is to be deducted from the amount determined under section 446L(4) (or, where section 446M applies, the amount determined under sections 446L(4) and 446M).
- (3) DA is the aggregate of the amounts arrived at under subsection (4) in relation to each event occurring during the relevant period that is a chargeable event in relation to the employment-related securities.
- (4) The amount is—

## TA- ARTA

- (5) TA is the taxable amount actually determined under section 428 in relation to the chargeable event.
- (6) ARTA is the taxable amount which would have been determined under section 428 in relation to the chargeable event if any non-commercial increases during the period—
  - (a) beginning at the same time as the relevant period, and
  - (b) ending immediately before the chargeable event,had been disregarded.

### *Supplementary*

#### **“Relevant period” and “valuation date”**

- 446(1) This section explains what is meant by “relevant period” and “valuation date” in this Chapter.
- (2) The first relevant period in relation to employment-related securities is the period beginning with the date of the acquisition and ending with the following 5th April.
  - (3) After the first relevant period, each period beginning with 6th April and ending with the following 5th April is a relevant period in relation to the employment-related securities.
  - (4) But if this Chapter ceases to apply to the employment-related securities during a relevant period, the relevant period ends with the date on which this Chapter ceases to apply to them.
  - (5) And if this Chapter ceases to apply to an interest in the employment-related securities during a relevant period, the relevant period ends in relation to that interest with the date on which this Chapter ceases to apply to that interest.
  - (6) In a case where subsection (5) applies, this Chapter has effect separately in relation to that interest and the remainder of the employment-related securities.
  - (7) In this Chapter “valuation date”, in relation to a relevant period, means the date with which the relevant period ends.

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## Definitions

- 446P(1) In this Chapter “interest”, in relation to securities, has the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) In this Chapter—  
“the acquisition”,  
“the employee”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (4) In this Chapter—  
“restricted interest in securities”, and  
“restricted securities”,  
have the same meaning as in Chapter 2 of this Part (see sections 423 and 424).
- (5) In this Chapter “chargeable event” means an event which is a chargeable event for the purposes of section 426.
- (6) In this Chapter “restriction” has the same meaning as in Chapter 2 of this Part (see section 432(8)).
- (7) In this Chapter—  
“non-commercial increase”, and  
“non-commercial reduction”,  
have the meaning indicated in section 446K(4).
- (8) In this Chapter—  
“relevant period”, and  
“valuation date”,  
have the meaning indicated in section 446O.”.
- (2) Subject as follows, sub-paragraph (1) has effect on and after 16th April 2003 (so that it applies on and after that date in relation to employment-related securities irrespective of the date of the acquisition).
- (3) Sections 446M and 446N do not affect any securities, or interests in securities, acquired before 16th April 2003; and, in relation to any securities or interests in securities acquired on or after that date but before the day appointed under paragraph 3(2), those sections apply only on and after that appointed day.
- (4) For the purposes of section 446O employment-related securities acquired before 16th April 2003 are to be treated as acquired on that date.
- 7 (1) After Chapter 3B of Part 7 (inserted by paragraph 6(1)) insert—



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## “CHAPTER 3C

### SECURITIES ACQUIRED FOR LESS THAN MARKET VALUE

#### Application of this Chapter

446Q) This Chapter applies if—

- (a) no payment is made for employment-related securities at or before the time of the acquisition, or
  - (b) the payment made for employment-related securities at or before that time is less than their market value.
- (2) For the purposes of subsection (1) any obligation to make a payment or further payment after the time of the acquisition is to be disregarded.
- (3) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.
- (4) If section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities, this Chapter has effect as if the employment-related securities were not acquired until the occurrence of the first event which is a chargeable event for the purposes of section 426 in relation to the employment-related securities.
- (5) This section is subject to section 446R (case outside this Chapter).

#### Case outside this Chapter

446R) This Chapter does not apply if—

- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) all the company’s shares of the class are acquired either for no payment or for a payment less than their market value, and
  - (c) subsection (3) or (4) is satisfied.
- (2) Where the company’s shares of the class are not fully paid up, the reference in subsection (1) to their market value is to what it would be if they were fully paid up.
- (3) This subsection is satisfied if, at the time of the acquisition of the employment-related securities, the company is employee-controlled by virtue of holdings of shares of the class.
- (4) This subsection is satisfied if, at that time, the majority of the company’s shares of the class are not held by or for the benefit of any of the following—
- (a) employees of the company,
  - (b) persons who are related to an employee of the company,
  - (c) associated companies of the company,
  - (d) employees of any associated company of the company, or

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- (e) persons who are related to an employee of any such associated company.
- (5) For the purposes of subsection (4) a person is related to an employee if—
  - (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee’s employment, or
  - (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm’s length from the employee or another person who is related to the employee.

### **Notional loan**

- 446(S) Where this Chapter applies an interest-free loan (“the notional loan”) is to be treated as having been made to the employee by the employer at the time of the acquisition.
- (2) The provisions listed in subsection (3) apply as though the notional loan were an employment-related loan as defined in section 174 if and for so long as the employment has not terminated.
  - (3) The provisions are—
    - section 175 (benefit of taxable cheap loan treated as earnings),
    - section 178 (exception for loans where interest qualifies for tax relief),
    - section 180 (threshold for benefit of loan to be treated as earnings),
    - section 182 (normal method of calculation: averaging),
    - section 183 (alternative method of calculation),
    - section 184 (interest treated as paid),
    - section 185 (apportionment of cash equivalent in case of joint loan etc),
    - and
    - section 187 (aggregation of loans by close company to director).

### **Amount of notional loan**

- 446(I) The amount of the notional loan initially outstanding is—

$$MV - DA$$

where—

MV is the market value of the employment-related securities at the time of the acquisition, and

DA is the total of any deductible amounts.

- (2) Where the employment-related securities are, or are an interest in, securities which are not fully paid up, the reference in subsection (1) to the market value of the employment-related securities is to what it would be if the securities were fully paid up.
- (3) For the purposes of subsection (1) each of the following is a “deductible amount”—

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- (a) any payment made for the employment-related securities by the employee, and any payment so made by the person by whom they were acquired (if not the employee), at or before the time of the acquisition,
  - (b) any amount that constitutes earnings from the employee's employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities,
  - (c) if section 425(2) (no charge on acquisition of certain restricted securities or restricted interests in securities) applies in relation to the employment-related securities, any amount that counts as employment income of the employee under section 426 by reason of the first event which is a chargeable event for the purposes of that section in relation to the employment-related securities,
  - (d) if the employment-related securities were acquired on a conversion of other employment-related securities, any amount that counts as employment income of the employee under section 438 (charge on conversion) by reason of the conversion, and
  - (e) if the acquisition is pursuant to a securities option, any amount that counted as employment income of the employee under section 476 (acquisition of securities pursuant to securities option) in respect of the acquisition.
- (4) The amount of the notional loan outstanding at any subsequent time is the difference between—
- (a) the amount initially outstanding, and
  - (b) the amount of any payments or further payments made for the employment-related securities after the acquisition but before that time.

### **Discharge of notional loan**

- 446(1) The notional loan is treated as discharged when—
- (a) the employment-related securities are disposed of otherwise than to an associated person, or
  - (b) if the employment-related securities were securities, or an interest in securities, not fully paid up at the time of the acquisition, the outstanding or contingent liability to pay for them is released, transferred or adjusted so as no longer to bind any associated person.
- (2) If the notional loan is discharged as the result of an event specified in subsection (1), the amount of the notional loan outstanding immediately before the occurrence of the event counts as employment income of the employee for the relevant tax year (whether or not the employment has terminated before or since the acquisition).
- (3) The “relevant tax year” is the tax year in which the notional loan is treated as discharged.
- (4) The notional loan is also treated as discharged when—
- (a) payments or further payments for the employment-related securities equal to the amount initially outstanding in relation to them have been made by an associated person, or

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- (b) the employee dies.

### **Chapter to be additional to other income tax charges**

446V This Chapter does not affect any liability to income tax arising in respect of the acquisition under—

- (a) Chapter 1 of Part 3 (earnings),
- (b) Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
- (c) Chapter 3 of this Part (acquisition by conversion),
- (d) Chapter 3A of this Part (securities with artificially depressed market value), or
- (e) Chapter 5 of this Part (acquisition of securities pursuant to securities option).

### **Definitions**

446W(1) In this Chapter—

“interest”, in relation to securities,

“securities”,

“securities option”, and

“shares”,

have the meaning indicated in section 420.

(2) In this Chapter “market value” has the meaning indicated in section 421(1).

(3) In this Chapter “the acquisition” has the meaning indicated in section 421B(8) (but subject to section 446Q(4)).

(4) In this Chapter—

“the employment”,

“the employee” (except in section 446R),

“the employer”, and

“employment-related securities”,

have the meaning indicated in section 421B(8).

(5) In this Chapter “associated person” has the meaning indicated in section 421C.

(6) In this Chapter—

“associated company”, and

“employee-controlled”,

have the meaning indicated in section 421H.

(7) In this Chapter “the notional loan” has the meaning indicated in section 446S(1).”.

(2) Sub-paragraph (1) has effect in relation to securities, and interests in securities, acquired on or after 16th April 2003.

8 (1) After Chapter 3C of Part 7 (inserted by paragraph 7(1)) insert—

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## “CHAPTER 3D

### SECURITIES DISPOSED OF FOR MORE THAN MARKET VALUE

#### Application of this Chapter

446X This Chapter applies if—

- (a) employment-related securities are disposed of by an associated person so that no associated person is any longer beneficially entitled to them, and
- (b) the disposal is for a consideration which exceeds the market value of the employment-related securities at the time of the disposal.

#### Amount treated as income

446(1) Where this Chapter applies the amount determined under subsection (3) counts as employment income of the employee for the relevant tax year.

- (2) The “relevant tax year” is the tax year in which the disposal occurs.
- (3) The amount is—

### CD - MV - DA

where—

CD is the amount of the consideration given on the disposal,

MV is the market value of the employment-related securities at the time of the disposal, and

DA is the amount of any expenses incurred in connection with the disposal.

#### Definitions

446(1) In this Chapter “market value” has the meaning indicated in section 421(1).

- (2) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of the consideration given for anything.
- (3) In this Chapter—  
“the employee”, and  
“employment-related securities”,  
have the meaning indicated in section 421B(8).
- (4) In this Chapter “associated person” has the meaning indicated in section 421C.”.

(2) Sub-paragraph (1) has effect in relation to securities, and interests in securities, disposed of on or after 16th April 2003.

9 (1) For Chapter 4 of Part 7 substitute—

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## “CHAPTER 4

### POST-ACQUISITION BENEFITS FROM SECURITIES

#### **Charge on other chargeable benefits from securities**

- 447 (1) This Chapter applies if an associated person receives a benefit by virtue of the ownership of employment-related securities by that person or another associated person.
- (2) The taxable amount determined under section 448 counts as employment income of the employee for the relevant tax year.
- (3) The “relevant tax year” is the tax year in which the benefit is received.
- (4) This section does not apply if the benefit is otherwise chargeable to income tax.
- (5) This section is subject to section 449 (case outside this Chapter).

#### **Amount of charge**

- 448 The taxable amount for the purposes of section 447 (charge on other chargeable benefits) is the amount or market value of the benefit.

#### **Case outside this Chapter**

- 449 (1) This Chapter does not apply if—
- (a) the employment-related securities are shares (or an interest in shares) in a company of a class,
  - (b) a similar benefit is received by the owners of all the company’s shares of the class, and
  - (c) subsection (2) or (3) is satisfied.
- (2) This subsection is satisfied if, immediately before the receipt of the benefit, the company is employee-controlled by virtue of holdings of shares of the class.
- (3) This subsection is satisfied if, immediately before the receipt of the benefit, the majority of the company’s shares of the class are not held by or for the benefit of any of the following—
- (a) employees of the company,
  - (b) persons who are related to an employee of the company,
  - (c) associated companies of the company,
  - (d) employees of any associated company of the company, or
  - (e) persons who are related to an employee of any such associated company.
- (4) For the purposes of subsection (3) a person is related to an employee if—
- (a) the person acquired the shares pursuant to a right or opportunity available by reason of the employee’s employment, or

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- (b) the person is connected with a person who so acquired the shares or with the employee and acquired the shares otherwise than by or under a disposal made by way of a bargain at arm's length from the employee or another person who is related to the employee.

### Definitions

450 (1) In this Chapter—

“interest”, in relation to shares, and

“shares”,

have the meaning indicated in section 420(8).

(2) In this Chapter “market value” has the meaning indicated in section 421(1).

(3) In this Chapter—

“the employee” (except in section 449), and

“employment-related securities”,

have the meaning indicated in section 421B(8).

(4) In this Chapter “associated person” has the meaning indicated in section 421C.

(5) In this Chapter—

“associated company”, and

“employee-controlled”,

have the meaning indicated in section 421H.”.

(2) Subject to sub-paragraph (3), sub-paragraph (1) has effect on and after 16th April 2003 (so that it applies on and after that date in relation to employment-related securities irrespective of the date of the acquisition).

(3) The provisions of Chapter 4 as originally enacted which are mentioned in sub-paragraph (4)—

(a) continue to apply in relation to shares, and interests in shares, acquired before 16th April 2003, and

(b) apply in relation to shares, and interests in shares, acquired on or after that date until the day appointed under paragraph 3(2).

In this sub-paragraph “shares” means shares in a company or securities as defined in section 254(1) of the Taxes Act 1988 issued by a company.

(4) The provisions are—

section 450(1), (2), (3)(a), (4), (5) and (6)(a), and

sections 447 to 449, section 451, section 452(1) to (3), section 461(1) and (2),

section 462, sections 464 to 466 and sections 468 to 470, so far as relevant

for the purposes of those provisions of section 450 (or the other provisions

mentioned in this subsection so far as so relevant).

10 (1) For Chapter 5 of Part 7 substitute—

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## “CHAPTER 5

### SECURITIES OPTIONS

#### *Introduction*

#### **Options to which this Chapter applies**

- 471 (1) This Chapter applies to a securities option acquired by a person where the right or opportunity to acquire the securities option is available by reason of an employment of that person or any other person.
- (2) For the purposes of subsection (1) “employment” includes a former or prospective employment.
- (3) A right or opportunity to acquire a securities option made available by a person’s employer, or a person connected with a person’s employer, is to be regarded for the purposes of subsection (1) as available by reason of an employment of that person unless—
- (a) the person by whom the right or opportunity is made available is an individual, and
  - (b) the right or opportunity is made available in the normal course of the domestic, family or personal relationships of that person.
- (4) A right or opportunity to acquire a securities option available by reason of holding employment-related securities is to be regarded for the purposes of subsection (1) as available by reason of the same employment as that by reason of which the right or opportunity to acquire the employment-related securities was available.
- (5) In this Chapter—
- “the acquisition”, in relation to an employment-related securities option, means the acquisition of the employment-related securities option pursuant to the right or opportunity available by reason of the employment,
  - “the employment” means the employment by reason of which the right or opportunity to acquire the employment-related securities option is available (“the employee” and “the employer” being construed accordingly), and
  - “employment-related securities option” means a securities option to which this Chapter applies.

#### **Associated persons**

- 472 (1) For the purposes of this Chapter the following are “associated persons” in relation to an employment-related securities option—
- (a) the person who acquired the employment-related securities option on the acquisition,
  - (b) (if different) the employee, and
  - (c) any relevant linked person.



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- (2) A person is a relevant linked person if—
  - (a) that person (on the one hand), and
  - (b) either the person who acquired the employment-related securities option on the acquisition or the employee (on the other),are connected or, although not connected, are members of the same household.
- (3) But a company which would otherwise be a relevant linked person is not if it is—
  - (a) the employer,
  - (b) the person from whom the employment-related securities option was acquired, or
  - (c) the person by whom the right or opportunity to acquire the employment-related securities option was made available.

### **Introduction to taxation of securities options**

- 473 (1) The starting-point is that section 475 contains an exemption from the liability to tax that might otherwise arise under—
  - (a) Chapter 1 of Part 3 (earnings), or
  - (b) Chapter 10 of that Part (taxable benefits: residual liability to charge),when an employment-related securities option is acquired.
- (2) Liability to tax may arise, when securities are acquired pursuant to the employment-related securities option, under—
  - (a) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (b) Chapter 3C of this Part (acquisition of securities for less than market value), or
  - (c) section 476 (acquisition of securities pursuant to securities option).
- (3) Liability to tax may also arise by virtue of section 476 when—
  - (a) the employment-related securities option is assigned or released, or
  - (b) a benefit is received in connection with the employment-related securities option.
- (4) There are special rules relating to share options acquired under—
  - (a) approved SAYE option schemes (see Chapter 7 of this Part),
  - (b) approved CSOP schemes (see Chapter 8 of this Part), or
  - (c) enterprise management incentives (see Chapter 9 of this Part).

### **Cases where this Chapter does not apply**

- 474 (1) This Chapter (apart from sections 473 and 483) does not apply in relation to an employment-related securities option if, at the time of the acquisition, the earnings from the employment were not (or would not have been if there had been any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK).

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- (2) This Chapter (apart from sections 473 and 483) does not apply in the case of a former employment if it would not apply if the acquisition had taken place in the last tax year in which the employment was held.
- (3) This Chapter (apart from sections 473 and 483) does not apply in the case of a prospective employment if it would not apply if the acquisition had taken place in the first tax year in which the employment is held.
- (4) Where the employment-related securities option is a new option (within the meaning of section 483), the references in this section to the acquisition are to the acquisition of the old option (within the meaning of that section).

#### *Tax relief on acquisition of option*

##### **No charge in respect of acquisition of option**

- 475 (1) No liability to income tax arises in respect of the acquisition of an employment-related securities option.
- (2) Subsection (1) is subject to section 526 (approved CSOP schemes: charge where share option granted at a discount).

#### *Tax charge on post-acquisition chargeable events*

##### **Charge on occurrence of chargeable event**

- 476 (1) This section applies if a chargeable event occurs in relation to an employment-related securities option.
- (2) The taxable amount determined under section 478 counts as employment income of the employee for the relevant tax year (but subject to subsection (5)).
  - (3) The “relevant tax year” is the tax year in which the chargeable event occurs.
  - (4) Section 477 explains what are chargeable events for the purposes of this section.
  - (5) If the employee has been divested of the employment-related securities option by operation of law, the person who is the relevant person in relation to the chargeable event (see section 477(7)) is chargeable to tax under Case VI of Schedule D on the amount determined under section 478.
  - (6) This section is subject to—
    - section 519 (approved SAYE option schemes: no charge in respect of exercise of share option by employee),
    - section 524 (approved CSOP schemes: no charge in respect of exercise of share option by employee), and
    - section 530 (enterprise management incentives: no charge on exercise by employee of option to acquire shares at market value).

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### **Chargeable events**

- 477 (1) This section applies for the purposes of section 476 (charge on occurrence of chargeable event).
- (2) Any of the events mentioned in subsection (3) is a “chargeable event” in relation to the employment-related securities option unless it occurs on or after the death of the employee.
- (3) The events are—
- (a) the acquisition of securities pursuant to the employment-related securities option by an associated person,
  - (b) the assignment for consideration of the employment-related securities option by an associated person otherwise than to another associated person or the release for consideration of the employment-related securities option by an associated person, or
  - (c) the receipt by an associated person of a benefit in money or money’s worth in connection with the employment-related securities option (other than securities acquired pursuant to the employment-related securities option or consideration for its assignment or release).
- (4) For the purposes of subsection (3)(a) securities are acquired at the time when a beneficial interest is acquired (and not, if different, the time when the securities are conveyed or transferred).
- (5) A benefit received on account of any disability (within the meaning of the Disability Discrimination Act 1995) of the employee is to be disregarded for the purposes of subsection (3)(c).
- (6) A benefit in money or money’s worth received in consideration for or otherwise in connection with—
- (a) failing or undertaking not to acquire securities pursuant to the employment-related securities option, or
  - (b) granting or undertaking to grant to another person a right to acquire securities which are subject to the employment-related securities option or any interest in them,
- is to be regarded for the purposes of subsection (3)(c) as received in connection with the employment-related securities option.
- (7) For the purposes of section 476(5) (charge under Case VI of Schedule D) the relevant person in relation to a chargeable event is—
- (a) in the case of an event that is a chargeable event by virtue of subsection (3)(a), the person by whom the securities are acquired, and
  - (b) in the case of an event that is a chargeable event by virtue of subsection (3)(b) or (c), the person by whom the consideration or benefit is received.

### **Amount of charge**

- 478 (1) The taxable amount for the purposes of section 476 (charge on occurrence of chargeable event) is—

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## AG - DA

where—

AG is the amount of any gain realised on the occurrence of the chargeable event, and

DA is the total of any deductible amounts.

- (2) Section 479 explains what is the amount of any gain realised on the occurrence of a chargeable event.
- (3) Section 480 specifies what are deductible amounts.

### **Amount of gain realised on occurrence of chargeable event**

- 479 (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).
- (2) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is (subject to subsection (4))—

## MV - C

- (3) In subsection (2)—
  - MV is the market value of the securities that are acquired at the time when they are acquired, and
  - C is the amount of any consideration given for the securities that are acquired.
- (4) But the amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(a) (acquisition of securities) is calculated—
  - (a) if section 531 (enterprise management incentives: limitation of charge on exercise of option to acquire shares below market value) applies, in accordance with that section, and
  - (b) if section 532 (enterprise management incentives: modified tax consequences following disqualifying events) applies, in accordance with that section.
- (5) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(b) (assignment or release of option) is the amount of the consideration given for the assignment or release.
- (6) The amount of the gain realised on the occurrence of an event that is a chargeable event by virtue of section 477(3)(c) (receipt of benefit in connection with option) is the amount or market value of the benefit.
- (7) But if—
  - (a) the consideration mentioned in subsection (5), or
  - (b) the benefit mentioned in subsection (6),

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consists (in whole or in part) in the provision of securities or an interest in securities the market value of which has been reduced by at least 10% as a result of things done otherwise than for genuine commercial purposes within the period of 7 years ending with the receipt of the consideration or benefit, its market value is to be taken to be what it would be but for the reduction.

- (8) The following are among the things that are, for the purposes of subsection (7), done otherwise than for genuine commercial purposes—
- (a) anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions, and
  - (b) any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm's length (other than a payment for group relief).
- (9) In subsection (8)(b)—
- (a) “group” means a company and its 51% subsidiaries, and
  - (b) “group relief” has the same meaning as in section 402(6) of ICTA.

### **Deductible amounts**

480 (1) This section applies for the purposes of section 478 (amount of charge on occurrence of chargeable event).

- (2) The amount of—
- (a) any consideration given for the acquisition of the employment-related securities option, and
  - (b) the amount of any expenses incurred in connection with the acquisition of securities, assignment, release or receipt which constitutes the chargeable event,

is a deductible amount.

- (3) Where in consequence of—
- (a) the acquisition of the employment-related securities option,
  - (b) the acquisition of securities pursuant to the employment-related securities option, or
  - (c) a transaction of which the acquisition of the employment-related securities option or the acquisition of securities pursuant to the employment-related securities option forms part,

there is a reduction in the market value of any employment-related securities to which an associated person is beneficially entitled, the amount of the reduction is to be treated for the purposes of subsection (2) as consideration (or additional consideration) given for the acquisition of the employment-related securities option.

- (4) If an amount counts as employment income of the employee under section 526 (approved CSOP schemes: charge where option granted at a discount) in respect of the employment-related securities option, so much of that amount as is attributable to the shares in question is a deductible amount.
- (5) The following are also deductible amounts—

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- (a) any amount that constituted earnings from the employment under Chapter 1 of Part 3 (earnings) in respect of the acquisition of the employment-related securities option,
  - (b) any amount that was treated as earnings from the employment under Chapter 10 of that Part (taxable benefits: residual liability to charge) in respect of the acquisition of the employment-related securities option, and
  - (c) the amount of any gain by a previous holder on an assignment of the employment-related securities option which would have been a deductible cost by virtue of subsection (2)(c) of section 479 (as originally enacted) on an exercise of the option at a time when that section was in force.
- (6) If there has been a previous chargeable event in relation to the employment-related securities option (or if section 476 or 477 as originally enacted applied to the option by virtue of an earlier event), so much of any deductible amount as was deducted in calculating the taxable amount on the occasion of that event is to be regarded as not being a deductible amount.
- (7) Sections 481 and 482 (deductible amounts in respect of secondary Class 1 contributions or special contribution met by the employee) specify further deductible amounts.

#### **Deductible amount in respect of secondary Class 1 contributions met by employee**

- 481 (1) The amount calculated under subsection (2) is a deductible amount if—
- (a) an agreement having effect under paragraph 3A of Schedule 1 to the Contributions and Benefits Act has been entered into allowing the secondary contributor to recover from the employee the whole or part of any secondary Class 1 contributions in respect of the gain, or
  - (b) an election having effect under paragraph 3B of Schedule 1 to that Act is in force which has the effect of transferring to the employee the whole or part of the liability to pay secondary Class 1 contributions in respect of the gain.
- (2) The amount is the sum of—
- (a) any amount that under the agreement referred to in subsection (1) (a) is recovered in respect of the gain by the secondary contributor before 5th June in the tax year following that in which the gain is realised, and
  - (b) the amount of any liability in respect of the gain that, by virtue of the election referred to in subsection (1)(b), has become the employee's liability.
- (3) If notice of withdrawal of approval of the election is given, the amount of any liability in respect of the gain for the purposes of subsection (2)(b) is limited to the amount of the liability met before 5th June in the tax year following that in which the gain is realised.
- (4) Subsection (1) does not apply in respect of a liability to pay Class 1 contributions which is prevented from arising by virtue of section 2(1)(a) of the Social Security Contributions (Share Options) Act 2001 (liability to pay

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Class 1 contributions in respect of gains replaced by liability to pay special contribution).

(5) In this section—

“approval”, in relation to an election, means approval by the Board of Inland Revenue under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, and

“secondary contributor” has the same meaning as in that Act (see section 7).

### **Deductible amount in respect of special contribution met by employee**

482 (1) The amount of the liability referred to in subsection (4) is a deductible amount if conditions A to D are met.

(2) Condition A is that a notice in respect the employment-related securities option was given to the Board of Inland Revenue in accordance with section 1 of the Social Security Contributions (Share Options) Act 2001 before 11th August 2001.

(3) Condition B is that the person, or one of the persons, who gave that notice is a person who (apart from that Act) was liable, or would have become liable, by virtue of an election under paragraph 3B of Schedule 1 to the Contributions and Benefits Act, to pay secondary Class 1 contributions in respect of an event which is a chargeable event for the purposes of section 476.

(4) Condition C is that that person became liable to pay a special contribution under section 2 of the Social Security Contributions (Share Options) Act 2001 in respect of the employment-related securities option.

(5) Condition D is that that person met that liability before 11th August 2001 or before the end of such further period as the Board of Inland Revenue directed under section 2(5) of that Act.

### *Supplementary provisions*

### **Application of this Chapter where option exchanged for another**

483 (1) This section applies if—

- (a) the employment-related securities option (the “old option”) is assigned or released, and
- (b) the whole or part of the consideration for the assignment or release consists of or includes another securities option (the “new option”).

(2) For the purposes of section 479(5) (amount of gain realised by assigning or releasing option) the new option is not to be treated as consideration given for the assignment or release of the old option.

(3) This Chapter applies to the new option as it applies to the old option.

(4) For the purposes of section 480(2) (consideration for acquisition of option) the amount of the consideration given for the acquisition of the new option is to be treated as being the sum of—

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- (a) the amount by which the amount of the consideration given for the acquisition of the old option exceeds the amount of any consideration given for the assignment or release of the old option, apart from the new option, and
  - (b) any valuable consideration given for the acquisition of the new option, apart from the old option.
- (5) Two or more transactions are to be treated for the purposes of subsection (1) as a single transaction by which one option is assigned for a consideration which consists of or includes another option if—
- (a) the transactions result in—
    - (i) a person ceasing to hold an option, and
    - (ii) that person or a connected person coming to hold another option, and
  - (b) one or more of the transactions is effected under arrangements to which two or more persons holding options, in respect of which there may be liability to tax under this Chapter, are parties.
- (6) Subsection (5) applies regardless of the order in which the assignments and the acquisition occur.

### Definitions

- 484 (1) In this Chapter—
- “securities”, and
  - “securities option”,
- have the meaning indicated in section 420.
- (2) In this Chapter “market value” has the meaning indicated in section 421(1).
- (3) For the purposes of this Chapter sections 421(2) and 421A apply for determining the amount of consideration given for anything.
- (4) In this Chapter “employment-related securities” has the same meaning as in Chapter 1 of this Part (see section 421B(8)).
- (5) In this Chapter—
- “the acquisition”,
  - “the employee”,
  - “the employer”,
  - “the employment”, and
  - “employment-related securities option”,
- have the meaning indicated in section 471(5).
- (6) In this Chapter “associated person” has the meaning indicated in section 472.
- (7) In this Chapter—
- “secondary Class 1 contributions” has the same meaning as in the Contributions and Benefits Act (see section 1 of that Act), and
  - “the Contributions and Benefits Act” means SSCBA 1992 or SSCB(NI)A 1992.”.
- (2) Sub-paragraph (1) has effect—



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- (a) on and after 16th April 2003 in relation to employment-related securities options which are not share options, and
  - (b) on and after the day appointed under paragraph 3(2) in relation to employment-related securities options which are share options;
- and for this purpose “share options” means rights to acquire shares in a company or securities as defined in section 254(1) of the Taxes Act 1988 issued by a company.

#### PAYE

- 11 (1) Section 509 (modification of section 696 where charge on shares ceasing to be subject to plan) is amended as follows.
- (2) In subsection (4), for “subsection (5)” substitute “ subsections (5) and (6) ”.
- (3) After subsection (5) insert—
- “(6) In determining for the purposes of this section (and of section 696 in its application in accordance with this section) whether the shares are readily convertible assets, section 702 has effect with the omission of subsections (5A) to (5D).”.
- 12 (1) For sections 698 and 699 (PAYE: conditional interests in shares and convertible shares) substitute—

#### “698 PAYE: special charges on employment-related securities

- (1) This section applies where by reason of the operation of—
- (a) section 426 (chargeable events in relation to restricted securities and restricted interests in securities),
  - (b) section 438 (chargeable events in relation to convertible securities and interests in convertible securities),
  - (c) section 446B (charge on acquisition where market value of securities or interest artificially depressed),
  - (d) section 446L (charge where market value of securities artificially enhanced),
  - (e) section 446U (securities or interest acquired for less than market value: charge on discharge of notional loan),
  - (f) section 446Y (charge where securities or interest disposed of for more than market value), or
  - (g) section 447 (chargeable benefit from securities or interest),
- in relation to employment-related securities, an amount counts as employment income of an employee.
- (2) Sections 684 to 691 and 696 have effect as if—
- (a) the employee were provided with PAYE income in the form of the employment-related securities by the employer on the relevant date, and
  - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.
- (3) In a case in which the employment-related securities are not readily convertible assets, if—

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- (a) the amount counts as income by virtue of section 427(3)(c), 439(3)(b), (c) or (d), 446Y or 447, and
  - (b) the whole or any part of the consideration or benefit concerned takes the form of a payment or consists in the provision of an asset, subsection (4) applies.
- (4) Sections 684 to 691 and 696 have effect —
- (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
  - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.
- (5) Section 696 as applied by subsection (4)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.
- (6) In this section “the relevant date” means—
- (a) in relation to an amount counting as employment income under section 426 or 438, the date on which the chargeable event in question occurs,
  - (b) in relation to an amount counting as employment income under section 446B, the date of the acquisition of the securities or interest in securities in question,
  - (c) in relation to an amount counting as employment income under section 446L, the valuation date in question,
  - (d) in relation to an amount counting as employment income under section 446U, the date on which the notional loan in question is treated as discharged,
  - (e) in relation to an amount counting as employment income under section 446Y, the date of the disposal of the securities or interest in securities in question, and
  - (f) in relation to an amount counting as employment income under section 447, the date on which the benefit in question is received.
- (7) In this section “employment-related securities” has the same meaning as in Chapters 1 to 4 of Part 7.”
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) but does not affect the operation of section 698 as originally enacted in relation to any securities, or interests in securities, acquired before 16th April 2003.
- 13 (1) For section 700 (PAYE: gains from share options) substitute—

**“700 PAYE: gains from securities options**

- (1) This section applies where by reason of the operation of section 476 (acquisition of securities pursuant to securities option etc) in relation to

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an employment-related securities option an amount counts as employment income of an employee.

- (2) In a case where the amount counts as employment income by virtue of section 477(3)(a) (acquisition of securities), sections 684 to 691 and 696 have effect as if—
- (a) the employee were provided with PAYE income in the form of the securities by the employer on the relevant date, and
  - (b) the reference in subsection (2) of section 696 to the amount of income likely to be PAYE income in respect of the provision of the asset were to the amount likely to count as employment income.
- (3) In a case where the amount counts as income by virtue of section 477(3)(b) or (c) (assignment or release for consideration or receipt of benefit), sections 684 to 691 and 696 have effect—
- (a) to the extent that the consideration or benefit takes the form of a payment, as if it were a payment of PAYE income of the employee by the employer, and
  - (b) to the extent that the consideration or benefit consists in the provision of an asset, as if the provision of the asset were the provision of PAYE income in the form of the asset by the employer on the relevant date.
- (4) Section 696 as applied by subsection (3)(b) has effect as if the reference in subsection (2) of that section to the amount of income likely to be PAYE income were to the same proportion of the amount likely to count as employment income as so much of the consideration or benefit as consists in the provision of the asset bears to the whole of the consideration or benefit.
- (5) In this section “the relevant date” means the date on which the chargeable event in question occurs.
- (6) In this section—  
“employment-related securities option”, and  
“securities”,  
have the same meaning as in Chapter 5 of Part 7.”.

(2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).

14 (1) In section 701(2)(b) (“asset” not to include vouchers or credit-tokens), omit “subject to section 700(6).”.

(2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).

15 (1) Section 702 (meaning of “readily convertible asset”) is amended as follows.

(2) After subsection (5) insert—

“(5A) An asset consisting in securities which is not a readily convertible asset apart from this subsection is to be treated as a readily convertible asset unless the securities are shares that are corporation tax deductible.

(5B) For the purposes of subsection (5A) shares are corporation tax deductible if they are acquired by a person—

- (a) by reason of that, or another person's, employment with a company,  
or

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- (b) pursuant to an option granted by reason of that, or another person's, employment with a company,  
and the company is entitled to corporation tax relief in respect of the shares under Schedule 23 to the Finance Act 2003 (corporation tax relief for employee share acquisition).
- (5C) If a person acquires additional shares by virtue of holding shares that are corporation tax deductible, the additional shares are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.
- (5D) If—
- (a) on a person ceasing to be beneficially entitled to shares that are corporation tax deductible, that person acquires other shares, and
  - (b) the circumstances are such that the shares to which the person ceases to be beneficially entitled constitute “original shares” and the other shares constitute a “new holding” for the purposes of sections 127 to 130 of TCGA 1992,
- the shares that constitute the new holding are to be treated for the purposes of subsection (5A) as if they were corporation tax deductible.”.
- (3) In subsection (6), after the definition of “money debt” insert—
- ““securities” has the same meaning as in Chapters 1 to 5 of Part 7 (employment income from securities) (see section 420),
- “shares” includes—
- (a) an interest in shares, and
  - (b) stock or an interest in stock.”.
- (4) For the purposes of section 702, shares are to be treated as corporation tax deductible during an accounting period which began before 1st January 2003 if they would have been corporation tax deductible had the accounting period begun on or after that date.

#### *Consequential amendments*

- 16 (1) In section 3(1) (structure of employment income Parts), in the entry relating to Part 7, for “share-related income and exemptions” substitute “ income and exemptions relating to securities and securities options acquired in connection with an employment ”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003.
- 17 (1) In section 7(6)(b) (employment income), for “(share-related income and exemptions)” substitute “ (income and exemptions relating to securities and securities options) ”.
- (2) Sub-paragraph (1) has effect on and after 16th April 2003.
- 18 (1) In section 19(2) (year in which earnings treated as received), omit the entries relating to Chapters 8 and 9 of Part 3.
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and

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- (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 19 (1) In section 32(2) (receipt of non-money earnings), omit the entries relating to Chapters 8 and 9 of Part 3.
  - (2) Sub-paragraph (1) has effect—
    - (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
    - (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 20 (1) In section 63(1) (the benefits code), omit the entries relating to Chapters 8 and 9 of Part 3.
  - (2) Sub-paragraph (1) has effect—
    - (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
    - (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 21 (1) In section 64 (relationship between earnings and benefits code), omit subsections (5) and (6).
  - (2) Sub-paragraph (1) has effect in accordance with the provision made for the repeal of Chapter 8 of Part 3.
- 22 (1) Omit Chapter 8 of Part 3.
  - (2) Sub-paragraph (1) has effect in relation to shares, and interests in shares, acquired on or after 16th April 2003.
- 23 (1) Omit Chapter 9 of Part 3.
  - (2) Sub-paragraph (1) has effect in relation to shares, and interests in shares, disposed of on or after 16th April 2003.
- 24 (1) Section 216 (provisions not applicable to lower-paid employments) is amended as follows.
  - (2) In subsection (4), omit the entries relating to Chapters 8 and 9 of Part 3.
  - (3) In subsection (6), omit the entries relating to section 195(3) and section 199(4).
  - (4) Sub-paragraphs (1) to (3) have effect—
    - (a) so far as relating to Chapter 8 of Part 3, in accordance with the provision made for the repeal of that Chapter, and
    - (b) so far as relating to Chapter 9 of Part 3, in accordance with the provision made for the repeal of that Chapter.
- 25 (1) Section 227(4) (employment income: exemptions) is amended as follows.
  - (2) For paragraphs (a) and (b) substitute—
    - “(a) section 425 (restricted securities: no charge in respect of acquisition in certain circumstances),
    - (b) section 475 (no charge in respect of acquisition of securities option),”.

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- (3) Omit paragraphs (d), (f) and (h).
- (4) This paragraph has effect—
  - (a) so far as relating to section 425, in accordance with the provision made for the substitution of Chapter 2 of Part 7, and
  - (b) otherwise, in accordance with the provision made for the substitution of Chapter 5 of Part 7.
- 26 (1) Omit section 491 (no charge under Chapter 8 of Part 3 in respect of acquisition of approved share incentive plan shares).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the repeal of Chapter 8 of Part 3.
- 27 (1) Omit section 494 (no charge on removal of restrictions applying to approved share incentive plan shares).
- (2) Sub-paragraph (1) has effect—
  - (a) so far as relating to section 427, in accordance with the provision made for the substitution of Chapter 2 of Part 7, and
  - (b) so far as relating to section 449, in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 28 (1) Omit section 495 (approved share incentive plan shares: value of shares in dependent subsidiary).
- (2) Sub-paragraph (1) has effect on 16th April 2003.
- 29 (1) Omit section 518 (no charge in respect of acquisition of approved SAYE share scheme option).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 30 (1) In section 519 (no charge in respect of exercise of approved SAYE share scheme option), omit subsection (4).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 31 (1) Omit section 520 (approved SAYE option schemes: no charge in respect of post-acquisition benefits).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 32 (1) Omit section 523 (no charge in respect of acquisition of approved CSOP scheme option).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 33 (1) In section 524 (no charge in respect of exercise of approved CSOP scheme option), omit subsection (4).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 34 (1) Omit section 525 (approved CSOP schemes: no charge in respect of post-acquisition benefits).
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 4 of Part 7.

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- 35 (1) In section 526(4) (charge where approved CSOP scheme option granted at a discount: deductions of charge from amount chargeable under other provisions), for the words from the beginning to “deductions” substitute “ Section 480(4) (gain realised on acquisition of securities pursuant to option etc) provides for a deduction ”.
- (2) Sub-paragraph (1) has effect—
- (a) so far as relating to section 194, in accordance with the provision made for the repeal of Chapter 8 of Part 3, and
- (b) otherwise, on and after the day appointed under paragraph 3(2).
- 36 (1) Omit section 528 (enterprise management incentives: no charge in respect of acquisition of qualifying option).
- (2) Sub-paragraph (1) has effect on the day appointed under paragraph 3(2).
- 37 (1) In section 531(4) (enterprise management incentives: limitation of charge on exercise of qualifying option to acquire shares below market value), for the words after “which” substitute “ under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option. ”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 38 (1) In section 532(5) (enterprise management incentives: modified tax consequences following disqualifying events), for the words after “which” substitute “ under section 478 (amount of charge under section 476) is to be regarded as the taxable amount for the purposes of section 476 in respect of the acquisition of the shares pursuant to the option. ”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 39 (1) In section 538 (share conversions excluded for purposes of section 536), for subsection (4) substitute—
- “(4) In this section—
- “associated company” has the same meaning as, by virtue of section 416 of ICTA, it has for the purposes of Part 11 of ICTA,
- “director” has the same meaning as in the benefits code (see section 67) but also includes a person who is to be or has been a director,
- “employee” includes a person who is to be or has been an employee, and
- “employee-controlled” has the same meaning as in Chapters 1 to 4 of this Part (see section 421H(1)).”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 40 (1) In section 540(1) (enterprise management incentives: notional loan provisions not to apply in relation to acquisition of shares by exercise of qualifying option), for “Chapter 8 of Part 3” substitute “ Chapter 3C of this Part ”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the repeal of Chapter 8 of Part 3.
- 41 (1) In section 541 (enterprise management incentives: effect on other income tax charges), for subsections (1) and (2) substitute—

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- “(1) Nothing in the EMI code affects—
- (a) the operation of Chapters 2 to 4 of this Part in relation to shares acquired under a qualifying option, or
  - (b) the operation of Chapter 5 of this Part otherwise than in relation to the acquisition of shares under a qualifying option.
- (2) But in calculating the taxable amount for the purposes of section 426 (post-acquisition charge on restricted securities) in respect of shares acquired under a qualifying option, the amount of relief on the exercise of the option is to be regarded as a deductible amount for the purposes of section 428 (amount of charge).”.

- (2) So far as relating to—
- (a) Chapter 9 of Part 3 (which is repealed and replaced by provisions inserted in Part 7),
  - (b) any of the new Chapters substituted or inserted in Part 7 by this Schedule, and
  - (c) each of the Chapters of that Part as originally enacted for which new Chapters are substituted by this Schedule,
- sub-paragraph (1) has effect in accordance with the provision made for the taking effect of the repeal, substitution or insertion.

42 (1) Part 2 of Schedule 1 (index of defined expressions) is amended as follows.

- (2) Omit the entries relating to—
- “acquisition (in Chapter 8 of Part 3)”,
  - “the acquisition (in Chapter 8 of Part 3)”,
  - “acquisition (in Chapter 9 of Part 3)”,
  - “the acquisition (in Chapter 4 of Part 7)”,
  - “as a director or employee, in relation to the acquisition of an interest in shares (in Chapter 2 of Part 7)”,
  - “as a director or employee, in relation to the acquisition of shares or an interest in shares (in Chapter 3 of Part 7)”,
  - “as a director or employee, in relation to the acquisition of shares or an interest in shares (in Chapter 4 of Part 7)”,
  - “assign, in relation to a share option (in Chapter 5 of Part 7)”,
  - “associated company (in Chapter 4 of Part 7)”,
  - “company (in Chapter 5 of Part 7)”,
  - “the Contributions and Benefits Act (in Chapter 5 of Part 7)”,
  - “convertible, in relation to shares (in Chapter 3 of Part 7)”,
  - “dependent subsidiary (in Chapter 4 of Part 7)”,
  - “director (in Chapter 2 of Part 7)”,
  - “director (in Chapter 3 of Part 7)”,
  - “director (in Chapter 4 of Part 7)”,
  - “director (in Chapter 5 of Part 7)”,
  - “employee (in Chapter 8 of Part 3)”,
  - “employee (in Chapter 9 of Part 3)”,
  - “employee (in Chapter 2 of Part 7)”,
  - “the employee (in Chapter 2 of Part 7)”,
  - “employee (in Chapter 3 of Part 7)”,



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“the employee (in Chapter 3 of Part 7)”,  
“employee (in Chapter 4 of Part 7)”,  
“the employee (in Chapter 4 of Part 7)”,  
“employee (in Chapter 5 of Part 7)”,  
“the employee (in Chapter 5 of Part 7)”,  
“employee-controlled (in relation to a company) (in Chapter 4 of Part 7)”,  
“the employee’s interest (in Chapter 2 of Part 7)”,  
“the employer company (in Chapter 2 of Part 7)”,  
“the employer company (in Chapter 3 of Part 7)”,  
“the employer company (in Chapter 4 of Part 7)”,  
“employment-related shares (in Chapter 9 of Part 3)”,  
“the employment-related shares (in Chapter 8 of Part 3)”,  
“held by outside shareholders (in Chapter 4 of Part 7)”,  
“interest in shares (in Chapter 8 of Part 3)”,  
“interest in shares (in Chapter 9 of Part 3)”,  
“interest in shares (in Chapter 4 of Part 7)”,  
“market value (in Chapter 8 of Part 3)”,  
“market value (in Chapter 9 of Part 3)”,  
“market value (in Chapter 2 of Part 7)”,  
“only conditional (interest in shares) (in Chapter 2 of Part 7)”,  
“payment for the employment-related shares (in Chapter 8 of Part 3)”,  
“release, in relation to a share option (in Chapter 5 of Part 7)”,  
“secondary Class 1 contributions (in Chapter 5 of Part 7)”,  
“share option (in Chapter 5 of Part 7)”,  
“the share option (in Chapter 5 of Part 7)”,  
“shares (in Chapter 8 of Part 3)”,  
“shares (in Chapter 9 of Part 3)”,  
“shares (in Chapter 2 of Part 7)”,  
“the shares (in Chapter 2 of Part 7)”,  
“shares (in Chapter 3 of Part 7)”,  
“the shares (in Chapter 3 of Part 7)”,  
“shares (in Chapter 4 of Part 7)”,  
“the shares (in Chapter 4 of Part 7)”,  
“shares (in Chapter 5 of Part 7)”,  
“terms (in Chapter 2 of Part 7)”,  
“terms (in Chapter 3 of Part 7)”, and  
“value (in relation to shares) (in Chapter 4 of Part 7)”.

(3) At the appropriate places insert—

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“the acquisition (in Chapters 1 to 4 of Part 7) section 421B(8) (see also section 446Q(4))”,

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“the acquisition (in Chapter 5 of Part 7) section 471(5)”,

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“associated company (in section 421H(1) and section 421H(2)),  
Chapters 2 to 4 of Part 7)

“associated person (in Chapters 1 to 4 of Part section 421C”,  
7)

“associated person (in Chapter 5 of Part 7) section 472”,

“chargeable event (in Chapter 3B of Part 7) section 446P(5)”,

“the Contributions and Benefits Act (in section 484(7)”,  
Chapter 5 of Part 7)

“consideration (in Chapters 2 to 5 of Part 7) sections 421(2) and 421A”,

“consideration given for the acquisition of section 421I”,  
employment-related securities (in Chapters 2  
to 3A of Part 7)

“convertible securities (in Chapters 2 to 3A section 436”,  
of Part 7)

“the employee (in Chapters 1 to 4 of Part 7) section 421B(8)”,

“the employee (in Chapter 5 of Part 7) section 471(5)”,

“employee-controlled (in Chapters 2 to 4 of section 421H(1)”,  
Part 7)

“the employer (in Chapters 1 to 4 of Part 7) section 421B(8)”,

“the employer (in Chapter 5 of Part 7) section 471(5)”,

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“the employment (in Chapters 1 to 4 of Part 7) section 421B(8)”,

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“the employment (in Chapter 5 of Part 7) section 471(5)”,

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“employment-related securities (in Chapters 1 to 5 of Part 7) section 421B(8) (see also section 484(4))”,

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“employment-related securities option (in Chapter 5 of Part 7) section 471(5)”,

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“interest, in relation to securities (or shares) (in Chapters 1 to 5 of Part 7) section 420(8)”,

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“market value (in Chapters 1 to 5 of Part 7) section 421(1)”,

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“non-commercial increase (in Chapter 3B of Part 7) section 446K(4)”,

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“non-commercial reduction (in Chapter 3B of Part 7) section 446K(4)”,

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“the notional loan (in Chapter 3C of Part 7) section 446S(1)”,

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“recognised stock exchange section 841 of ICTA”,

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“relevant period (in Chapter 3B of Part 7) section 446O”,

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“restricted securities and restricted interest in securities (in Chapters 2, 3A and 3B of Part 7) sections 423 and 424”,

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“restriction (in Chapters 2, 3A and 3B of Part 7) section 432(8)”,

“secondary Class 1 contributions (in Chapter 5 of Part 7) section 484(7)”,

“securities (in Chapters 1 to 5 of Part 7) section 420”,

“securities option (in Chapters 1 to 5 of Part 7) section 420(8)”,

“shares (in Chapters 1 to 5 of Part 7) section 420(8)”,

“valuation date (in Chapter 3B of Part 7) section 446O”, and

“variation, in relation to a restriction (in Chapter 2 of Part 7) section 427(4)”.

- (4) So far as relating to—
- (a) Chapters 8 and 9 of Part 3 (which are repealed and replaced by provisions inserted in Part 7),
  - (b) each of the new Chapters substituted or inserted in Part 7, and
  - (c) each of the Chapters of that Part as originally enacted for which new provisions are substituted,
- sub-paragraphs (1) to (3) have effect in accordance with the provision made for the taking effect of the repeal, substitution or insertion.
- 43 (1) In paragraph 35 of Schedule 2 (approved share incentive plans: maximum annual award), for sub-paragraphs (3) and (4) substitute—
- “(3) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.
- (4) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 2 of Part 7.
- 44 (1) In paragraph 42(3) of Schedule 3 (approved SAYE option schemes: withdrawal of approval), for paragraph (b) substitute—

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- “(b) section 421G(b) (exemption from Chapters 2 to 4 of Part 7),”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 4 of Part 7.
- 45 (1) Schedule 5 (enterprise management incentives) is amended as follows.
- (2) In paragraph 5, for sub-paragraphs (7) and (8) substitute—
- “(7) For the purposes of this paragraph the market value of restricted shares is to be determined as if they were not.
- (8) Shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares.”.
- (3) In paragraph 37, for sub-paragraphs (4) to (6) substitute—
- “(4) Where the shares that may be acquired by the employee are restricted shares, the agreement must contain details of the restrictions.
- (5) For the purposes of sub-paragraph (4)—
- (a) shares are “restricted shares” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and
- (b) “restrictions” means that provision.”.
- (4) Sub-paragraphs (1) to (3) have effect in accordance with the provision made for the substitution of Chapter 2 of Part 7.
- 46 (1) Schedule 7 (transitionals and savings) is amended as follows.
- (2) Omit paragraphs 30 and 31.
- (3) In the heading of Part 6, for “share-related” substitute “ related to securities ”.
- (4) In the heading of Part 7, for “share-related income” substitute “ income related to securities ”.
- (5) Before paragraph 44 insert—

*“Pre-6th April 2003 acquisitions*

- 43A(1) This paragraph relates to the operation of section 421E (exclusions from Chapters 2 to 4 of Part 7: residence) in relation to an acquisition made before 6th April 2003.
- (2) Section 421E(1) has effect with the substitution of “ the employee was not chargeable under Case I of Schedule E in respect of the employment ” for the words from “the earnings”.
- (3) Section 421E(2) has effect with the substitution of “ the emoluments of the employment did not fall to be charged to income tax under Schedule E ” for the words from “the earnings”.”.

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- (6) In paragraph 44, after “Part 7” insert “, as originally enacted,”.
- (7) In paragraph 45(1), at end insert “, as originally enacted.”.
- (8) In paragraph 46(1), after “disposal” insert “, as originally enacted,”.
- (9) Omit paragraphs 47 and 48.
- (10) In paragraph 49, for “shares” substitute “ securities ”.
- (11) Omit paragraphs 50 to 52.
- (12) Omit paragraph 53.
- (13) In paragraph 54, after “Part 7” insert “, both as originally enacted and as substituted by the Finance Act 2003,”.
- (14) In paragraph 55—
  - (a) after “Part 7” insert “, as originally enacted,” and
  - (b) omit sub-paragraph (2)(a).
- (15) In paragraph 56, after “section 449” insert “, as originally enacted,”.
- (16) In paragraph 58(1), at end insert “, as originally enacted.”
- (17) Omit paragraph 59.
- (18) Omit paragraphs 60 and 61.
- (19) After paragraph 61 insert—

*“Securities disposed of for more than market value*

61A Chapter 3D of Part 7 does not apply in relation to securities, or an interest in securities, acquired on or before 6th April 1976.”.

- (20) Omit paragraph 62.
- (21) For paragraph 63 substitute—
  - “63 (1) This paragraph relates to the operation of section 474 (exclusions from Chapter 5 of Part 7: residence) in relation to an acquisition made before 6th April 2003.
  - (2) Section 474(1) has effect with the substitution of “ the employee was not chargeable under Case I of Schedule E in respect of the employment ” for the words from “the earnings”.”.
- (22) In paragraph 64—
  - (a) for “share” (in both places) substitute “ securities ”,
  - (b) for “obtained” substitute “ acquired ”, and
  - (c) for “receipt” substitute “ acquisition ”.
- (23) In paragraph 65—
  - (a) in sub-paragraph (1), for “479 (amount of gain realised by exercising option) in relation to a share option obtained” substitute “ 478 in relation to an event that is a chargeable event by virtue of section 477(3)(a) or (b) (acquisition

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- of securities pursuant to an option and assignment and release of option) in the case of a share option acquired”, and
- (b) in sub-paragraph (2), for “479(1)” substitute “ 478(1) ” and for “cost” substitute “ amount ”.
- (24) Omit paragraph 66.
- (25) Omit paragraph 67.
- (26) In this paragraph—
- (a) sub-paragraphs (2) and (19) have effect in relation to securities, and interests in securities, disposed of on or after 16th April 2003,
- (b) sub-paragraphs (5) and (13) to (17) have effect on and after 16th April 2003,
- (c) sub-paragraphs (6) to (8), (10), (11), (20), (23) and (24) have effect on the day appointed under paragraph 3(2), and
- (d) sub-paragraphs (21) and (22) have effect in accordance with the provision made for the substitution of Chapter 5 of Part 7.

*Consequential amendments of other enactments*

- 47 (1) In section 98 of the Taxes Management Act 1970 (c. 9) (penalties for failure to furnish information etc)—
- (a) in the first column of the Table, at the appropriate place insert “ Section 421J(4) of ITEPA 2003. ”, and
- (b) in the second column of the Table, for the entries relating to sections 432, 433, 445, 465, 466 and 486 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) substitute “ Section 421J(3) of ITEPA 2003. ”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 1 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.
- 48 (1) In section 4(4)(a) of—
- (a) the Social Security Contributions and Benefits Act 1992 (c. 4) (payments treated as earnings), and
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (corresponding provision for Northern Ireland),
- for the words after “479” substitute “ of ITEPA 2003 in respect of which an amount counts as employment income of the earner under section 476 of that Act (charge on acquisition of securities pursuant to option etc), reduced by any amounts deducted under section 480(1) to (6) of that Act in arriving at the amount counting as such employment income; ”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.
- 49 The Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- 50 (1) After section 119 insert—

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### **“119A Increase in expenditure by reference to tax charged in relation to employment-related securities**

- (1) This section applies to a disposal of an asset consisting of employment-related securities if the disposal—
  - (a) is an event giving rise to a relevant income tax charge, or
  - (b) is the first disposal after an event, other than a disposal, giving rise to a relevant income tax charge.
- (2) Section 38(1)(a) applies as if the relevant amount had formed part of the consideration given by the person making the disposal for his acquisition of the employment-related securities.
- (3) For the purposes of this section an event gives rise to a relevant income tax charge if it results in an amount counting as employment income—
  - (a) under section 426 of ITEPA 2003 (restricted securities),
  - (b) under section 438 of ITEPA 2003 by virtue of section 439(3)(a) of that Act (conversion of convertible securities),
  - (c) under section 446U of ITEPA 2003 (securities acquired for less than market value: discharge of notional loan), or
  - (d) under section 476 of ITEPA 2003 by virtue of section 477(3)(a) of that Act (acquisition of securities pursuant to employment-related securities option),in respect of the employment-related securities.
- (4) For the purposes of this section “the relevant amount” is the aggregate of the amounts counting as employment income as mentioned in subsection (3) above by reason of events occurring—
  - (a) not later than the disposal, and
  - (b) where this section has applied to an earlier disposal of the employment-related securities, after the last disposal to which this section applied.
- (5) But where the relevant amount consists of or includes an amount counting as employment income under section 476 of ITEPA 2003, it is to be increased by the aggregate of any amounts deducted under section 480(5)(a) or (b), 481 or 482 of that Act in arriving at the amount of that employment income.
- (6) Where securities or interests in securities cease to be employment-related securities—
  - (a) by reason of subsection (6) of section 421B of ITEPA 2003 in circumstances in which, immediately before the employee’s death, the employment-related securities are held otherwise than by the employee, or
  - (b) by reason of subsection (7) of that section,they are to be regarded for the purposes of this section as remaining employment-related securities until the next occasion on which they are disposed of.
- (7) In this section—

“employment-related securities”, and



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“employee”, in relation to employment-related securities,  
have the same meaning as in Chapters 1 to 4 of Part 7 of ITEPA  
2003.

(8) References in this section to ITEPA 2003 are to that Act as amended by  
Schedule 22 to the Finance Act 2003.”.

(2) Sub-paragraph (1) has effect in relation to disposals on or after 16th April 2003.

51 In section 120 (increase in expenditure by reference to tax charged in relation to  
shares etc), after subsection (8) insert—

“(9) References in this section to ITEPA 2003 are to that Act as originally  
enacted.”.

52 (1) After section 149A insert—

**“149AA Restricted and convertible employment-related securities**

(1) Where an individual has acquired an asset consisting of employment-related  
securities which are—

- (a) restricted securities or a restricted interest in securities, or
- (b) convertible securities or an interest in convertible securities,

the consideration for the acquisition shall (subject to section 119A) be taken  
to be equal to the aggregate of the actual amount or value given for the  
employment-related securities and any amount that constituted earnings  
under Chapter 1 of Part 3 of ITEPA 2003 (earnings) in respect of the  
acquisition.

(2) Subsection (1) above applies only to the individual making the acquisition  
and, accordingly, is to be disregarded in calculating the consideration  
received by the person from whom the employment-related securities are  
acquired.

(3) This section has effect in relation to acquisitions on or after the day appointed  
under paragraph 3(2) of Schedule 22 to the Finance Act 2003.

(4) In this section “employment-related securities” has the same meaning as in  
Chapters 1 to 4 of Part 7 of ITEPA 2003 (as substituted by Schedule 22 to  
the Finance Act 2003).

(5) In this section—

“restricted interest in securities”, and  
“restricted securities”,

have the same meaning as in Chapter 2 of that Part of ITEPA 2003  
(as so substituted).

(6) In this section “convertible securities” has the same meaning as in Chapter 3  
of that Part of ITEPA 2003 (as so substituted).”.

53 In section 149B (employee incentive schemes: conditional interests in shares), after  
subsection (4) insert—

“(5) This section does not apply to acquisitions on or after the day appointed  
under paragraph 3(2) of Schedule 22 to the Finance Act 2003.

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- (6) References in this section to ITEPA 2003 are to that Act as originally enacted.”.
- 54 (1) In section 288 (interpretation), after subsection (1) insert—
- “(1A) If any employment-related securities option would not otherwise be regarded as an option for the purposes of this Act, it shall be so regarded; and the acquisition of securities by an associated person pursuant to an employment-related securities option is to be treated for the purposes of this Act as the exercise of the option.
- Expressions used in this subsection and Chapter 5 of Part 7 of ITEPA 2003 have the same meaning in this subsection as in that Chapter.”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Chapter 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).
- 55 (1) The Social Security Contributions (Share Options) Act 2001 (c. 20) is amended as follows.
- (2) The amendments of that Act have effect on and after the day appointed under paragraph 3(2).
- 56 In section 2(3)(b) (effect of notice under section 1), insert at the end “ (less any deductible amounts under section 480(1) to (6) of that Act). ”.
- 57 (1) Section 3 (special provision for roll-overs) is amended as follows.
- (2) In subsection (4)—
- (a) in paragraph (a), for “section 485(1) to (4)” substitute “ section 483(1) to (4) ”, and
- (b) insert at the end of paragraph (b)(i) “ (less any deductible amounts under section 480(1) to (6) of that Act). ”.
- (3) In subsection (6), for “485(1) to (3)” substitute “ 483(1) to (3) ”.
- (4) In subsection (11)(a), insert at the end “ (less any deductible amounts under section 480(1) to (6)); ”.
- 58 In section 5(2)(c) (interpretation), for “483(1)” substitute “ 477(6) ”.
- 59 Schedule 23 to this Act (corporation tax relief for employee share acquisitions) is amended as follows.
- 60 (1) Paragraph 1 is amended as follows.
- (2) In sub-paragraph (1)(b), for “in exercise of” substitute “ pursuant to ”.
- (3) For sub-paragraph (2) substitute—
- “(2) Part 4 of this Schedule makes further provision for cases where the shares acquired are restricted shares.
- (2A) Part 4A of this Schedule makes further provision for cases where the shares acquired are convertible shares.”.
- (4) Sub-paragraph (2) has effect on and after the day appointed under paragraph 3(2).

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- (5) Sub-paragraph (3) has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.
- 61 (1) For paragraph 5(2) substitute—
- “(2) Where the shares acquired are restricted shares, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.
- (3) Where the shares acquired are convertible shares, the provisions of this Part have effect subject to the provisions of Part 4A of this Schedule.”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.
- 62 (1) For paragraph 11(2) substitute—
- “(2) Where the shares acquired pursuant to the option are restricted shares, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.
- (3) Where the shares acquired pursuant to the option are convertible shares, the provisions of this Part have effect subject to the provisions of Part 4A of this Schedule.”.
- (2) Sub-paragraph (1) has effect in accordance with the provision made for the substitution of Part 4 of, and the insertion of Part 4A in, Schedule 23.
- 63 (1) In paragraph 12, for “in exercise of” substitute “ pursuant to ”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 64 (1) Paragraph 13 is amended as follows.
- (2) In sub-paragraph (2)(b), for “in exercise of” (in both places) substitute “ pursuant to ”.
- (3) For sub-paragraph (2)(c) substitute—
- “(c) in determining the amount of relief—
- (i) any consideration given in respect of the grant of the new option is treated as if it had been given in respect of the grant of the old option, and
- (ii) any consideration given in respect of the acquisition of shares pursuant to the new option is treated as if it had been given in respect of the acquisition of shares pursuant to the old option.”.
- (4) In sub-paragraph (3)(b), for “its exercise” substitute “ the shares acquired pursuant to it ”.
- (5) This paragraph has effect on and after the day appointed under paragraph 3(2).
- 65 (1) For paragraph 14 substitute—
- “Income tax position of the employee*
- 14 (1) It must be the case that the acquisition of shares pursuant to the option—
- (a) is a chargeable event in relation to the employee for the purposes of section 476 of the Income Tax (Earnings and Pensions) Act 2003

*Status: Point in time view as at 18/04/2005.*

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- (whether or not an amount counts as employment income by virtue of that event), or
- (b) would be such a chargeable event in relation to the employee if the conditions specified in sub-paragraph (2) were met.
- (2) The conditions mentioned in sub-paragraph (1)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and
- (b) that the duties of the employment by reason of which the option was granted were performed in the United Kingdom at all material times.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 66 (1) Paragraph 15 is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “the option is exercised” substitute “ they are acquired pursuant to the option ”, and
- (b) for “or exercise of” substitute “ of the option or the acquisition of the shares pursuant to ”.
- (3) In sub-paragraph (3), for “or exercise of” substitute “ of the option or the acquisition of the shares pursuant to ”.
- (4) This paragraph has effect on and after the day appointed under paragraph 3(2).
- 67 (1) In paragraph 17(1), for “in exercise of” substitute “ pursuant to ”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).
- 68 (1) For Part 4 substitute—

#### “PART 4

##### PROVISIONS APPLYING IN CASE OF RESTRICTED SHARES

###### **Introduction**

- 18 In the case of—
- (a) an award of restricted shares, or
- (b) the acquisition pursuant to an option of restricted shares,
- the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

###### **Meaning of “restricted shares”**

- 19 Shares are “restricted shares” for the purposes of this Schedule if they are restricted securities, or a restricted interest in securities, for the purposes of Chapter 2 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see sections 423 and 424 of that Act).

*Status: Point in time view as at 18/04/2005.*

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### **Income tax position of employee in case of restricted shares**

- 20 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 7 (income tax position of the employee).
- (2) It must be the case that the employee —
- (a) either—
- (i) is subject to a charge to income tax under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the award, or
- (ii) is not subject to such a charge but will be subject to a charge to income tax under the Income Tax (Earnings and Pensions) Act 2003 by virtue of section 426 of that Act on the occurrence of an event in relation to the shares that is a chargeable event for the purposes of that section, or
- (b) would be within paragraph (a) if the conditions specified in sub-paragraph (4) were met.
- (3) Where but for the death of the employee sub-paragraph (2)(a)(ii) would apply in relation to restricted shares acquired under an award of shares, it is to be treated as applying in relation to the restricted shares.
- (4) The conditions mentioned in sub-paragraph (2)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and
- (b) that the duties of the employment by reason of which the award was made or the option was granted were performed in the United Kingdom at all material times.

### **Amount of relief in case of restricted shares**

- 21 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 8 or 15 (amount of relief).
- (2) Relief is available—
- (a) on the award of the shares or, where they are acquired pursuant to an option, on that acquisition,
- (b) on any event that is a chargeable event in relation to the shares for the purposes of section 426 of the Income Tax (Earnings and Pensions) Act 2003,
- (c) on the death of the employee.
- (3) The amount of the relief on the award of the shares is equal to the amount that constitutes earnings from the employee's employment under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the award.
- (4) The amount of the relief on the acquisition of the shares pursuant to the option is equal to the amount that counts as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the acquisition, increased by any amounts deducted under sections 481 and 482 of that Act.

*Status: Point in time view as at 18/04/2005.*

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- (5) Where restricted shares acquired as mentioned in sub-paragraph (3) or (4) are also convertible shares, the total amount of the relief in respect of the acquisition is whichever is the greater of—
- (a) in the case of an award of shares, the amounts mentioned in sub-paragraph (3) and paragraph 22C(3), and
  - (b) in the case of an acquisition of shares pursuant to an option, the amounts mentioned in sub-paragraph (4) and paragraph 22C(4).
- (6) The amount of the relief on an event that is a chargeable event for the purposes of section 426 of the Income Tax (Earnings and Pensions) Act 2003 is equal to the amount that counts as employment income of the employee under that section in respect of that event.
- (7) The amount of the relief on the death of the employee is equal to the amount that (disregarding section 428(6) and (9) of the Income Tax (Earnings and Pensions) Act 2003) would count as employment income of the employee if there were a chargeable event within section 427(3)(c) of that Act immediately before the restricted shares ceased to be employment-related securities by virtue of the employee's death.
- (8) Section 446E(3) of the Income Tax (Earnings and Pensions) Act 2003 is to be disregarded in determining the amounts of the reliefs given by sub-paragraphs (6) and (7).
- (9) The amount of any non-commercial increase in the market value of the restricted shares since the time of the acquisition is to be disregarded for the purpose of determining the amounts of the reliefs given by sub-paragraphs (6) and (7).
- “Non-commercial increase” has the same meaning as in Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.
- (10) If the award or grant was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.
- (11) Where the employee—
- (a) is not subject to a charge to income tax mentioned in sub-paragraph (3), (4) or (6), or would not be subject to the charge to income tax mentioned in sub-paragraph (7), but
  - (b) would be subject to such a charge if the conditions specified in paragraph 20(4) were met,
- the amount of the relief is to be taken to be the amount that would be the amount of the relief if those conditions were met.

#### **Timing of relief in case of restricted shares**

- 22 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 10 or 17 (timing of relief).

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- (2) The relief mentioned in paragraph 21(3) is given for the accounting period in which the recipient acquires the restricted shares pursuant to the award.
  - (3) The relief mentioned in paragraph 21(4) is given for the accounting period in which the recipient acquires the restricted shares pursuant to the option.
  - (4) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.
  - (5) The relief mentioned in paragraph 21(6) is given for the accounting period in which the chargeable event takes place.
  - (6) The relief mentioned in paragraph 21(7) is given for the accounting period in which the employee dies.”.
- (2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) but does not affect any restricted shares acquired before 16th April 2003.
- 69 (1) After Part 4 insert—

## “PART 4A

### PROVISIONS APPLYING IN CASE OF CONVERTIBLE SHARES

#### Introduction

- 22A In the case of—
- (a) an award of convertible shares, or
  - (b) the acquisition pursuant to an option of convertible shares,
- the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

#### Meaning of “convertible shares”

- 22B (1) Shares are “convertible shares” for the purposes of this Schedule if they are convertible securities, or an interest in convertible securities.
- (2) But convertible securities which are not shares, or an interest in convertible securities which are not shares, are to be taken to be convertible shares for the purposes of this Schedule as it applies in relation to the reliefs given by paragraph 22C(6) and (7).
  - (3) In this paragraph “convertible securities” has the same meaning as in Chapter 3 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 436 of that Act).

#### Amount of relief in case of convertible shares

- 22C (1) Where the recipient acquires convertible shares, this paragraph applies in place of paragraph 8 or 15 (amount of relief).
- (2) Relief is available—

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- (a) on the award of the shares or, where they are acquired pursuant to an option, on that acquisition,
  - (b) on any event that is a chargeable event in relation to the convertible shares,
  - (c) on the death of the employee.
- (3) The amount of the relief on the award of the shares is equal to the amount that constitutes earnings from the employee's employment under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the award.
- (4) The amount of the relief on the acquisition of the shares pursuant to an option is equal to the amount that counts as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the acquisition, increased by any amounts deducted under sections 481 and 482 of that Act.
- (5) Where convertible shares acquired as mentioned in sub-paragraph (3) or (4) are also restricted shares, the total amount of the relief in respect of the acquisition is whichever is the greater of—
- (a) in the case of an award of shares, the amounts mentioned in sub-paragraph (3) and paragraph 21(3), and
  - (b) in the case of an acquisition of shares pursuant to an option, the amounts mentioned in sub-paragraph (4) and paragraph 21(4).
- (6) The amount of the relief on an event that is a chargeable event in relation to the convertible shares is equal to the amount that counts as employment income of the employee in respect of that event.
- (7) The amount of the relief on the death of the employee is equal to the amount that would have counted as employment income of the employee in relation to the first event following the employee's death which would have been a chargeable event were the employee still alive.
- (8) Sections 446G and 446H of the Income Tax (Earnings and Pensions) Act 2003 are to be disregarded in determining the amounts of the reliefs given by sub-paragraphs (6) and (7).
- (9) If the award or grant was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.
- (10) Where the employee—
- (a) is not subject to a charge to income tax mentioned in sub-paragraph (3), (4) or (6), or would not be subject to the charge to income tax mentioned in sub-paragraph (7), but
  - (b) would be subject to such a charge if the conditions specified in paragraph 7(2) or 14(2) were met,
- the amount of the relief is to be taken to be the amount that would be the amount of the relief if those conditions were met.



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(11) In this paragraph and paragraph 22D “chargeable event” means an event that is a chargeable event in relation to the convertible shares within section 439(3)(a) of the Income Tax (Employment and Pensions) Act 2003; but a conversion of the convertible shares into anything other than shares which—

- (a) meet the requirements of paragraph 4, and
- (b) would meet the requirements of paragraph 6 if they had been acquired by an award of shares,

is not a chargeable event for the purposes of this paragraph.

### **Timing of relief in case of convertible shares**

22D(1) Where the recipient acquires convertible shares, this paragraph applies in place of paragraph 10 or 17 (timing of relief).

- (2) The relief mentioned in paragraph 22C(3) is given for the accounting period in which the recipient acquires the convertible shares under the award.
- (3) The relief mentioned in paragraph 22C(4) is given for the accounting period in which the recipient acquires the convertible shares pursuant to the option.
- (4) The time when shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.
- (5) The relief mentioned in paragraph 22C(6) is given for the accounting period in which the chargeable event takes place.
- (6) The relief mentioned in paragraph 22C(7) is given for the accounting period in which the event takes place which would have been a chargeable event but for the death of the employee.”.

(2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2) (so that, apart from paragraph 22C(2)(a) and (3) to (5) and paragraph 22D(2) to (4), the provisions of Part 4A of Schedule 23 as inserted by that sub-paragraph apply on and after that day in relation to convertible shares irrespective of the time of the acquisition).

70 (1) In paragraph 23(2)(a), for “or 22” substitute “ , 22 or 22D ”.

(2) Sub-paragraph (1) has effect on and after the day appointed under paragraph 3(2).

71 (1) In paragraph 26 before paragraph (a) insert—

“(za) “employment” includes a former or prospective employment,”.

(2) Sub-paragraph (1) has effect on and after 16th April 2003.

72 (1) For paragraph 27 substitute—

### *“Acquisition of shares pursuant to option after death of employee or recipient*

27 (1) Where after the employee’s death shares are acquired by the recipient pursuant to an option obtained by reason of the employee’s employment, the condition in paragraph 14 (income tax position of the employee) is treated as met if it would be met were the employee still alive.



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“the employee” means the person by reason of whose employment the shares are acquired or the option is granted.

#### Textual Amendments

**F183** Words in Sch. 23 para. 1(1)(b) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 60\(2\)\(4\)](#); [S.I. 2003/1997, art. 2](#)

**F184** Sch. 23 para. 1(2)(2A) substituted for Sch. 23 para. 1(2) (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 60\(3\)\(5\)](#); [S.I. 2003/1997, art. 2](#)

#### *Requirements for relief*

- 2 Relief under this Schedule is available only if the requirements of this Schedule are met as to—
- (a) the business for the purposes of which the award or grant is made (paragraph 3);
  - (b) the kind of shares acquired (paragraph 4);
  - (c) the company whose shares are acquired (paragraph 6 or 12); and
  - (d) the income tax position of the employee (paragraph 7, 14 or 20).

#### *Business must be within the charge to corporation tax*

- 3 (1) The business for the purposes of which the award or grant is made must—
- (a) be carried on by the employing company, and
  - (b) be within the charge to corporation tax.
- (2) A business is within the charge to corporation tax if, or to the extent that, it is carried on by a company that is within the charge to corporation tax in respect of the profits of the business.

#### *Kind of shares acquired*

- 4 (1) The shares acquired must meet the following requirements.
- (2) They must be ordinary shares that are fully paid-up and not redeemable.
- (3) They must be—
- (a) shares of a class listed on a recognised stock exchange, or
  - (b) shares in a company that is not under the control of another company, or
  - (c) shares in a company that is under the control of a company (other than a close company or a company that if resident in the United Kingdom would be a close company) whose shares are listed on a recognised stock exchange.

## PART 2

### AWARD OF SHARES

#### *Introduction*

- 5 (1) The provisions of this Part of this Schedule apply in the case of an award of shares.

*Status: Point in time view as at 18/04/2005.*

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[<sup>F185</sup>(2) Where the shares acquired are restricted shares, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.

(3) Where the shares acquired are convertible shares, the provisions of this Part have effect subject to the provisions of Part 4A of this Schedule.]

#### Textual Amendments

**F185** Sch. 23 para. 5(2)(3) substituted for Sch. 23 para. 5(2) (with effect in accordance with Sch. 22 paras. 68(2), 69(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 61](#); [S.I. 2003/1997, art. 2](#)

#### *The company whose shares are acquired*

- 6 (1) The shares acquired must be shares in—
- (a) the employing company; or
  - (b) a company that, at the time of the award, is a parent company in relation to the employing company; or
  - (c) a company that, at the time of the award, is a member of a consortium that owns the employing company or a company within paragraph (b); or
  - (d) where at the time of the award the employing company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that at that time—
    - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
    - (ii) is also a member of the same commercial association of companies as C.

#### *Income tax position of employee*

- 7 (1) It must be the case that the employee—
- (a) is subject to a charge to income tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) in respect of the award, or
  - (b) would be subject to such a charge if the conditions specified in sub-paragraph (2) were met.
- (2) The conditions mentioned in sub-paragraph (1)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and
  - (b) that the duties of the employment by reason of which the award was made were performed in the United Kingdom at all material times.

#### *Amount of relief*

- 8 (1) The amount of the relief is equal to the difference between—
- (a) the market value of the shares at the time of the award, and
  - (b) the total amount or value of any consideration given, by the recipient or another, in respect of the shares.

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- (2) The consideration mentioned in sub-paragraph (1)(b) does not include the performance of any duties of, or in connection with, the employee's employment with the employing company.
- (3) A just and reasonable apportionment shall be made for the purposes of this paragraph of any consideration given partly in respect of the shares and partly in respect of other matters.
- (4) If the award was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.

#### *How relief is given*

- 9 (1) The amount of the relief is allowed as a deduction in computing for the purposes of corporation tax the profits of the business for the purposes of which the award was made.
  - [<sup>F186</sup>(2) If the company carrying on that business is a company with investment business, the amount of the relief is treated as expenses of management for the purposes of section 75 of the Taxes Act 1988.]
  - [<sup>F187</sup>(3) If the company carrying on that business is an insurance company carrying on life assurance business, the amount of the relief shall be treated as expenses payable falling to be brought into account at Step 1 in section 76(7) of the Taxes Act 1988.]
  - (4) If the award was made for the purposes of more than one business within the charge to corporation tax, the amount of the deduction must be apportioned between them on a just and reasonable basis.

#### **Textual Amendments**

**F186** Sch. 23 para. 9(2) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 69(2)**

**F187** Sch. 23 para. 9(3) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 69(3)**

#### *Timing of relief*

- 10 (1) The relief is given for the accounting period in which the recipient acquires the shares.
  - (2) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.

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### PART 3

#### GRANT OF OPTION

##### *Introduction*

- 11 (1) The provisions of this Part of this Schedule apply in the case of the grant of an option to acquire shares.
- [<sup>F188</sup>(2) Where the shares acquired pursuant to the option are restricted shares, the provisions of this Part have effect subject to the provisions of Part 4 of this Schedule.
- (3) Where the shares acquired pursuant to the option are convertible shares, the provisions of this Part have effect subject to the provisions of Part 4A of this Schedule.]

#### **Textual Amendments**

**F188** Sch. 23 para. 11(2)(3) substituted for Sch. 23 para. 11(2) (with effect in accordance with Sch. 22 paras. 68(2), 69(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 62](#); [S.I. 2003/1997, art. 2](#)

##### *The company whose shares are acquired*

- 12 The company whose shares are acquired [<sup>F189</sup>pursuant to] the option must be—
- (a) the employing company; or
  - (b) a company that, at the time the option is granted, is a parent company in relation to the employing company; or
  - (c) a company that, at that time, is a member of a consortium that owns the employing company or a company within paragraph (b); or
  - (d) where, at that time, the employing company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that, at that time—
    - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
    - (ii) is also a member of the same commercial association of companies as C; or
  - (e) a qualifying successor company (see paragraph 13).

#### **Textual Amendments**

**F189** Words in Sch. 23 para. 12 substituted (with effect in accordance with Sch. 22 paras. 68(2), 69(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 63](#); [S.I. 2003/1997, art. 2](#)

##### *Takeover of company whose shares are subject of option*

- 13 (1) This paragraph applies where—
- (a) there is a takeover of a company whose shares are the subject of a qualifying option,

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- (b) the holder of the option, by agreement with the acquiring company, releases his rights under that option (“the old option”) in consideration of the grant to him of another option (“the new option”), and
  - (c) the new option relates to shares in a qualifying company.
- (2) Where those conditions are met—
- (a) the company whose shares are the subject of the new option is a qualifying successor company for the purposes of paragraph 12 (requirement as to company whose shares are acquired),
  - (b) shares acquired [<sup>F190</sup>pursuant to] the new option are treated for the purposes of this Schedule as if they had been acquired [<sup>F190</sup>pursuant to] the old option, and
  - [<sup>F191</sup>(c) in determining the amount of relief—
    - (i) any consideration given in respect of the grant of the new option is treated as if it had been given in respect of the grant of the old option, and
    - (ii) any consideration given in respect of the acquisition of shares pursuant to the new option is treated as if it had been given in respect of the acquisition of shares pursuant to the old option.]
- (3) For the purposes of this paragraph—
- (a) there is a takeover of a company where another company (“the acquiring company”) acquires control of it; and
  - (b) an option is a “qualifying option” if the requirements of paragraph 12 would be met in relation to [<sup>F192</sup>the shares acquired pursuant to it].
- (4) The following are qualifying companies for the purposes of this paragraph—
- (a) the acquiring company;
  - (b) a company that, at the time of the takeover, is a parent company in relation to the acquiring company;
  - (c) a company that, at that time, is a member of a consortium that owns the acquiring company or a company within paragraph (b);
  - (d) where, at that time, the acquiring company or a company within paragraph (b) is a member of a consortium that owns another company (C), a company that, at that time—
    - (i) is a member of the consortium or a parent company in relation to a member of the consortium, and
    - (ii) is also a member of the same commercial association of companies as C.

#### Textual Amendments

**F190** Words in Sch. 23 para. 13(2)(b) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 64\(2\)\(5\); S.I. 2003/1997, art. 2](#)

**F191** Sch. 23 para. 13(2)(c) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 64\(3\)\(5\); S.I. 2003/1997, art. 2](#)

**F192** Words in Sch. 23 para. 13(3)(b) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 64\(4\)\(5\); S.I. 2003/1997, art. 2](#)

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### *[<sup>F193</sup>Income tax position of the employee*

#### **Textual Amendments**

**F193** Sch. 23 para. 14 and crossheading substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 65](#); [S.I. 2003/1997, art. 2](#)

- 14 (1) It must be the case that the acquisition of shares pursuant to the option—
- (a) is a chargeable event in relation to the employee for the purposes of section 476 of the Income Tax (Earnings and Pensions) Act 2003 (whether or not an amount counts as employment income by virtue of that event), or
  - (b) would be such a chargeable event in relation to the employee if the conditions specified in sub-paragraph (2) were met.
- (2) The conditions mentioned in sub-paragraph (1)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and
  - (b) that the duties of the employment by reason of which the option was granted were performed in the United Kingdom at all material times.]

### *Amount of relief*

- 15 (1) The amount of the relief is equal to the difference between—
- (a) the market value of the shares at the time [<sup>F194</sup>they are acquired pursuant to the option], and
  - (b) the total amount or value of any consideration given, by the recipient or another, in respect of the grant [<sup>F195</sup>of the option or the acquisition of the shares pursuant to] the option.
- (2) The consideration mentioned in sub-paragraph (1)(b) does not include—
- (a) the performance of any duties of, or in connection with, the employee's employment with the employing company, or
  - (b) any amount paid or payable by the employee in pursuance of—
    - (i) an agreement within paragraph 3A(2) of Schedule 1 to the Contributions and Benefits Act (agreement for recovery from earner of secondary Class 1 contributions in respect of share option gain), or
    - (ii) an election under paragraph 3B of that Schedule (election transferring to earner liability for secondary Class 1 contributions in respect of share option gain).
- (3) A just and reasonable apportionment shall be made for the purposes of this paragraph of any consideration given partly in respect of the grant [<sup>F196</sup>of the option or the acquisition of the shares pursuant to] the option and partly in respect of other matters.
- (4) If the option was granted partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.



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#### Textual Amendments

- F194** Words in Sch. 23 para. 15(1) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 66\(2\)\(a\)\(4\)](#); [S.I. 2003/1997, art. 2](#)
- F195** Words in Sch. 23 para. 15(1) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 66\(2\)\(b\)\(4\)](#); [S.I. 2003/1997, art. 2](#)
- F196** Words in Sch. 23 para. 15(3) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 66\(3\)\(4\)](#); [S.I. 2003/1997, art. 2](#)

#### *How relief is given*

- 16 (1) The amount of the relief is allowed as a deduction in computing for the purposes of corporation tax the profits of the business for the purposes of which the option was granted.
- [<sup>F197</sup>(2) If the company carrying on that business is a company with investment business the amount of the relief is treated as expenses of management for the purposes of section 75 of the Taxes Act 1988.]
- [<sup>F198</sup>(3) If the company carrying on that business is an insurance company carrying on life assurance business, the amount of the relief shall be treated as expenses payable to be brought into account at Step 1 in section 76(7) of the Taxes Act 1988.]
- (4) If the option was granted for the purposes of more than one business within the charge to corporation tax, the amount of the deduction must be apportioned between them on a just and reasonable basis.

#### Textual Amendments

- F197** [Sch. 23 para. 16\(2\)](#) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\), art. 1\(2\), Sch. para. 70\(2\)](#)
- F198** [Sch. 23 para. 16\(3\)](#) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\), art. 1\(2\), Sch. para. 70\(3\)](#)

#### *Timing of relief*

- 17 (1) The relief is given for the accounting period in which the shares are acquired [<sup>F199</sup>pursuant to] the option.
- (2) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.

#### Textual Amendments

- F199** Words in Sch. 23 para. 17(1) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 67](#); [S.I. 2003/1997, art. 2](#)

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## [<sup>F200</sup>PART 4

### PROVISIONS APPLYING IN CASE OF RESTRICTED SHARES

#### Textual Amendments

**F200** Sch. 23 Pt. 4 substituted (with effect in accordance with Sch. 22 para. 68(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 22 para. 68(1)**; S.I. 2003/1997, art. 2

#### Introduction

- 18 In the case of—
- (a) an award of restricted shares, or
  - (b) the acquisition pursuant to an option of restricted shares,
- the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

#### Meaning of “restricted shares”

- 19 Shares are “restricted shares” for the purposes of this Schedule if they are restricted securities, or a restricted interest in securities, for the purposes of Chapter 2 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see sections 423 and 424 of that Act).

#### Income tax position of employee in case of restricted shares

- 20 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 7 (income tax position of the employee).
- (2) It must be the case that the employee —
- (a) either—
    - (i) is subject to a charge to income tax under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the award, or
    - (ii) is not subject to such a charge but will be subject to a charge to income tax under the Income Tax (Earnings and Pensions) Act 2003 by virtue of section 426 of that Act on the occurrence of an event in relation to the shares that is a chargeable event for the purposes of that section, or
  - (b) would be within paragraph (a) if the conditions specified in sub-paragraph (4) were met.
- (3) Where but for the death of the employee sub-paragraph (2)(a)(ii) would apply in relation to restricted shares acquired under an award of shares, it is to be treated as applying in relation to the restricted shares.
- (4) The conditions mentioned in sub-paragraph (2)(b) are—
- (a) that the employee was resident and ordinarily resident in the United Kingdom at all material times, and

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- (b) that the duties of the employment by reason of which the award was made or the option was granted were performed in the United Kingdom at all material times.

*Amount of relief in case of restricted shares*

- 21 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 8 or 15 (amount of relief).
- (2) Relief is available—
- (a) on the award of the shares or, where they are acquired pursuant to an option, on that acquisition,
  - (b) on any event that is a chargeable event in relation to the shares for the purposes of section 426 of the Income Tax (Earnings and Pensions) Act 2003,
  - (c) on the death of the employee.
- (3) The amount of the relief on the award of the shares is equal to the amount that constitutes earnings from the employee's employment under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the award.
- (4) The amount of the relief on the acquisition of the shares pursuant to the option is equal to the amount that counts as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 in respect of the acquisition, <sup>F201</sup>.... [<sup>F202</sup>No account shall be taken for this purpose of any relief under section 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee).]
- (5) Where restricted shares acquired as mentioned in sub-paragraph (3) or (4) are also convertible shares, the total amount of the relief in respect of the acquisition is whichever is the greater of—
- (a) in the case of an award of shares, the amounts mentioned in sub-paragraph (3) and paragraph 22C(3), and
  - (b) in the case of an acquisition of shares pursuant to an option, the amounts mentioned in sub-paragraph (4) and paragraph 22C(4).
- (6) The amount of the relief on an event that is a chargeable event for the purposes of section 426 of the Income Tax (Earnings and Pensions) Act 2003 is equal to the amount that counts as employment income of the employee under that section in respect of that event. [<sup>F203</sup>No account shall be taken for this purpose of any relief under section 428A of that Act (relief for secondary Class 1 contributions met by employee).]
- (7) The amount of the relief on the death of the employee is equal to the amount that (disregarding section 428(6) and (9) of the Income Tax (Earnings and Pensions) Act 2003) would count as employment income of the employee if there were a chargeable event within section 427(3)(c) of that Act immediately before the restricted shares ceased to be employment-related securities by virtue of the employee's death.
- (8) Section [<sup>F204</sup>446E(6)] of the Income Tax (Earnings and Pensions) Act 2003 is to be disregarded in determining the amounts of the reliefs given by sub-paragraphs (6) and (7).

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- (9) The amount of any non-commercial increase in the market value of the restricted shares since the time of the acquisition is to be disregarded for the purpose of determining the amounts of the reliefs given by sub-paragraphs (6) and (7).

“Non-commercial increase” has the same meaning as in Chapter 3B of Part 7 of the Income Tax (Earnings and Pensions) Act 2003.

- (10) If the award or grant was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.

- (11) Where the employee—

- (a) is not subject to a charge to income tax mentioned in sub-paragraph (3), (4) or (6), or would not be subject to the charge to income tax mentioned in sub-paragraph (7), but
- (b) would be subject to such a charge if the conditions specified in paragraph 20(4) were met,

the amount of the relief is to be taken to be the amount that would be the amount of the relief if those conditions were met.

#### **Textual Amendments**

- F201** Words in Sch. 23 para. 21(4) repealed (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), Sch. 16 para. 5(2)(a), **Sch. 42 Pt. 2(10)** (with Sch. 16 para. 5(6)); S.I. 2004/1945, art. 2
- F202** Words in Sch. 23 para. 21(4) added (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), **Sch. 16 para. 5(2)(b)** (with Sch. 16 para. 5(6)); S.I. 2004/1945, art. 2
- F203** Words in Sch. 23 para. 21(6) added (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), **Sch. 16 para. 5(3)** (with Sch. 16 para. 5(6)); S.I. 2004/1945, art. 2
- F204** Word in Sch. 23 para. 21(8) substituted (retrospective to 7.5.2004) by Finance (No. 2) Act 2005 (c. 22), **Sch. 2 para. 20(3)(7)**

#### *Timing of relief in case of restricted shares*

- 22 (1) Where the recipient acquires restricted shares, this paragraph applies in place of paragraph 10 or 17 (timing of relief).
- (2) The relief mentioned in paragraph 21(3) is given for the accounting period in which the recipient acquires the restricted shares pursuant to the award.
  - (3) The relief mentioned in paragraph 21(4) is given for the accounting period in which the recipient acquires the restricted shares pursuant to the option.
  - (4) The time when the shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.
  - (5) The relief mentioned in paragraph 21(6) is given for the accounting period in which the chargeable event takes place.
  - (6) The relief mentioned in paragraph 21(7) is given for the accounting period in which the employee dies.]

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## [<sup>F205</sup>PART 4A

### PROVISIONS APPLYING IN CASE OF CONVERTIBLE SHARES

#### Textual Amendments

**F205** Sch. 23 Pt. 4A inserted (with effect in accordance with Sch. 22 para. 69(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 22 para. 69(1)**; S.I. 2003/1997, art. 2

#### Introduction

- 22A In the case of—
- (a) an award of convertible shares, or
  - (b) the acquisition pursuant to an option of convertible shares,
- the provisions of Part 2 or 3 have effect subject to the provisions of this Part of this Schedule.

#### Meaning of “convertible shares”

- 22B (1) Shares are “convertible shares” for the purposes of this Schedule if they are convertible securities, or an interest in convertible securities.
- (2) But convertible securities which are not shares, or an interest in convertible securities which are not shares, are to be taken to be convertible shares for the purposes of this Schedule as it applies in relation to the reliefs given by paragraph 22C(6) and (7).
- (3) In this paragraph “convertible securities” has the same meaning as in Chapter 3 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 436 of that Act).

#### Amount of relief in case of convertible shares

- 22C (1) Where the recipient acquires convertible shares, this paragraph applies in place of paragraph 8 or 15 (amount of relief).
- (2) Relief is available—
- (a) on the award of the shares or, where they are acquired pursuant to an option, on that acquisition,
  - (b) on any event that is a chargeable event in relation to the convertible shares,
  - (c) on the death of the employee.
- (3) The amount of the relief on the award of the shares is equal to the amount that constitutes earnings from the employee’s employment under Chapter 1 of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the award.
- (4) The amount of the relief on the acquisition of the shares pursuant to an option is equal to the amount that counts as employment income of the employee under section 476 of the Income Tax (Earnings and Pensions) Act 2003 (as modified by section 437 of that Act) in respect of the acquisition,<sup>F206</sup>...[<sup>F207</sup>No account shall be taken for this purpose of any relief under section 481 or 482 of that Act (relief for secondary Class 1 contributions or special contribution met by employee)].

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- (5) Where convertible shares acquired as mentioned in sub-paragraph (3) or (4) are also restricted shares, the total amount of the relief in respect of the acquisition is whichever is the greater of—
- (a) in the case of an award of shares, the amounts mentioned in sub-paragraph (3) and paragraph 21(3), and
  - (b) in the case of an acquisition of shares pursuant to an option, the amounts mentioned in sub-paragraph (4) and paragraph 21(4).
- (6) The amount of the relief on an event that is a chargeable event in relation to the convertible shares is equal to the amount that counts as employment income of the employee in respect of that event. [<sup>F206</sup>No account shall be taken for this purpose of any relief under section 442A of that Act (relief for secondary Class 1 contributions met by employee).]
- (7) The amount of the relief on the death of the employee is equal to the amount that would have counted as employment income of the employee in relation to the first event following the employee's death which would have been a chargeable event were the employee still alive.
- (8) Sections 446G and 446H of the Income Tax (Earnings and Pensions) Act 2003 are to be disregarded in determining the amounts of the reliefs given by sub-paragraphs (6) and (7).
- (9) If the award or grant was made partly for the purposes of a business meeting the requirements of paragraph 3 (business must be within the charge to corporation tax) and partly for the purposes of a business in relation to which those requirements are not met, the amount of the relief shall be reduced to such extent as is just and reasonable.
- (10) Where the employee—
- (a) is not subject to a charge to income tax mentioned in sub-paragraph (3), (4) or (6), or would not be subject to the charge to income tax mentioned in sub-paragraph (7), but
  - (b) would be subject to such a charge if the conditions specified in paragraph 7(2) or 14(2) were met,
- the amount of the relief is to be taken to be the amount that would be the amount of the relief if those conditions were met.
- (11) In this paragraph and paragraph 22D “chargeable event” means an event that is a chargeable event in relation to the convertible shares within section 439(3)(a) of the Income Tax (Employment and Pensions) Act 2003; but a conversion of the convertible shares into anything other than shares which—
- (a) meet the requirements of paragraph 4, and
  - (b) would meet the requirements of paragraph 6 if they had been acquired by an award of shares,
- is not a chargeable event for the purposes of this paragraph.

#### Textual Amendments

**F206** Words in Sch. 23 para. 22C(4) repealed (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), Sch. 16 para. 5(4)(a), Sch. 42 Pt. 2(10) (with Sch. 16 para. 5(6)); S.I. 2004/1945, art. 2

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**F207** Words in Sch. 23 para. 22C(4) added (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), Sch. 16 para. 5(4)(b) (with Sch. 16 para. 5(6)); S.I. 2004/1945, art. 2

**F208** Words in Sch. 23 para. 22C(6) added (1.9.2004) by Finance Act 2004 (c. 12), s. 85(2), Sch. 16 para. 5(5) (with Sch. 16 para. 5(6)); S.I. 2004/1945, art. 2

### *Timing of relief in case of convertible shares*

- 22D (1) Where the recipient acquires convertible shares, this paragraph applies in place of paragraph 10 or 17 (timing of relief).
- (2) The relief mentioned in paragraph 22C(3) is given for the accounting period in which the recipient acquires the convertible shares under the award.
- (3) The relief mentioned in paragraph 22C(4) is given for the accounting period in which the recipient acquires the convertible shares pursuant to the option.
- (4) The time when shares are acquired is when the recipient acquires a beneficial interest in the shares and not, if different, the time the shares are conveyed or transferred.
- (5) The relief mentioned in paragraph 22C(6) is given for the accounting period in which the chargeable event takes place.
- (6) The relief mentioned in paragraph 22C(7) is given for the accounting period in which the event takes place which would have been a chargeable event but for the death of the employee.]

## PART 5

### SUPPLEMENTARY PROVISIONS

#### *Transfer of business within a group*

- 23 (1) This paragraph applies where—
- (a) between the time when an award of shares, or the grant of an option to acquire shares, is made and the time of the relief-triggering event for those shares, there is a transfer of the whole, or substantially the whole, of the business for the purposes of which the award or grant was made (“the relevant business”),
- (b) the transfer, or each of them if there is more than one, is a qualifying transfer, and
- (c) as a result of the transfer or transfers, the whole or substantially the whole of the relevant business is carried on at the time of the relief-triggering event by a different company (“the successor company”) or by different companies (“the successor companies”) from the one by which it was carried on at the time of the award or grant.
- (2) For the purposes of sub-paragraph (1)—
- (a) the “relief-triggering event” for shares is the event that, in accordance with paragraph 10, 17<sup>[F209]</sup>, 22 or 22D], determines the accounting period for which relief under this Schedule is given in respect of them;
- (b) there is a “qualifying transfer” of a business (or a part of one) where the business (or part) is transferred from one company to another company that is, or to two or more companies that are, members of the same group.

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- (3) Where this paragraph applies—
- (a) relief under this Schedule in respect of the shares is given to the successor company or, as the case may be, to whichever one of the successor companies is jointly nominated by them, and
  - (b) the reference in paragraph 1(1)(a) or (b) to “that company” shall be read as a reference to the company by which the relevant business was carried on at the time of the award or grant.

#### Textual Amendments

**F209** Words in Sch. 23 para. 23(2)(a) substituted (1.9.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 70](#); [S.I. 2003/1997](#), art. 2

#### *Relationship between relief and other deductions: priority of deductions under SIP code*

- 24 (1) Deductions available under any of the following provisions of Schedule 4AA to the Taxes Act 1988 (share incentive plans) are to be given in priority to relief under this Schedule—
- (a) paragraph 2 (deduction for providing free or matching shares);
  - (b) paragraph 3 (deduction for expenses in providing partnership shares);
  - (c) paragraph 9 or 10(3) (deduction for contribution to plan trust).
- (2) No relief is available under this Schedule in respect of shares in relation to which a deduction is allowable, or has been made, under any of those provisions.

#### *Relationship between relief and other deductions: exclusion of other deductions*

- 25 (1) Where relief under this Schedule is available for any accounting period, no other deduction is allowed for any corporation tax purposes (whether for that or any other period) in respect of the cost of providing the shares.
- This applies to any deduction, whether by the employing company or any other company, in computing chargeable profits for the purposes of corporation tax.
- (2) For this purpose the cost of providing the shares—
- (a) means expenses directly related to the provision of the shares, and
  - (b) includes, in a case where the shares are acquired under an employee share scheme, any amount paid or payable by the employing company in respect of the participation of the employee in that scheme.
- (3) The following are not regarded as part of the cost of providing the shares—
- (a) expenses incurred in establishing the employee share scheme under which the recipient acquires the shares;
  - (b) expenses incurred in meeting, or contributing to, the costs of administering the scheme;
  - (c) the costs of borrowing for the purposes of the scheme;
  - (d) fees, commission, stamp duty and similar incidental expenses of acquiring the shares.
- (4) In this paragraph “employee share scheme” means any scheme or arrangement for enabling shares to be acquired by reason of employees' employment.



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### *Meaning of “employment”*

- 26 For the purposes of this Schedule—
- [<sup>F210</sup>(za) “employment” includes a former or prospective employment,]
- (a) references to employment by a company include holding an office with that company, and related expressions have a corresponding meaning, and
  - (b) members of a company whose affairs are managed by the members themselves are treated as holding an office with the company.

#### **Textual Amendments**

**F210** Sch. 23 para. 26(za) inserted (with effect on and after 16.4.2003) by [Finance Act 2003 \(c. 14\), s. 140, Sch. 22 para. 71](#)

### *[<sup>F211</sup>Acquisition of shares pursuant to option after death of employee or recipient*

#### **Textual Amendments**

**F211** Sch. 23 para. 27 and cross heading substituted (1.9.2003) by [Finance Act 2003 \(c. 14\), Sch. 22 para. 72; S.I. 2003/1997, art. 2](#)

- 27 (1) Where after the employee’s death shares are acquired by the recipient pursuant to an option obtained by reason of the employee’s employment, the condition in paragraph 14 (income tax position of the employee) is treated as met if it would be met were the employee still alive.
- (2) Where after the death of the recipient shares are acquired pursuant to an option obtained by reason of the employee’s employment, paragraph 1(1)(b) and Parts 3, 4 and 4A of this Schedule, and sub-paragraph (1) above, apply as if the recipient were still alive and the shares were acquired by him.]

### *Meaning of “group company” and “parent company”*

- 28 For the purposes of this Schedule—
- (a) a company is a “group company”, in relation to another company, if they are members of the same group,
  - (b) two companies are members of the same group if, and only if, one is a 51% subsidiary of the other or both are 51% subsidiaries of a third company, and
  - (c) a company is a “parent company” in relation to another company if that other is its 51% subsidiary.

### *Meaning of “consortium” and “commercial association of companies”*

- 29 (1) For the purposes of this Schedule a company is a member of a consortium owning another company if it is one of five or fewer companies—
- (a) that between them beneficially own not less than 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 10% of that capital.
- For this purpose the shareholdings of members of a group of companies shall be treated as held by a single company.

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- (2) In this Schedule a “commercial association of companies” means a company together with such of its associated companies as carry on businesses that are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking.

“Associated company” here has the meaning given by section 416 of the Taxes Act 1988.

### *Minor definitions*

- 30 In this Schedule—
- “the Contributions and Benefits Act” means—
- (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);
- “control” has the meaning given by section 840 of the Taxes Act 1988;
- “insurance company” and “life assurance business” have the meanings given by section 431(2) of that Act;
- “investment company” has the meaning given by section 130 of that Act;
- “market value” has the same meaning as in the Taxation of Chargeable Gains Act 1992 (c. 12) (see sections 272 and 273 of that Act);
- “option” includes any right to acquire shares;
- “ordinary shares”, in relation to a company, means shares forming part of the company’s ordinary share capital;
- “shares” includes—
- (a) an interest in shares, and
- (b) stock or an interest in stock.

### *Index of defined expressions*

- 31 In this Schedule the following expressions are defined or otherwise explained by the provisions indicated:

commercial association of companies	paragraph 29(2)
consortium	paragraph 29(1)
Contributions and Benefits Act	paragraph 30
control	paragraph 30
[ <sup>F212</sup> convertible shares	paragraph 22B]
employment and related expressions	paragraph 26
the employee	paragraph 1(3)
employing company	paragraph 1(3)
group	paragraph 28(b)
group company	paragraph 28(a)
insurance company	paragraph 30

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investment company	paragraph 30
life assurance business	paragraph 30
market value	paragraph 30
option	paragraph 30
ordinary shares	paragraph 30
parent company	paragraph 28(c)
the recipient	paragraph 1(3)
[ <sup>F212</sup> restricted shares	paragraph 19]
shares	paragraph 30
F213	F213
. . .	. . .
within the charge to corporation tax (of a business)	paragraph 3(2)

#### Textual Amendments

**F212** Words in Sch. 23 para. 31 inserted (with effect in accordance with Sch. 22 paras. 68(2), 69(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 73\(3\)\(4\)](#); [S.I. 2003/1997, art. 2](#)

**F213** Sch. 23 para. 31 entry repealed (with effect in accordance with Sch. 22 paras. 68(2), 69(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 73\(2\)\(4\)](#), [Sch. 43 Pt. 3\(4\)](#) Note; [S.I. 2003/1997, art. 2](#)

## PART 6

### COMMENCEMENT AND TRANSITIONAL PROVISIONS

#### *Commencement*

- 32 This Schedule applies to accounting periods of the employing company beginning on or after 1st January 2003.

#### *Transitional provisions*

- 33 (1) Relief is not available under this Schedule in respect of shares to the extent that a deduction is available or has been made in respect of relevant expenses in computing the chargeable profits of the employing company or any other company for the purposes of corporation tax for an accounting period beginning before 1st January 2003.
- (2) In sub-paragraph (1) “relevant expenses” means any expenses referable, directly or indirectly, to the provision of the shares in question.
- (3) In relation to any time before the coming into force of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”), this Schedule has effect as if—
- (a) the references to a charge to income tax under ITEPA were to a charge to income tax under section 19 of the Taxes Act 1988;

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- (b) the reference in paragraph 14(1)(a)(ii) to section 476 or 477 of ITEPA were to section 135 of the Taxes Act 1988;
- (c) the reference in paragraph 14(2)(a) to section 519, 520, 524 or 525 of ITEPA were to section 185(3)(a) of the Taxes Act 1988;
- (d) the reference in paragraph 14(2)(b) to section 530 of ITEPA were to paragraph 44 of Schedule 14 to the Finance Act 2000 (c. 17);
- (e) the reference in paragraph 20(2)(a) to section 427 of ITEPA were to section 140A of the Taxes Act 1988;
- (f) the references in paragraph 24(1) to paragraphs 2, 3, 9 and 10(3) of Schedule 4AA to the Taxes Act 1988 were to paragraphs 106, 107, 112A and 112B(3) respectively of Schedule 8 to the Finance Act 2000 (c. 17).

## SCHEDULE 24

Section 143

### RESTRICTION OF DEDUCTIONS FOR EMPLOYEE BENEFIT CONTRIBUTIONS

#### *Restriction of deductions*

- 1 (1) This Schedule applies where—
- (a) a calculation is required to be made for [<sup>F214</sup>corporation tax purposes] of a person’s profits for any period, and
  - (b) a deduction would (but for this Schedule) be allowed for that period in respect of employee benefit contributions made, or to be made, by that person (“the employer”).
- But it does not apply to a deduction of a kind mentioned in paragraph 8.
- (2) For the purposes of this Schedule an employer makes an “employee benefit contribution” if—
- (a) [<sup>F215</sup>the employer] pays money or transfers an asset to another person (“the third party”), and
  - (b) the third party is entitled or required, under the terms of an employee benefit scheme, to hold or use the money or asset for or in connection with the provision of benefits to employees of the employer.
- (3) The deduction in respect of employee benefit contributions mentioned in sub-paragraph (1) is allowed only to the extent that—
- (a) during the period in question or within nine months from the end of it—
    - (i) qualifying benefits are provided out of the contributions, or
    - (ii) qualifying expenses are paid out of the contributions,
 or
  - (b) where the making of the contributions is itself the provision of qualifying benefits, the contributions are made during that period or within those nine months.
- (4) An amount disallowed under sub-paragraph (3) is allowed as a deduction for a subsequent period to the extent that—
- (a) qualifying benefits are provided out of the employee benefit contributions in question before the end of that subsequent period, or

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- (b) where the making of the contributions is itself the provision of qualifying benefits, the contributions are made before the end of that subsequent period.

#### Textual Amendments

- F214** Words in Sch. 24 para. 1(1)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 624\(2\)\(a\)](#) (with Sch. 2)
- F215** Words in Sch. 24 para. 1(2)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 624\(2\)\(b\)](#) (with Sch. 2)

#### *“Provision of qualifying benefits”*

- 2 (1) For the purposes of this Schedule qualifying benefits are provided where there is a payment of money or transfer of assets, otherwise than by way of loan, that—
- (a) gives rise both to an employment income tax charge and to an NIC charge, or would do if the conditions in sub-paragraph (3) were met, or
- (b) is made in connection with the termination of the recipient’s employment with the employer.
- (2) In sub-paragraph (1)(a)—
- “employment income tax charge” means a charge to tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (whether on the recipient or on someone else);
- “NIC charge” means a liability to pay national insurance contributions under section 6 (Class 1 contributions), 10 (Class 1A contributions) or 10A (Class 1B contributions) of the Contributions and Benefits Act.
- (3) The conditions mentioned in sub-paragraph (1)(a) are—
- (a) that the duties of the employment in respect of which the payment or transfer was made were performed in the United Kingdom, and
- (b) that the person in respect of whose employment the payment or transfer was made fulfilled at all relevant times the conditions as to residence or presence in Great Britain or Northern Ireland prescribed under section 1(6)(a) of the Contributions and Benefits Act.
- (4) In this paragraph “the Contributions and Benefits Act” means—
- (a) the Social Security Contributions and Benefits Act 1992 (c. 4), or
- (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (5) Where the provision of a qualifying benefit takes the form of the payment of money, the benefit is treated for the purposes of this Schedule as provided at the time when the money is treated as received for the purposes of Chapter 4 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003, applying the rules in section 18 of that Act (receipt of money earnings).

#### *“Qualifying expenses”*

- 3 In this Schedule “qualifying expenses”—

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- (a) does not include expenses that, if incurred by the employer, would not be deductible in calculating for [<sup>F216</sup>corporation tax purposes] the employer's profits for any period, but
- (b) subject to that, includes any expenses of the third party (other than the provision of benefits to employees of the employer) in operating the employee benefit scheme in question.

#### Textual Amendments

**F216** Words in Sch. 24 para. 3(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\)](#), [Sch. 1 para. 624\(3\)](#) (with [Sch. 2](#))

#### *Payment “out of” employee benefit contributions*

- 4
- (1) For the purposes of paragraph 1(3)(a) any qualifying benefits provided or qualifying expenses paid by the third party after the receipt by him of employee benefit contributions are regarded as being provided or paid out of those contributions, up to the total amount of the contributions as reduced by the amount of any benefits or expenses previously provided or paid as mentioned in paragraph 1(3)(a).
  - (2) For the purposes of paragraph 1(4)(a) any qualifying benefits provided by the third party after the receipt by him of employee benefit contributions are regarded as being provided out of those contributions, up to the total amount of the contributions as reduced by the amount of any benefits or expenses previously provided or paid as mentioned in paragraph 1(3)(a) or (4)(a).
  - (3) In applying sub-paragraphs (1) and (2) above no account shall be taken of any other amount received or paid by the third party.

#### *Transfer of asset to employee*

- 5
- (1) This paragraph applies where the provision of a qualifying benefit takes the form of the transfer of an asset.
  - (2) The amount provided shall be taken for the purposes of this Schedule to be the total of—
    - (a) the amount (if any) expended on the asset by the third party, and
    - (b) in a case where the asset was transferred to the third party by the employer, the amount of the deduction that would be allowed as mentioned in paragraph 1(1) in respect of the transfer.
  - (3) But where the amount given by sub-paragraph (2) above is more than the amount that is charged to tax under the Income Tax (Earnings and Pensions) Act 2003 (c. 1) in respect of the transfer, or would be so charged if the condition in paragraph 2(3) (a) were met, the deduction allowable under paragraph 1(3) or (4) is limited to that lower amount.

#### *Provisional calculation of profits*

- 6
- Where the calculation referred to in paragraph 1(1) is made before the end of the nine-month period mentioned in paragraph 1(3)—

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- (a) for the purposes of making the calculation, paragraph 1(3) shall be read as if the reference to that nine-month period were a reference to the period ending at the time when the calculation is made, but
- (b) after the end of the nine-month period the calculation shall if necessary be adjusted to take account of any benefits provided, expenses paid or contributions made within that period but after the time of the calculation.

### *F<sup>217</sup>Life assurance business*

#### **Textual Amendments**

**F217** Sch. 24 para. 7 substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendment of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 71(2)**

- 7
- (1) In the case of a company in relation to which section 76 of the Taxes Act 1988 applies (expenses of companies carrying on life assurance business) the effect of section 86 of the Finance Act 1989 (spreading of relief for acquisition expenses) shall be ignored in determining for the purposes of paragraph 1(1) whether a deduction would (apart from this Schedule) be made.
  - (2) But paragraph 1(4) above has effect subject to section 86 of the Finance Act 1989 where, in accordance with sub-paragraph (1) above, an amount is allowed as a deduction for a particular period under paragraph 1(4).
  - (3) In construing that section, the employee benefit contributions shall be treated as expenses payable for that period which fall to be included at Step 1 in section 76(7) of the Taxes Act 1988.
  - (4) In the application of this Schedule to a company in relation to which section 76 of the Taxes Act 1988 applies—
    - (a) any reference to a deduction in respect of employee benefit contributions shall be taken as a reference to an amount being brought into account under that section as expenses payable, and
    - (b) references to deduction shall be construed accordingly.]

### *Deductions to which Schedule does not apply*

- 8
- This Schedule does not apply to any deduction that is allowable—
- (a) in respect of anything given as consideration for goods or services provided in the course of a trade or profession,
  - (b) in respect of contributions under a retirement benefits scheme within the meaning of Chapter 1 of Part 14 of the Taxes Act 1988 (see section 611 of that Act),
  - (c) in respect of contributions under a personal pension scheme approved under Chapter 4 of that Part (see section 630 of that Act),
  - (d) in respect of contributions under an accident benefit scheme,
  - (e) under Schedule 4AA to that Act (approved share incentive plans),
  - (f) under section 67 of the Finance Act 1989 (c. 26) (qualifying share ownership trusts), or
  - (g) under Schedule 23 to this Act (relief for employee share acquisition).

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### *Interpretation*

9 (1) In this Schedule—

“accident benefit scheme” means an employee benefit scheme under which benefits may be provided only by reason of a person’s disablement, or death, caused by an accident occurring during his service as an employee of the employer;

“employee benefit contribution” shall be read in accordance with paragraph 1(2);

“employee benefit scheme” means a trust, scheme or other arrangement for the benefit of persons who are, or include, employees of the employer;

“the employer” shall be read in accordance with paragraph 1(1);

**F218**  
...

“qualifying benefits” shall be read in accordance with paragraph 2;

“qualifying expenses” has the meaning given by paragraph 3;

“the third party” shall be read in accordance with paragraph 1(2).

(2) A reference in this Schedule to a person’s employee includes a reference to the holder of an office under that person, and “employment” shall be read accordingly.

#### **Textual Amendments**

**F218** Words in Sch. 24 para. 9(1) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), Sch. 1 para. 624(4), [Sch. 3](#) (with Sch. 2)

### *Consequential amendments*

10 (1) In section 43 (Schedule D) and section 44 (investment and insurance companies) of the Finance Act 1989 (c. 26), in subsection (2) (amounts charged in accounts in respect of employees' remuneration) for paragraphs (a) and (b) substitute “ for which provision is made in the accounts ”.

(2) In Schedule 29 to the Finance Act 2002 (c. 23) (intangible fixed assets), in paragraph 113(3)(a) (meaning of “potential emoluments”) omit the words “or benefits” and “, or held by an intermediary.”.

### *Commencement and transitory provisions*

11 (1) This Schedule has effect in relation to deductions that would (but for this Schedule) be allowed for a period ending on or after 27th November 2002 in respect of employee benefit contributions made on or after that date.

(2) In relation to any time before the coming into force of the Income Tax (Earnings and Pensions) Act 2003 (c. 1), this Schedule has effect as if—

- (a) the references to tax under that Act were to income tax under Schedule E;
- (b) the reference in paragraph 8(e) to Schedule 4AA to the Taxes Act 1988 (approved share incentive plans) were to Part 12 of Schedule 8 to the Finance Act 2000 (c. 17) (employee share ownership plans);
- (c) for the words in paragraph 2(5) from “treated as received” to the end there were substituted “ treated as received for the purposes of section 202A(1)(a)



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of the Taxes Act 1988, applying the rules in section 202B(1) to (6) of that Act (receipts basis of assessment for Schedule E) ”.

- (3) In relation to any such time, sections 43(11)(a) and 44(9)(a) of the Finance Act 1989 have effect with the omission of the words “or benefits” and “, or held by an intermediary,”.
- (4) In relation to a period beginning before 1st January 2003, the reference in paragraph 8(g) to a deduction allowable under Schedule 23 to this Act shall be read as a reference to a deduction allowable to a company for that period in respect of a person—
- (a) acquiring shares that are qualifying shares within the meaning of that Schedule, or
  - (b) having a right to acquire such shares,
- whether in that period or subsequently, by reason of his or another’s employment with the company.

## SCHEDULE 25

Section 149(3)

### DETERMINATION OF PROFITS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT: SUPPLEMENTARY PROVISIONS

The Schedule inserted in the Taxes Act 1988 as Schedule A1 is as follows—

#### “SCHEDULE A1

### DETERMINATION OF PROFITS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT: SUPPLEMENTARY PROVISIONS

#### PART 1

#### INTRODUCTION

##### *Introduction*

- 1 (1) The provisions of this Schedule have effect for supplementing section 11AA as regards the determination of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom (“the non-resident company”).
- (2) In this Schedule “the separate enterprise principle” means the principle in section 11AA(2) (read with subsection (3) of that section).

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## PART 2

### GENERAL PROVISIONS

#### *Transactions treated as taking place at arm's length*

- 2 In accordance with the separate enterprise principle, transactions between the permanent establishment and any other part of the non-resident company are treated as taking place on such terms as would have been agreed between parties dealing at arm's length.

#### *Application of general provision as to allowable deductions*

- 3 (1) Section 11AA(4) (general provision as to allowable deductions) applies whether or not the expenses are incurred by, or reimbursed by, the permanent establishment.
- (2) The amount of expenses to be taken into account under section 11AA(4) is the actual cost to the non-resident company.

#### *Prohibition of deductions for payments in respect of intangible assets*

- 4 (1) No deduction is allowed in respect of royalties paid, or other similar payments made, by the permanent establishment to any other part of the non-resident company in respect of the use of intangible assets held by the company.
- (2) This does not prevent a deduction in respect of any contribution by the permanent establishment to the costs of creation of an intangible asset.
- (3) In this paragraph “intangible asset” has the meaning it has for accounting purposes, and includes any intellectual property (as defined in paragraph 2(2) of Schedule 29 to the Finance Act 2002).

#### *Prohibition of deductions for interest or other financing costs*

- 5 (1) No deduction is allowed in respect of payments of interest or other financing costs by the permanent establishment to any other part of the non-resident company, except as provided by sub-paragraph (2).
- (2) The restriction in sub-paragraph (1) above does not apply to interest or other costs of financing that are payable in respect of borrowing by the permanent establishment in the ordinary course of a financial business carried on by it.
- (3) In sub-paragraph (2) “financial business” means any of the following—
- (a) banking, deposit-taking, money-lending or debt-factoring, or a business similar to any of those;
  - (b) dealing in commodity or financial futures.

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*Provision of goods or services for permanent establishment*

- 6 (1) This paragraph applies where the non-resident company provides the permanent establishment with goods or services.
- (2) If the goods or services are of a kind that the company supplies, in the ordinary course of its business, to third parties dealing with it at arm's length, the matter is dealt with as a transaction to which the separate enterprise principle applies.
- (3) If not, the matter is dealt with as an expense incurred by the non-resident company for the purposes of the permanent establishment.

**PART 3**

PROVISIONS APPLICABLE TO NON-RESIDENT BANKS

*Application of this Part*

- 7 (1) The provisions of this Part of this Schedule have effect where the non-resident company is a bank.
- “Bank” for this purpose has the meaning given by section 840A.
- (2) Nothing in this Part of this Schedule shall be read as preventing the application of principles similar to those provided for in this Part in applying the separate enterprise principle to a non-resident company that is not a bank.

*Non-resident banks: transfer of financial assets*

- 8 (1) In accordance with the separate enterprise principle, transfers of loans and other financial assets between the permanent establishment and any other part of the company are recognised only if they would have taken place between independent enterprises.
- (2) Such a transfer is not recognised where it cannot reasonably be considered that it is carried out for valid commercial reasons. For this purpose the obtaining of a tax advantage is not a valid commercial reason.

*Loans by non-resident banks: attribution of financial assets and profits arising*

- 9 (1) In accordance with the separate enterprise principle, loans and other financial assets, and profits arising from them, are attributed to a permanent establishment to the extent that they can reasonably be regarded as having been generated by the activities of the permanent establishment.
- (2) The following provisions have effect as regards the factors to be taken into account.
- (3) Particular account shall be taken of the extent to which the permanent establishment is responsible for—
- (a) obtaining the offer of new business;

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- (b) establishing the potential borrower's credit rating and the risk involved in providing credit;
  - (c) negotiating the terms of the loan with the borrower;
  - (d) deciding whether, and if so on what conditions, to make or extend the loan.
- (4) Account may also be taken of the extent to which the permanent establishment is responsible for—
- (a) concluding the loan agreement and disbursing the proceeds of the loan;
  - (b) administering the loan (including handling and monitoring the service of it) and holding and controlling any securities pledged.
- (5) References in this paragraph to a financial asset include any financial risk in relation to a loan, or potential loan, that is capable of giving rise to fees or other receipts and for which the holding of capital is required (or would be required if the transaction were between parties at arm's length).

*Borrowing by non-resident banks: permanent establishment acting as agent or intermediary*

- 10 (1) This paragraph applies where a permanent establishment—
- (a) borrows funds for the purposes of another part of the non-resident company, and
  - (b) in relation to that borrowing acts only as an agent or intermediary.
- (2) In such a case, in accordance with the separate enterprise principle—
- (a) the profits attributable to the permanent establishment, and
  - (b) the capital attributable to the permanent establishment under section 11AA(3),
- shall be that appropriate in the case of an agent acting at arm's length, taking into account the risks and costs borne by the establishment.”.

SCHEDULE 26

Section 152

NON-RESIDENT COMPANIES: TRANSACTIONS THROUGH  
 BROKER, INVESTMENT MANAGER OR LLOYD'S AGENT

*Introduction*

- 1 (1) This Schedule makes provision about transactions carried out on behalf of a company that is not resident in the United Kingdom (a “non-resident company”), in the course of that company's trade, by a person in the United Kingdom acting as—
- (a) a broker (paragraph 2),
  - (b) an investment manager (paragraphs 3 to 5), or
  - (c) a members' or managing agent at Lloyd's (paragraph 6).
- (2) The provisions of this Schedule supplement—
- (a) section 148(3) (meaning of “permanent establishment”: not to include independent agent), and

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- (b) section 151(2)(c) (limit on income tax chargeable on non-resident company: income arising from transactions carried out through independent agent).

#### *Brokers*

- 2 (1) In relation to a transaction carried out on behalf of a non-resident company, a broker is regarded as an agent of independent status acting in the ordinary course of his business if, and only if, the following conditions are met.
- (2) The conditions are—
- (a) that at the time of the transaction he is carrying on the business of a broker;
  - (b) that the transaction is carried out by him in the ordinary course of that business;
  - (c) that the remuneration he receives in respect of the transaction for the provision of the services of a broker to the non-resident company is not less than is customary for that class of business; and
  - (d) that he does not fall to be treated as a permanent establishment of the non-resident company in relation to any other transaction carried out in the same accounting period.

#### *Investment managers*

- 3 (1) In relation to an investment transaction carried out on behalf of a non-resident company by a person providing investment management services (an “investment manager”), the investment manager is regarded as an agent of independent status acting in the ordinary course of his business if, and only if, the following conditions are met.
- (2) The conditions are—
- (a) that at the time of the transaction he is carrying on a business of providing investment management services;
  - (b) that the transaction is carried out in the ordinary course of that business;
  - (c) that he acts on behalf of the non-resident company in relation to the transaction in an independent capacity;
  - (d) that the requirements of the 20% rule are met (see paragraph 4);
  - (e) that the remuneration he receives in respect of the transaction for the provision to the non-resident company of investment management services is not less than is customary for that class of business; and
  - (f) that he does not fall to be treated as a permanent establishment of the company in relation to any other transaction carried out in the same accounting period.
- (3) In sub-paragraph (1) “investment transaction” means—
- (a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,
  - (b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and
  - (c) such other transactions as the Treasury may by regulations designate for the purposes of this Schedule.

*Status: Point in time view as at 18/04/2005.*

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Regulations for the purposes of paragraph (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

- (4) For the purposes of sub-paragraph (3) a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

*Investment managers: the 20% rule*

- 4 (1) The requirements of the 20% rule are—
- (a) that in relation to a qualifying period (see sub-paragraph (2)) it has been or is the intention of the investment manager and the persons connected with him that the company's relevant excluded income (see sub-paragraph (3)) should, as to at least 80%, consist of amounts to which neither he nor any such person has a beneficial entitlement (see sub-paragraph (4)), and
  - (b) to the extent that there is a failure to fulfil that intention, that failure—
    - (i) is attributable (directly or indirectly) to matters outside the control of the investment manager and persons connected with him, and
    - (ii) does not result from a failure by him or any of those persons to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.
- (2) A “qualifying period” means—
- (a) the accounting period in which the transaction in question is carried out, or
  - (b) a period of not more than five years comprising two or more complete accounting periods including that one.
- (3) The “relevant excluded income” of a non-resident company for a qualifying period is the aggregate of such of the chargeable profits of the company for the accounting periods comprised in the qualifying period as derive from transactions carried out by the investment manager on the company's behalf in relation to which the manager does not (apart from the requirements of the 20% rule) fall to be treated as a permanent establishment of the company.
- (4) A person has a “beneficial entitlement” to relevant excluded income if he has or may acquire a beneficial entitlement by virtue of—
- (a) an interest of his (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of that income is represented, or
  - (b) an interest of his in or other rights in relation to the non-resident company, that is or would be attributable to that income.
- (5) In the case of a transaction in relation to which the conditions in paragraph 3 are met except for the requirements of the 20% rule, this Schedule has effect as if the requirements of that rule were met in relation to so much of the chargeable profits of the non-resident company deriving from the transaction as do not represent relevant excluded income of the company to which the investment manager or a person connected with him has or has had any beneficial entitlement.

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*Investment managers: application of 20% rule to collective investment schemes*

- 5 (1) This paragraph applies where amounts arise or accrue to the non-resident company as a participant in a collective investment scheme.
- (2) The requirements of the 20% rule need not be met in relation to a transaction carried out for the purposes of the scheme if the scheme is such that, if the following assumptions applied—
- (a) that all transactions carried out for the purposes of the scheme were carried out on behalf of a company constituted for the purposes of the scheme and resident outside the United Kingdom, and
  - (b) that the participants did not have any rights in respect of the amounts arising or accruing in respect of those transactions other than the rights that, if they held shares in the company on whose behalf the transactions are assumed to be carried out, would be their rights as shareholders,
- the assumed company would not, in relation to the accounting period in which the transaction was carried out, be regarded for tax purposes as carrying on a trade in the United Kingdom.
- (3) Where on those assumptions the assumed company would be regarded for tax purposes as carrying on a trade in the United Kingdom, paragraph 4 has effect with the following modifications in relation to a transaction carried out for the purposes of the scheme—
- (a) for references to the non-resident company substitute references to the assumed company;
  - (b) for references to the non-resident company's relevant excluded income substitute references to the aggregate of the amounts that would, for accounting periods comprised in the qualifying period, be chargeable to tax on the assumed company as profits deriving from the transactions carried out by the investment manager and assumed to be carried out on behalf of the company.
- (4) In this paragraph “collective investment scheme” has the meaning given by section 235 of the Financial Services and Markets Act 2000 (c. 8), and “participant”, in relation to such a scheme, shall be construed in accordance with that section.

*Lloyd's agents*

- 6 (1) Where a non-resident company is a member of Lloyd's and the transaction is carried out in the course of the company's underwriting business, a person who acts on behalf of the company in relation to the transaction is regarded as an independent agent acting in the ordinary course of his business if he acts as members' agent or as managing agent of the syndicate in question.
- (2) In sub-paragraph (1)—
- (a) the reference to the non-resident company being a member of Lloyd's is to its being a corporate member within the meaning of Chapter 5 of Part 4 of the Finance Act 1994 (c. 9); and
  - (b) the references to a members' agent and to a managing agent shall be construed in accordance with section 230 of that Act.

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*General supplementary provisions*

- 7 (1) For the purposes of this Schedule a person is regarded as carrying out a transaction on behalf of another where he undertakes the transaction himself, whether on behalf of or to the account of that other, and also where he gives instructions for it to be so carried out by another.
- (2) For the purposes of this Schedule a person is regarded as acting in an independent capacity on behalf of a company only if the relationship between them, having regard to its legal, financial and commercial characteristics, is a relationship between persons carrying on independent businesses that deal with each other at arm's length.
- (3) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this Schedule.
- (4) This Schedule has effect in the case of a person who acts as a broker or provides investment services as part only of a business as if that part were a separate business.

SCHEDULE 27

Section 155

PERMANENT ESTABLISHMENT ETC: CONSEQUENTIAL AMENDMENTS

*Taxes Act 1988*

- 1 (1) The Taxes Act 1988 is amended as follows.
- (2) In section 606 (persons responsible in case of default of administrator of retirement benefits scheme), for subsection (13) substitute—
- “(13) References in this section to the employer include, where the employer is not resident in the United Kingdom, any person who is treated as UK representative of the employer under section 126 of the Finance Act 1995 or section 150 of the Finance Act 2003.”.
- (3) In section 806L (carry forward or carry back of unrelieved foreign tax), for subsection (7) substitute—
- “(7) In this section—
- “overseas permanent establishment” means a permanent establishment through which a company carries on a trade in a territory outside the United Kingdom; and
- “permanent establishment”—
- (a) if there are arrangements having effect under section 788 in relation to the territory concerned that define the expression, has the meaning given by those arrangements, and
- (b) if there are no such arrangements, or if they do not define the expression, has the meaning given by section 148 of the Finance Act 2003.”.
- (4) In Schedule 15 (qualifying policies), in paragraph 24 (policies issued by non-resident companies), in sub-paragraph (3)(b) (twice) and (c) for “branch” substitute “permanent establishment”.



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### *Taxation of Chargeable Gains Act 1992*

- 2 (1) The Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
- (2) In section 10 (non-resident with United Kingdom branch or agency)—
- (a) omit subsection (3); and
  - (b) in subsection (4), omit “or corporation tax”.
- (3) In sections 13(5)(d), 25(7)(b), 106(10), 139(1A), 140A(2), 159(4)(b), 171(1A), 175(2AA), 179(1A), 190(2)(b) and (3)(b), 199(6)(b) and 228(6)(b), and in Schedule 7A, paragraph 1(3A), for “10(3)” substitute “ 10B ”.

### *Finance Act 1993*

F219<sub>3</sub> .....

#### **Textual Amendments**

**F219** Sch. 27 para. 3 repealed (with effect in accordance with s. 52(3) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(6\)](#)

### *Finance Act 1995*

- 4 (1) Section 126 of the Finance Act 1995 (c. 4) (UK representatives of non-residents) is amended as follows.
- (2) In subsection (1), omit the words “, corporation tax”.
- (3) In subsection (2)—
- (a) after paragraph (b) insert “ and ”;
  - (b) in paragraph (c) omit the words from “or fall” to “non-resident”; and
  - (c) omit sub-paragraph (d) and the word “and” preceding it.
- (4) For subsection (8) substitute—
- “(8) In this section, “branch or agency” means any factorship, agency, receivership, branch or management.”.
- (5) In subsection (9), omit paragraph (b) and the word “and” preceding it.
- (6) After subsection (9) insert—
- “(10) This section does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.”.
- 5 (1) Section 127 of the Finance Act 1995 (persons not treated as UK representatives) is amended as follows.
- (2) In subsection (1) for “(a) to (d)” substitute “ (a) to (c) ”.
- (3) In subsection (5)(b) omit “or 129”.
- (4) In subsection (17), in the definition of “branch or agency” for “the Management Act” substitute “ section 126 above ”.
- (5) In subsection (19) omit paragraph (b) and the word “and” preceding it.

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- 6 In section 128 of the Finance Act 1989 (limit on income chargeable on non-residents: income tax), after subsection (11) insert—
- “(12) This section does not apply in relation to income tax chargeable on income of a company otherwise than as a trustee.”
- 7 Omit section 129 of the Finance Act 1995 (c. 4) (limit on income chargeable on non-residents: corporation tax).

*Finance Act 1996*

- 8 In Schedule 15 to the Finance Act 1996 (c. 8) (loan relationships: transitional provisions), in paragraph 8(6)(c)—
- (a) for “10(3)” substitute “ 10B ”, and
- (b) for “on a disposal by a branch or agency” substitute “ attributable to a permanent establishment ”.

*Finance Act 2000*

- 9 In Schedule 15 to the Finance Act 2000 (c. 17) (corporate venturing scheme), in paragraph 79(5) (gain accruing on chargeable event), for “section 10” substitute “ section 10B ”.

SCHEDULE 28

Section 159

CAPITAL GAINS TAX: REPORTING LIMITS AND ANNUAL EXEMPT AMOUNT

**PART 1**

REPORTING LIMITS

- 1 After section 3 of the Taxation of Chargeable Gains Act 1992 (c. 12) insert—

**“3A Reporting limits**

- (1) Where in the case of an individual—
- (a) the amount of chargeable gains accruing to him in any year of assessment does not exceed the exempt amount for that year, and
- (b) the aggregate amount or value of the consideration for all chargeable disposals of assets made by him in that year does not exceed four times the exempt amount for that year,
- a statement to that effect is sufficient compliance with so much of any notice under section 8 of the Management Act as requires information for the purposes of establishing the amount in which he is chargeable to capital gains tax for that year.
- (2) For the purposes of subsection (1)(a) above—
- (a) the amount of chargeable gains accruing to an individual in a year of assessment for which no deduction falls to be made in respect of allowable losses is the amount after any reduction for taper relief;

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- (b) the amount of chargeable gains accruing to an individual in a year of assessment for which such a deduction does fall to be made is the amount before deduction of losses or any reduction for taper relief.
  - (3) For the purposes of subsection (1)(b) above a “chargeable disposal” is any disposal other than—
    - (a) a disposal on which any gain accruing is not a chargeable gain, or
    - (b) a disposal the consideration for which is treated by virtue of section 58 (husband and wife) as being such that neither a gain nor a loss would accrue.
  - (4) Subsection (1) above applies to personal representatives (for the year of assessment in which the individual in question dies and for the next 2 following years) as it applies to an individual.
  - (5) Subsection (1) above applies to the trustees of a settlement in accordance with Schedule 1.
  - (6) In this section “exempt amount” has the meaning given by section 3 (read, where appropriate, with Schedule 1).”
- 2 (1) In the heading to Schedule 1 to that Act (application of exempt amount in cases involving settled property) after “EXEMPT AMOUNT” insert “ AND REPORTING LIMITS ”.
- (2) In paragraph 1 of that Schedule (trustees for person with a disability) after sub-paragraph (5) insert—
  - “(5A) In its application to the trustees of a settlement, section 3A(1) has effect with the substitution for the reference to section 8 of the Management Act of a reference to section 8A of that Act.”.
- (3) In paragraph 2 of that Schedule (other trustees) after sub-paragraph (6) insert—
  - “(6A) In its application to the trustees of a settlement, section 3A(1) has effect with the substitution for the reference to section 8 of the Management Act of a reference to section 8A of that Act.”.

## PART 2

### ANNUAL EXEMPT AMOUNT

- 3 (1) Section 3 of the Taxation of Chargeable Gains Act 1992 (c. 12) is amended as follows.
  - (2) Omit subsection (6).
  - (3) In subsection (7) for “subsections (1) to (6)” substitute “ subsections (1) to (5C) ”.
  - (4) After that subsection insert—
    - “(7A) As they apply by virtue of subsection (7) above—
      - (a) subsection (5A) has effect with the omission of paragraph (b), and
      - (b) subsection (5B) has effect with the omission of the words “or (b)”.”.
- 4 (1) Paragraph 1 of Schedule 1 to that Act is amended as follows.
  - (2) In sub-paragraph (1), in the words following paragraph (b)—

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- (a) for “section 3(1) to (6)” substitute “ sections 3(1) to (5C) and 3A ”;
  - (b) at the end insert “ , but with the modifications specified in this paragraph ”.
- (3) After sub-paragraph (2) insert—
- “(2A) As they apply by virtue of sub-paragraph (1) above—
    - (a) section 3(5A) has effect with the omission of paragraph (b), and
    - (b) section 3(5B) has effect with the omission of the words “or (b)”.”.
- (4) In sub-paragraph (3)—
- (a) for “section 3” substitute “ sections 3 and 3A(1)(a) ”;
  - (b) after “the exempt amount for the year”, where it first occurs, insert “ (except the one in section 3(2)) ”.
- (5) In sub-paragraph (7) for “An inspector” substitute “ An officer of the Board ”.
- 5 (1) Paragraph 2 of that Schedule is amended as follows.
- (2) In sub-paragraph (1) for “section 3(1) to (6)” substitute “ sections 3(1) to (5C) and 3A ”.
- (3) In sub-paragraph (2)—
- (a) for “subsections (1) and (5)” substitute “ section 3(1), (5A), (5B) and (5C) ”;
  - (b) after “section 3(1), (5A), (5B) and (5C)” insert “ and section 3A(1)(a) ”.
- (4) After sub-paragraph (2) insert—
- “(2A) As they apply by virtue of sub-paragraph (1) above—
    - (a) section 3(5A) has effect with the omission of paragraph (b), and
    - (b) section 3(5B) has effect with the omission of the words “or (b)”.”.
- (5) Omit sub-paragraph (3).
- (6) In sub-paragraph (9) for “An inspector” substitute “ An officer of the Board ”.
- 6 In the first column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalty for failure to furnish particulars etc), at the appropriate place insert — “ Paragraph 1(7) of Schedule 1 to the 1992 Act. ”.

### PART 3

#### COMMENCEMENT

- 7 The amendments in paragraphs 1, 2, 3(2) and (3), 4(2)(a) and (4)(a) and 5(2), (3) (b) and (5) of this Schedule apply in relation to any notice under section 8 or, as the case may be, section 8A of the Taxes Management Act 1970 given in relation to the year 2003-04 or any subsequent year of assessment.
- 8 The amendments in paragraphs 3(4), 4(2)(b), (3) and (4)(b) and 5(3)(a) and (4) of this Schedule shall be deemed always to have had effect.
- 9 The amendments in paragraphs 4(5), 5(6) and 6 of this Schedule have effect in relation to any notice given in respect of the year 2002-03 or any subsequent year of assessment, except that the amendment in paragraph 6 has effect only in relation to such a notice given after the passing of this Act.

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## SCHEDULE 29

Section 163(2)

### TRANSFERS OF VALUE: ATTRIBUTION OF GAINS TO BENEFICIARIES

#### *Introduction*

- 1 Schedule 4C to the Taxation of Chargeable Gains Act 1992 (c. 12) (transfers of value: attribution of gains to beneficiaries) is amended as follows.

#### *Scope and scheme of Schedule*

- 2 For paragraphs 1 and 2 (introduction and general scheme of Schedule) substitute—

#### *“Introduction*

- 1 (1) This Schedule applies where the trustees of a settlement (“the transferor settlement”) make a transfer of value to which Schedule 4B applies (“the original transfer”).
- (2) Where this Schedule applies, the following gains—
- (a) any Schedule 4B trust gains accruing by virtue of the transfer (see paragraphs 3 to 7), and
  - (b) any outstanding section 87/89 gains of the transferor settlement at the end of the year of assessment in which the transfer is made (see paragraph 7A),
- are pooled for the purpose of attributing them, in accordance with this Schedule, to beneficiaries who receive capital payments. Paragraph 7B provides for further gains to be brought into the pool in the case of a further transfer of value.
- (3) The gains mentioned in sub-paragraph (2) are referred to in this Schedule as “Schedule 4C gains” and the pool is referred to as the transferor settlement’s “Schedule 4C pool”.
- (4) Paragraphs 8 to 9 provide for the attribution of gains in a settlement’s Schedule 4C pool.
- (5) References in this Schedule to a transfer to which Schedule 4B applies include any such transfer, whether or not any chargeable gain or allowable loss accrues under that Schedule by virtue of the transfer.”

#### *Other gains to be brought into Schedule 4C pool*

- 3 After paragraph 7 insert—

#### *“Outstanding section 87/89 gains*

- 7A (1) The amount of outstanding section 87/89 gains of a settlement at the end of a year of assessment is given by—

$$G - B + NC$$

where—

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G is the amount of the settlement's section 87/89 gains for the year (see subparagraph (2)),

B is the amount of the gains treated in accordance with section 87(4) or 89(2) as accruing in that year to beneficiaries, and

NC is the amount of gains so treated as accruing in that year to beneficiaries who were not chargeable to tax for that year.

- (2) The amount of a settlement's section 87/89 gains for a year of assessment is—
- (a) if section 87 applies to the settlement for the year—
    - (i) the amount of the settlement's trust gains within the meaning of section 87(2), together with
    - (ii) any amount by which that amount falls to be increased under section 90(1)(a), or would fall to be increased but for section 90(2) or (3);
  - (b) if section 89(2) applies to the settlement for the year (otherwise than by virtue of section 90(1)(c))—
    - (i) the amount of the trust gains referred to in section 89(2), together with
    - (ii) any amount by which that amount falls to be increased under section 90(1)(b), or would fall to be increased but for section 90(2) or (3);
  - (c) if section 90(1)(c) applies to the settlement for the year, the amount that falls to be treated as trust gains in accordance with that provision, or would fall to be so treated but for section 90(2) or (3).

*Gains to be brought into pool on subsequent transfer of value*

- 7B (1) Where the trustees of a settlement who have made a transfer of value to which Schedule 4B applies make a further transfer of value to which that Schedule applies, the following provisions apply.
- (2) If the further transfer is made in the same year of assessment as the original transfer, any Schedule 4B trust gains accruing by virtue of the further transfer are brought into the settlement's Schedule 4C pool at the end of the year.
  - (3) If the further transfer is made in a later year of assessment at the beginning of which there are outstanding gains in the settlement's Schedule 4C pool—
    - (a) any Schedule 4B trust gains accruing by virtue of the further transfer, and
    - (b) any outstanding section 87/89 gains of the settlement at the end of the later year of assessment,
 are brought into the settlement's Schedule 4C pool at the end of the later year.  
 “Outstanding gains in the settlement's Schedule 4C pool” means gains in that pool that have not been attributed to beneficiaries in accordance with this Schedule.
  - (4) If the further transfer is made in a later year of assessment at the beginning of which the settlement no longer has a Schedule 4C pool, the provisions

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of this Schedule apply in relation to the further transfer as they applied in relation to the original transfer.

- (5) For the purposes of this paragraph a settlement is treated as continuing to have a Schedule 4C pool until the end of the last year of assessment in which there are any gains in the pool.”.

*Attribution of gains to beneficiaries*

- 4 (1) For paragraphs 8 and 9 (attribution of gains to beneficiaries) substitute—

*“Attribution of Schedule 4C gains to beneficiaries*

- 8 (1) The gains in a settlement’s Schedule 4C pool at the end of any year of assessment are treated as chargeable gains accruing in that year to beneficiaries who receive in that year, or have received in an earlier year, capital payments from the trustees of any settlement that is a relevant settlement in relation to the pool.

Paragraph 8A defines “relevant settlement” for this purpose.

- (2) The attribution of chargeable gains to beneficiaries under this paragraph shall be made in proportion to, but shall not exceed, the amounts of the capital payments made to them.

Paragraphs 8B and 8C provide for the matching of gains with available capital payments.

- (3) A chargeable gain shall not be treated as accruing to a beneficiary under this Schedule unless he is chargeable to tax for that year of assessment.
- (4) For the purposes of this Schedule a beneficiary is “chargeable to tax” for a year of assessment if, and only if—
- (a) he is resident in the United Kingdom for any part of that year or is ordinarily resident in the United Kingdom for that year, and
  - (b) he is domiciled in the United Kingdom for any part of that year.
- (5) Any gains in a settlement’s Schedule 4C pool that are not attributed to beneficiaries in a year of assessment are carried forward to the following year of assessment, when this paragraph applies again.

*Relevant settlements*

- 8A (1) This paragraph specifies what settlements are relevant settlements in relation to a Schedule 4C pool.
- (2) The transferor and transferee settlements in relation to the original transfer of value are relevant settlements.
- (3) If the trustees of any settlement that is a relevant settlement in relation to a Schedule 4C pool—
- (a) make a transfer of value to which Schedule 4B applies, or
  - (b) make a transfer of settled property to which section 90 applies,
- any settlement that is a transferee settlement in relation to that transfer is also a relevant settlement in relation to that pool.

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- (4) If the trustees of a settlement that is a relevant settlement in relation to a Schedule 4C pool make a transfer of value to which Schedule 4B applies, any other settlement that is a relevant settlement in relation to that pool is also a relevant settlement in relation to the Schedule 4C pool arising from the further transfer.

*Attribution of gains in Schedule 4C pool*

- 8B (1) The following rules apply as regards the attribution of the gains in a settlement's Schedule 4C pool to beneficiaries of relevant settlements.

This paragraph has effect subject to paragraph 8C (order of attribution as between gains in Schedule 4C pool and other trust gains).

- (2) Gains of earlier years are attributed to beneficiaries before gains of later years.
- (3) For the purposes of this Schedule the year of a gain is determined as follows—
- (a) a Schedule 4B trust gain is a gain of the year of assessment in which the transfer of value in question takes place;
  - (b) a section 87/89 gain is a gain of the year of assessment in which it first forms part of a settlement's trust gains in accordance with section 87(2).
- (4) Gains of the same year are matched with available capital payments made at any time by trustees of any relevant settlement.
- (5) If gains of one year are wholly matched, gains of the next year are then matched, and so on.
- (6) The gains are attributed to beneficiaries in proportion to, but not so as to exceed, the amount of available capital payments received by them.

*Attribution of gains: Schedule 4C pool gains and other gains*

- 8C (1) Where in a year of assessment—
- (a) gains in a settlement's Schedule 4C pool fall to be attributed to beneficiaries of relevant settlements, and
  - (b) one or more of those settlements also have gains that fall to be attributed to beneficiaries under section 87(4) or 89(2),
- the provisions of paragraph 8B have effect as follows.
- (2) The rules in that paragraph apply in relation to all the gains falling to be so attributed.
- (3) As between gains of the same year, Schedule 4C gains are attributed to beneficiaries before other gains.

*Attribution of gains: available capital payments*

- 9 (1) In any year of assessment capital payments made to a beneficiary by the trustees of a relevant settlement, in that year or any earlier year, are available for the purposes of paragraphs 8 to 8C subject to the following provisions.



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- (2) A capital payment is no longer available to the extent that chargeable gains have, by reason of it, been treated as accruing to the recipient in an earlier year of assessment—
  - (a) under this Schedule, or
  - (b) under section 87(4) or 89(2).
- (3) Capital payments received—
  - (a) before 21st March 2000, or
  - (b) before the year of assessment preceding the year of assessment in which the original transfer of value was made,  
shall be disregarded.”.

- (2) After paragraph 12 insert—

#### **Attribution of gains to beneficiaries in section 10A cases**

- “12A(1) This paragraph applies where by virtue of section 10A an amount of gains would (apart from this Schedule) be treated under section 87 as accruing to a person (“the beneficiary”) in the year of return by virtue of a capital payment made to him in an intervening year.
- (2) Where this paragraph applies, a capital payment equal to so much of that capital payment as exceeds the amount otherwise charged shall be deemed for the purposes of this Schedule to be made to the beneficiary in the year of return.
- (3) The “amount otherwise charged” means the total of any chargeable gains attributed to the beneficiary under section 87(4) or 89(2) by virtue of the capital payment.
- (4) For the purposes of paragraph 13(5)(b) a deemed capital payment under this paragraph shall be treated as made when the actual capital payment mentioned in sub-paragraph (1) above was made.
- (5) Expressions used in this paragraph and section 10A have the same meanings in this paragraph as in that section”.

#### *Gains attributed to settlor*

- 5 (1) Paragraph 6 is amended as follows.
- (2) In sub-paragraph (1), in the opening words, for “the amount of any chargeable gains” substitute “the tapered amount of any chargeable gains”.
- (3) After that sub-paragraph insert—
  - “(1A) The reference in sub-paragraph (1) to the tapered amount of any chargeable gains is a reference—
    - (a) where section 86(4) applies, to the tapered section 86(4) amount as defined in section 87(3A);
    - (b) where section 10A applies, to the tapered section 86(1)(e) amount as defined in section 86A(7A).”.

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*Minor and consequential amendments*

- 6 (1) In paragraph 10(1) for “of the transferor settlement, or of any transferee settlement,” substitute “ of any relevant settlement ”.
- (2) In paragraph 12—
- (a) in sub-paragraph (1)(a) for “arising under Schedule 4B” substitute “ included in a settlement’s Schedule 4C pool ”,
  - (b) in sub-paragraph (2) for “the Schedule 4B trust gains” substitute “ the settlement’s Schedule 4C gains ”, and
  - (c) in sub-paragraph (3) for “the transferor or transferee settlements” substitute “ any relevant settlement ”.
- (3) In paragraph 13(5)(a) for “that in which the transfer of value was made” substitute “ the year of the gain (determined in accordance with paragraph 8B(3)) ”.
- (4) After paragraph 13 insert—

*“Effect of settlement ceasing to exist after transfer of value*

- 13A Where a settlement ceases to exist after the trustees have made a transfer of value to which Schedule 4B applies, this Schedule has effect as if a year of assessment had ended immediately before the settlement ceased to exist.”.

SCHEDULE 30

Section 167

FIRST-YEAR ALLOWANCES FOR EXPENDITURE ON  
 ENVIRONMENTALLY BENEFICIAL PLANT OR MACHINERY

*Introductory*

- 1 The Capital Allowances Act 2001 (c. 2) is amended as follows.

*Types of expenditure for which first-year allowances available*

- 2 In section 39—
- (a) after “under” insert “ any of the following provisions ”;
  - (b) at the end of the entry relating to section 45E, omit “or”;
  - (c) after the entry relating to section 45F add—

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“section 45H	expenditure on environmentally beneficial plant or machinery.”.
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*First-year qualifying expenditure on environmentally beneficial plant or machinery*

- 3 After section 45G insert—

*“Expenditure on environmentally beneficial plant or machinery*

- 45H**(1) Expenditure is first-year qualifying expenditure if—

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*Status: Point in time view as at 18/04/2005.*

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- (a) it is expenditure on environmentally beneficial plant or machinery that is unused and not second-hand,
  - (b) it is incurred on or after 1st April 2003,
  - (c) it is not long-life asset expenditure, and
  - (d) it is not excluded by section 46 (general exclusions).
- (2) Environmentally beneficial plant or machinery means plant or machinery in relation to which the following conditions are met—
  - (a) when the expenditure is incurred, or
  - (b) when the contract for the provision of the plant or machinery is entered into.
- (3) The conditions are that the plant or machinery—
  - (a) is of a description specified by Treasury order, and
  - (b) meets the environmental criteria specified by Treasury order for plant or machinery of that description.
- (4) The Treasury may make such orders under subsection (3) as appear to them appropriate to promote the use of technologies, or products, designed to remedy or prevent damage to the physical environment or natural resources.
- (5) Any such order may make provision by reference to any technology list, or product list, issued by the Secretary of State (whether before or after the coming into force of this section).

*Certification of environmentally beneficial plant and machinery*

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

A “section 45H allowance” means a first-year allowance in respect of expenditure that is first-year qualifying expenditure under section 45H.

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

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

*Environmentally beneficial components of plant or machinery*

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

*General exclusions affecting first-year qualifying expenditure*

- 4 (1) In section 46(1)—
- (a) after “under” insert “ any of the following provisions ”;
  - (b) at the end of the entry relating to section 45E, omit “or”;
  - (c) after the entry relating to section 45F add—

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“section 45H	expenditure on environmentally beneficial plant or machinery.”.
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- (2) In section 46(5) for “or 45E” substitute “, 45E or 45H ”.

*Amount of first-year allowances*

- 5 In section 52(3), in the Table, after the entries relating to expenditure qualifying under section 45F add—

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“Expenditure qualifying under section 45H (expenditure on environmentally beneficial plant or machinery)	100%”.
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*Penalty for failure to provide information etc*

- 6 In the second column of the Table in section 98 of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information etc), in the entry relating to requirements imposed by the Capital Allowances Act 2001 (c. 2), after “45G(5) and (6)” insert “, 45I(5) and (6) ”.

*Transitory provision: expenditure incurred etc before first order made*

- 7 (1) For the purposes of section 45H(2) of the Capital Allowances Act 2001, where—
- (a) expenditure on plant or machinery is incurred, or a contract for the provision of plant or machinery is entered into, before the first order is made under section 45H(3) of that Act, and
  - (b) if that order had been made before the relevant time, the conditions in section 45H(3) of that Act would have been met,
- those conditions shall be treated as if they were met at the relevant time.
- (2) In sub-paragraph (1) “the relevant time” means the time when the expenditure was incurred or (as the case may be) the contract was entered into.

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## SCHEDULE 31

Section 168

### TAX RELIEF FOR EXPENDITURE ON RESEARCH AND DEVELOPMENT

#### PART 1

#### SMALL AND MEDIUM-SIZED ENTERPRISES: SCHEDULE 20 TO FINANCE ACT 2000

##### *Introductory*

- 1 Schedule 20 to the Finance Act 2000 (c. 17) (tax relief for expenditure on research and development by small and medium-sized enterprises) is amended in accordance with the following provisions of this Part of this Schedule.

*Required minimum aggregate expenditure: reduction from £25,000 to £10,000*

- 2 (1) Paragraph 1 (entitlement to R&D tax relief) is amended as follows.
- (2) In sub-paragraph (1)(b) (requirement for minimum aggregate expenditure of £25,000 or time apportioned part of that amount) in sub-paragraphs (i) and (ii) for “£25,000” substitute “ £10,000 ”.

#### **Commencement Information**

**I116** Sch. 31 para. 2 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

*Required minimum aggregate expenditure: inclusion of new class of expenditure*

- 3 (1) Paragraph 1 is also amended as follows.
- (2) In sub-paragraph (1)(b) (requirement for minimum aggregate expenditure)—
- (a) for “paragraph 3) and” substitute “ paragraph 3), ”; and
  - (b) after “Finance Act 2002)” insert “ and its qualifying additional SME expenditure (as defined in paragraph 10B of that Schedule) ”.
- (3) In sub-paragraph (3A) (meaning of “deductible” in relation to qualifying sub-contracted R&D expenditure)—
- (a) after “(1)(b)” insert “, each of the following—
    - (a) ”;
    - (b) after “Finance Act 2002)” insert “, and ”; and
    - (c) after the paragraph (a) so formed, insert the following paragraph—
 

“(b) a company’s qualifying additional SME expenditure (as defined in paragraph 10B of that Schedule),”.

#### **Commencement Information**

**I117** Sch. 31 para. 3 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

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*Qualifying R&D expenditure: expenditure on externally provided workers*

- 4 In paragraph 3 (qualifying R&D expenditure) for sub-paragraph (4) (the third condition, that the expenditure is incurred on staffing costs or consumable stores or is qualifying expenditure on sub-contracted research and development) substitute—
- “(4) The third condition is that the expenditure—
- (a) is incurred on staffing costs (see paragraph 5),
  - (b) is incurred on consumable stores (see paragraph 6),
  - (c) is qualifying expenditure on externally provided workers (see paragraphs 8A to 8E), or
  - (d) is qualifying expenditure on sub-contracted research and development (see paragraphs 9 to 12).”.

**Commencement Information**

**I118** Sch. 31 para. 4 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

*Staffing costs: persons partly engaged directly and actively in relevant R&D*

- 5 (1) In paragraph 5 (staffing costs) sub-paragraph (3) (person partly engaged in relevant research and development) is amended as follows.
- (2) In the opening words, omit “the following rules apply”.
- (3) Omit paragraphs (a) and (b) (person spending less than 20% or more than 80% of total working time on relevant research and development).
- (4) In paragraph (c), omit “in any other case,”.

**Commencement Information**

**I119** Sch. 31 para. 5 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

*Qualifying expenditure on externally provided workers*

- 6 After paragraph 8 (subsidised expenditure) insert—

*“Qualifying expenditure on externally provided workers*

- 8A (1) The provisions of paragraphs 8C to 8E have effect for determining the amount of the qualifying expenditure of a company (“the company”) on externally provided workers.
- (2) The provisions of sub-paragraphs (4) to (6) have effect for determining how much of any such expenditure is attributable to relevant research and development.
- (3) For the purposes of this Schedule the company incurs expenditure on externally provided workers if it makes a payment (a “staff provision payment”) to another person (the “staff provider”) in respect of the supply

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to the company, by or through the staff provider, of the services of any externally provided workers.

- (4) Qualifying expenditure on externally provided workers is attributable to relevant research and development if the externally provided workers are directly and actively engaged in such research and development.
- (5) In the case of any externally provided worker partly engaged directly and actively in relevant research and development, an appropriate proportion of the qualifying expenditure relating to him is treated as attributable to the relevant research and development.
- (6) For the purposes of sub-paragraphs (4) and (5) persons who provide services, such as secretarial or administrative services, in support of activities carried on by others, are not, by virtue of providing those services, to be treated as themselves directly and actively engaged in those activities.

*Meaning of “externally provided worker”*

- 8B For the purposes of this Schedule a person is an “externally provided worker” in relation to the company if the following conditions are satisfied—
- (a) he is an individual,
  - (b) he is not a director or employee of the company,
  - (c) he personally provides, or is under an obligation personally to provide, services to the company,
  - (d) he is subject to (or to the right of) supervision, direction or control by the company as to the manner in which those services are provided,
  - (e) his services are supplied to the company by or through the staff provider (whether or not he is a director or employee of the staff provider or of any other person),
  - (f) he provides, or is under an obligation to provide, those services personally to the company under the terms of a contract between him and the staff provider,
  - (g) the provision of those services does not constitute the carrying on of activities contracted out by the company.

*Treatment of expenditure where company and staff provider are connected persons*

- 8C (1) Where—
- (a) the company and the staff provider are connected persons, and
  - (b) in accordance with generally accepted accounting practice—
    - (i) the whole of the staff provision payment has been brought into account in determining the staff provider’s profit or loss for a relevant period, and
    - (ii) all of the staff provider’s relevant expenditure has been so brought into account,
 the whole of the payment (up to the amount of the staff provider’s relevant expenditure) is qualifying expenditure on externally provided workers.

- (2) In sub-paragraph (1)—



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- (a) references to the “relevant expenditure” of the staff provider are to expenditure that—
    - (i) is incurred by the staff provider in providing for the company the externally provided workers to which the staff provision payment relates,
    - (ii) is not of a capital nature, and
    - (iii) is incurred on staffing costs or agency workers' remuneration;
  - (b) a “relevant period” means a period—
    - (i) for which accounts are drawn up for the staff provider, and
    - (ii) that ends not more than twelve months after the end of the company's period of account in which the staff provision payment is, in accordance with generally accepted accounting practice, brought into account in determining the company's profit or loss.
- (3) Paragraph 5 (staffing costs) applies for the purposes of determining whether the staff provider's expenditure meets the requirements of sub-paragraph (2) (a)(iii) so far as relating to staffing costs.

For this purpose the references in that paragraph to a company shall be read as references to the staff provider.

- (4) For the purposes of this Schedule “agency workers' remuneration”, in the case of any person who is an externally provided worker in relation to the company, means remuneration receivable by the worker under or in consequence of the contract mentioned in paragraph 8B(f)—
- (a) that does not constitute employment income of the worker apart from Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (application of provisions to agency workers), and
  - (b) that is not, apart from section 134 of the Taxes Act 1988 (workers supplied by agencies), chargeable to income tax under Schedule E.
- (5) Any apportionment of expenditure of the company or the staff provider necessary for the purposes of this paragraph shall be made on a just and reasonable basis.

*Election for connected persons treatment*

- 8D (1) The company and the staff provider may in any case jointly elect that paragraph 8C shall apply to the staff provision payments made by the company to the staff provider.
- (2) Any such election must be made in relation to all staff provision payments paid under the same contract or arrangement.
  - (3) The election must be made by notice in writing given to the Inland Revenue.
  - (4) The notice must be given before the end of the period of two years beginning with the end of the company's accounting period in which the contract or other arrangement is entered into.
  - (5) An election under this paragraph, once made, is irrevocable.

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*Treatment of staff provision payment in other cases*

8E Where—

- (a) the company makes a staff provision payment,
- (b) the company and the staff provider are not connected persons, and
- (c) no election is made under paragraph 8D,

65% of the amount of the staff provision payment is treated as qualifying expenditure on externally provided workers.”.

**Commencement Information**

**I120** Sch. 31 para. 6 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), **art. 2**

*Qualifying expenditure on sub-contracted R&D: externally provided workers*

7 (1) Paragraph 10 (treatment of qualifying expenditure on sub-contracted research and development where company and sub-contractor are connected persons) is amended as follows.

(2) In sub-paragraph (2)(a) (relevant expenditure of sub-contractor) in sub-paragraph (iii) after “on consumable stores” insert “ or is qualifying expenditure on externally provided workers ”.

(3) For sub-paragraph (3) (which applies paragraphs 5 and 8) substitute—

“(3) For the purpose of determining whether the sub-contractor’s expenditure meets the requirements of sub-paragraph (2)(a)(iii) and (iv), the following provisions apply—

- (a) paragraph 5 (staffing costs),
- (b) paragraph 8 (subsidised expenditure), and
- (c) paragraphs 8A to 8E (qualifying expenditure on externally provided workers),

but for that purpose the references in those paragraphs to a company shall be read as references to the sub-contractor.”.

**Commencement Information**

**I121** Sch. 31 para. 7 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), **art. 2**

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## PART 2

### LARGE COMPANIES: PART 1 OF SCHEDULE 12 TO FINANCE ACT 2002

#### *Introductory*

- 8 Part 1 of Schedule 12 to the Finance Act 2002 (c. 23) (entitlement to R&D relief: large companies) is amended in accordance with the following provisions of this Part of this Schedule.

*Required minimum aggregate expenditure: reduction from £25,000 to £10,000*

- 9 (1) Paragraph 1 (entitlement to relief under Part 1 of the Schedule) is amended as follows.
- (2) In sub-paragraph (1)(b) (requirement for minimum qualifying R&D expenditure of £25,000 or time apportioned part of that amount) in sub-paragraphs (i) and (ii) for “£25,000” substitute “ £10,000 ”.

#### *Qualifying expenditure on externally provided workers*

- 10 In paragraph 4 (qualifying expenditure on direct research and development) for sub-paragraph (3) (the second condition, that the expenditure is incurred on staffing costs or consumable stores) substitute—

“(3) The second condition is that the expenditure—

- (a) is incurred on staffing costs,
- (b) is incurred on consumable stores, or
- (c) is qualifying expenditure on externally provided workers.”.

## PART 3

### WORK SUB-CONTRACTED TO SMES: PART 2 OF SCHEDULE 12 TO FINANCE ACT 2002

#### *Introductory*

- 11 Part 2 of Schedule 12 to the Finance Act 2002 (c. 23) (entitlement to relief for R&D expenditure: work sub-contracted to small or medium-sized enterprise) is amended in accordance with the following provisions of this Part of this Schedule.

*Required minimum aggregate expenditure: reduction from £25,000 to £10,000*

- 12 (1) Paragraph 7 (entitlement to relief under Part 2 of the Schedule) is amended as follows.
- (2) In sub-paragraph (1)(b) (requirement for minimum R&D expenditure of £25,000 or time apportioned part of that amount) in sub-paragraphs (i) and (ii) for “£25,000” substitute “ £10,000 ”.

*Required minimum aggregate expenditure: inclusion of new class of expenditure*

- 13 (1) Paragraph 7 is also amended as follows.

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- (2) In sub-paragraph (2) (meaning of “aggregate R&D expenditure”) omit the word “and” immediately preceding paragraph (b) and at the end of that paragraph add “, and
- (c) its qualifying additional SME expenditure (see paragraph 10B).”.

*R&D directly undertaken by SME: qualifying expenditure on externally provided workers*

- 14 In paragraph 9 (expenditure on research and development directly undertaken by SME) for sub-paragraph (2) (the second condition, that the expenditure must be incurred on staffing costs or consumable stores) substitute—
- “(2) The second condition is that the expenditure—
- (a) is incurred on staffing costs,
- (b) is incurred on consumable stores, or
- (c) is qualifying expenditure on externally provided workers.”.

#### PART 4

ENTITLEMENT OF SME TO CERTAIN RELIEF AVAILABLE TO LARGE COMPANIES

*Insertion of Part 2A of Schedule 12 to the Finance Act 2002*

- 15 After Part 2 of Schedule 12 to the Finance Act 2002 (entitlement to relief for R&D expenditure: work sub-contracted to small or medium-sized enterprise) insert the following Part—

#### “PART 2A

ENTITLEMENT OF SME TO ADDITIONAL RELIEF AVAILABLE TO LARGE COMPANIES

##### Entitlement to relief under this Part

- 10A (1) A company (“the SME”) is entitled to tax relief under this Part for an accounting period if—
- (a) it qualifies as a small or medium-sized enterprise in that period, and
- (b) its aggregate R&D expenditure for that period is not less than—
- (i) £10,000, if the accounting period is a period of 12 months, or
- (ii) such amount as bears to £10,000 the same proportion as the accounting period bears to 12 months.
- (2) Sub-paragraphs (2) and (3) of paragraph 7 (meaning of “aggregate R&D expenditure” and “for an accounting period”) apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- (3) Any relief to which a company is entitled under this Part for an accounting period is in addition to any relief to which it may be entitled under—
- (a) Schedule 20 to the Finance Act 2000, or

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(b) Part 2 of this Schedule.

### **Qualifying additional SME expenditure**

- 10B For the purposes of this Schedule, the SME's "qualifying additional SME expenditure" is any expenditure which—
- (a) had the SME been a large company throughout the accounting period in question, would have been qualifying R&D expenditure of that company (see paragraph 3), but
  - (b) is not qualifying R&D expenditure for the purposes of Schedule 20 to the Finance Act 2000 (see paragraph 3 of that Schedule) in the case of the SME by reason only of paragraph 3(7) or 10(2)(a)(iv) of that Schedule (subsidised expenditure, within the meaning given by paragraph 8 of that Schedule); and
  - (c) is not qualifying sub-contracted R&D expenditure for the purposes of this Schedule (see paragraph 8) in the case of the SME."

## **PART 5**

SUPPLEMENTARY: AMENDMENTS TO PARTS 3 TO 6 OF SCHEDULE 12 TO FINANCE ACT 2002

### *Introductory*

- 16 Parts 3 to 6 of Schedule 12 to the Finance Act 2002 (c. 23) are amended in accordance with the following provisions of this Part of this Schedule.

### *Deduction in computing profits of trade*

- 17 (1) Paragraph 11 is amended as follows.
- (2) In sub-paragraph (1) (application of paragraph) for "Part 1 or 2" substitute " Part 1, 2 or 2A ".
  - (3) In sub-paragraph (3) (meaning of "qualifying expenditure") omit the word "and" immediately preceding paragraph (b) and at the end of that paragraph insert "*, and*"
    - (c) in the case of relief under Part 2A, qualifying additional SME expenditure (see paragraph 10B)."

### *Refunds of contributions to independent research and development*

- 18 In paragraph 15(1) (refunds of certain payments) omit the word "or" immediately preceding paragraph (c) and at the end of that paragraph insert "*, or*"
  - (d) any expenditure which is qualifying additional SME expenditure,".

### *Meaning of "qualifying expenditure on externally provided workers"*

- 19 (1) Paragraph 17 (which applies certain definitions from Schedule 20 to the Finance Act 2000 (c. 17)) is amended as follows.
- (2) Omit the word "and" immediately preceding paragraph (c).

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- (3) At the end of paragraph (c) add “; and  
 (d) paragraphs 8A to 8E (qualifying expenditure on externally provided workers).”.
- (4) The heading to the paragraph accordingly becomes—

*“Meaning of “relevant research and development”, “staffing costs”, “consumable stores” and “qualifying expenditure on externally provided workers”  
 ”.*

## PART 6

### EXPENDITURE ON VACCINE RESEARCH ETC: SCHEDULE 13 TO FINANCE ACT 2002

#### *Introductory*

- 20 Schedule 13 to the Finance Act 2002 (tax relief for expenditure on vaccine research etc) is amended in accordance with the following provisions of this Part of this Schedule.

#### *Reduction of required qualifying expenditure from £25,000 to £10,000*

- 21 (1) Paragraph 1 (entitlement to relief under the Schedule) is amended as follows.
- (2) In sub-paragraph (1) (requirement for minimum qualifying expenditure of £25,000 or time apportioned part of that amount) in paragraphs (a) and (b) for “£25,000” substitute “£10,000”.

#### **Commencement Information**

**I122** Sch. 31 para. 21 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

#### *Direct research and development: qualifying expenditure on externally provided workers*

- 22 In paragraph 3 (qualifying expenditure on direct research and development) for sub-paragraph (5) (the fourth condition, that the expenditure is incurred on staffing costs or consumable stores) substitute—

“(5) The fourth condition is that the expenditure—  
 (a) is incurred on staffing costs,  
 (b) is incurred on consumable stores, or  
 (c) is qualifying expenditure on externally provided workers.”.

#### **Commencement Information**

**I123** Sch. 31 para. 22 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

*Status: Point in time view as at 18/04/2005.*

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*Meaning of “qualifying expenditure on externally provided workers”*

- 23 (1) Paragraph 5(3) (which applies certain definitions in Schedule 20 to the Finance Act 2000 (c. 17)) is amended as follows.
- (2) Omit the word “and” immediately preceding paragraph (d).
- (3) In paragraph (d), for “(subsidised expenditure),” substitute “ (subsidised expenditure); and ”.
- (4) After paragraph (d) insert the following paragraph—  
“*(e) paragraphs 8A to 8E (qualifying expenditure on externally provided workers),”*.”
- (5) The heading to paragraph 5 accordingly becomes—

*“Meaning of “relevant R&D”, “small or medium-sized enterprise”, “staffing costs”, “consumable stores”, “subsidised” and “qualifying expenditure on externally provided workers”*  
”.

**Commencement Information**

**1124** Sch. 31 para. 23 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

*Relevant expenditure of sub-contractor: qualifying expenditure on externally provided workers*

- 24 In paragraph 9 (relevant expenditure of sub-contractor) for sub-paragraph (3) (the second condition, that the expenditure must be incurred on staffing costs or consumable stores) substitute—
- “(3) The second condition is that the expenditure—
- (a) is incurred on staffing costs,
- (b) is incurred on consumable stores, or
- (c) is qualifying expenditure on externally provided workers.

In applying for the purposes of this sub-paragraph (by virtue of paragraph 5 above)—

paragraph 5 of Schedule 20 to the Finance Act 2000 (meaning of “staffing costs”), or

paragraphs 8A to 8E of that Schedule (qualifying expenditure on externally provided workers),

the references to the company shall be read as references to the sub-contractor.”.

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**Commencement Information**

**I125** Sch. 31 para. 24 has effect as specified by [The Finance Act 2003, Section 168 \(Appointed Day\) Order 2003 \(S.I. 2003/2497\)](#), [art. 2](#)

SCHEDULE 32

Section 169

TONNAGE TAX: RESTRICTIONS ON CAPITAL ALLOWANCES FOR LESSORS OF SHIPS

*The ring fence: amendments to the provisions about capital allowances and ship leasing*

- 1 (1) In Schedule 22 to the Finance Act 2000 (c. 17) (tonnage tax), Part 10 (the ring fence: capital allowances: ship leasing) is amended as follows.
- (2) Omit the word “finance” from the expression “finance lease” in paragraphs 89(1), 90(1), 92(1), 93(1), 94(1), 98(1)(a) and 99(1)(a).
- (3) At the end of sub-paragraph (1) of paragraph 89 (introduction to Part 10) insert—  
 “ This is subject to paragraph 89A (exception for ordinary charters). ”.
- (4) For sub-paragraph (2) of that paragraph substitute—  
 “(2) In this Part of this Schedule “lease” means any arrangements that provide for a ship to be leased or otherwise made available by a person (“the lessor”) to another person (“the lessee”).”.
- (5) After that paragraph insert—

*“Quantitative restrictions not to apply to ordinary charters*

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

- (2) The first case is where the ship is chartered out by a person who is responsible—
- (a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, throughout the period of the charter, and
  - (b) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.

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

- (3) The second case is where—
- (a) the ship is chartered out by a person acting in the course of a trade that consists of, or to a significant extent includes, operating ships, and



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

(4) Those conditions are—

- (a) that the period of the charter does not exceed seven years, and there is no provision or agreement under which it could be extended beyond seven years;
- (b) that the period of the charter, together with any other periods in the same ten years during which the ship is chartered out to the lessee or a person connected with him, does not exceed seven years in total;
- (c) that there are no arrangements under which the lessee or a person connected with him may acquire the ship, whether directly or indirectly, from the lessor.

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

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

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

#### *Consequential amendments*

- 2 (1) In paragraph 41(4) of that Schedule (the requirement not to enter into tax avoidance arrangements: exemption for finance leases)—
  - (a) in the first sentence omit “finance”;
  - (b) for the second sentence substitute— “ In this sub-paragraph “lease”, and “lessor” in relation to a lease, have the meaning given by paragraph 89(2). ”.
- (2) In paragraph 147 (index of defined expressions)—
  - (a) omit the entry for “finance lease (and lessor and lessee) (in Part X)”;
  - (b) insert at the appropriate place—

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“lease (and lessor and lessee) (in Part X) paragraph 89(2)”.

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#### *Commencement and temporary provision*

- 3 (1) Subject to paragraph 4(2), the amendments made by paragraphs 1 and 2 apply in relation to any lease entered into on or after 19th December 2002.
- (2) In sub-paragraph (4)(b) of the paragraph 89A inserted by paragraph 1(5) above, the reference to any other periods during which the ship is chartered out does not include any period during which it is chartered out under a lease entered into before 19th December 2002.
- 4 (1) This paragraph applies in relation to any lease entered into on or after 19th December 2002 and before 16 April 2003.

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- (2) Part 10 of the Schedule 22 to the Finance Act 2000 (c. 17) has effect as if, instead of the paragraph inserted after paragraph 89 by paragraph 1(5) above, the following paragraph were inserted—

*“Exception for ordinary charters*

- 89A (1) Paragraph 89(1), and the provisions of this Part of this Schedule listed there, do not apply in the following cases.

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

- (a) for the operation of the ship, including the appointment of the master and those members of the crew engaged in navigation, throughout the period of the charter, and
- (b) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses other than those directly incidental to a particular voyage or to the employment of the ship during that period.

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

- (3) The second case is where—

- (a) the ship is chartered out to another person (“the charterer”) because of short-term over-capacity,
- (b) the person chartering out the ship does so in the course of a trade that consists of or includes operating ships, and
- (c) the conditions in sub-paragraph (4) are met.

- (4) Those conditions are—

- (a) that the period of the charter does not exceed three years, and there is no provision or agreement under which it could be extended beyond three years;
- (b) that the period of the charter, together with any other periods in the same five years during which the ship is chartered out to the charterer or a person connected with him, does not exceed three years in total;
- (c) that neither the charterer nor any person connected with him has an option to purchase the ship.

- (5) In sub-paragraph (4)(b)—

- (a) the reference to any other periods during which the ship is chartered out does not include any period during which it is chartered out under a lease entered into before 19th December 2002;
- (b) “the same five years” means any period of five years that includes the period of the charter mentioned in that sub-paragraph.

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- (6) References in this paragraph to the period of a charter are to the term specified in the lease or, if longer, the actual period during which the ship is chartered.
- (7) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this paragraph.”.
- (3) Paragraph 93(1) of that Schedule (certificates required to support claim by lessor) has effect as if after paragraph (a) there were inserted—
- “(aa) that the lease is such that, by virtue of paragraph 89A (exception for ordinary charters), paragraph 89(1) does not apply, or”.
- 5 In paragraphs 3 and 4 “lease” means any arrangements that provide for a ship to be leased or otherwise made available by one person to another.

## SCHEDULE 33

Section 170

### INSURANCE COMPANIES

#### *Case I profits*

- 1 (1) For section 82 of the Finance Act 1989 (c. 26) (calculation of profits of insurance company in respect of life assurance business when computed in accordance with provisions applicable to Case I of Schedule D) substitute—

#### **“82 Calculation of profits: bonuses etc**

- (1) This section and sections 82A and 82B below have effect where the profits of an insurance company in respect of its life assurance business are, for the purposes of the Taxes Act 1988, computed in accordance with the provisions of that Act applicable to Case I of Schedule D.
- (2) Any amounts which are allocated to policy holders or annuitants in respect of a period of account are allowed as a deduction in calculating the profits for the period of account.
- (3) For the purposes of subsection (2) above, an amount is allocated to policy holders or annuitants if (but only if)—
- bonus payments are made to them,
  - reversionary bonuses are declared in their favour, or
  - a reduction is made in the premiums payable by them.
- (4) Where an amount is allocated to policy holders or annuitants for the purposes of subsection (2) above, the amount of the allocation is—
- in the case of bonus payments, the amount of the payments,
  - in the case of declared reversionary bonuses, the amount of the liabilities assumed by the company in consequence of the declaration, and
  - in the case of a reduction in premiums, the amount of the liabilities assumed by the company in consequence of the reduction.

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### **82A Calculation of profits: policy holders' tax**

- (1) Tax expended on behalf of policy holders or annuitants is allowed as a deduction in calculating the profits to the extent (but only to the extent) that regulations made by the Treasury so provide.
- (2) The regulations may include provision for tax so expended to be so allowed even if it is not brought into account.
- (3) The regulations—
  - (a) may make different provision for different cases, and
  - (b) may include provision having effect in relation to periods of account during which they are made.

### **82B Unappropriated surplus on valuation**

- (1) This section applies in relation to a period of account of the insurance company (“the period of account in question”) where—
  - (a) at the end of the period of account in question the company has an unappropriated surplus on valuation as shown in the return deposited with the Financial Services Authority under section 9.6 of the Prudential Sourcebook (Insurers) (an “unappropriated surplus”), and
  - (b) the company has not made an election in accordance with Rule 4.1(6) of the Prudential Sourcebook (Insurers) covering the period of account in question.
- (2) Where the company did not have an unappropriated surplus at the end of the period of account immediately preceding the period of account in question, so much of the unappropriated surplus at the end of the period of account in question as is required to meet the duty of fairness is allowed as a deduction in calculating the profits for the period of account in question.
- (3) Where the company did have an unappropriated surplus at the end of that immediately preceding period of account—
  - (a) if so much of the unappropriated surplus at the end of the period of account in question as is required to meet the duty of fairness exceeds so much of the unappropriated surplus at the end of that immediately preceding period of account as was required to meet that duty, the excess is allowed as a deduction in calculating the profits for the period of account in question, but
  - (b) if so much of the unappropriated surplus at the end of that immediately preceding period of account as was required to meet the duty of fairness exceeds so much of the unappropriated surplus at the end of the period of account in question as is required to meet that duty, the excess is to be taken into account as a receipt of the period of account in question.
- (4) In arriving for the purposes of this section at the amount of the unappropriated surplus which is or was required to meet the duty of fairness there is to be deducted the aggregate of amounts which—

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- (a) for periods of account ending before 14th March 1989 (and the first notional period of account, within the meaning of section 82 above as originally enacted) have been excluded, by virtue of section 433 of the Taxes Act 1988, as being reserved for policy holders or annuitants, and
      - (b) have not before that date either been allocated to or expended on behalf of policy holders or annuitants or been treated as profits of an accounting period on ceasing to be so reserved.
    - (5) References in this section to the company's duty of fairness are to the company's duty to treat its policy holders and annuitants fairly with regard to terminal bonuses."
  - (2) In section 83A(1) of the Finance Act 1989 (c. 26) (meaning of "brought into account"), for "83" substitute " 82A ".
  - (3) In section 436(3)(a) of the Taxes Act 1988 (pension business: separate charge on profits)—
    - (a) for "82 and 83" substitute " 82 and 82B to 83AB ", and
    - (b) omit the words after "modifications".
  - (4) In sections 439B(3)(a) and 441(4)(a) of the Taxes Act 1988 (life reinsurance business and overseas life insurance business: separate charge on profits)—
    - (a) for "82(1), (2) and (4) and 83" substitute " 82 and 82B to 83AB ", and
    - (b) omit "and in particular with the omission of the words "and any amounts of tax which are expended on behalf of" in section 82(1)(a)".
  - (5) This paragraph has effect for periods of account beginning on or after 1st January 2003.
  - (6) In relation to the first period of account of an insurance company beginning on or after that date, section 82B of the Finance Act 1989 (c. 26) (inserted by subparagraph (1)) applies as if the references in it to so much of the unappropriated surplus at the end of the immediately preceding period of account as was required to meet the company's duty of fairness were to any amount included in the closing liabilities of the period of account by virtue of section 82(1)(b) of that Act as originally enacted.
- 2
- (1) Section 83 of the Finance Act 1989 (receipts etc to be taken into account in Case I computations) is amended as follows.
  - (2) For subsection (2) substitute—
    - "(2) There shall be taken into account as receipts of a period of account amounts (so far as referable to that business) brought into account for the period of account as—
      - (a) investment income receivable before deduction of tax,
      - (b) an increase in the value of non-linked assets,
      - (c) an increase in the value of linked assets, or
      - (d) other income;and if amounts (so far as so referable) are brought into account for a period of account as a decrease in the value of non-linked assets or a decrease in the value of linked assets they shall be taken into account as an expense of the period of account.

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(2A) But subsection (2) above does not require to be taken into account as receipts of a period of account so much of the amounts brought into account as mentioned in paragraphs (a) to (d) of that subsection for the period of account as—

- (a) is entirely notional because an amount corresponding to it would fall to be brought into account as an expense (for that or any other period of account),
- (b) is exempted by section 444AC(2) of the Taxes Act 1988 (transfers of business), or
- (c) consists of interest paid under section 826 of the Taxes Act 1988 (interest on tax overpaid) in respect of a repayment or payment relating to an accounting period of the company ending before 1st July 1999;

but, subject to that, the whole of the amounts so brought into account for a period of account shall be taken into account as receipts of the period of account.

(2B) If any assets of the company's long-term insurance fund are transferred by the company so that they cease to be assets of that fund, but the transfer is not brought into account as part of total expenditure for the period of account in which the transfer takes place or any earlier period of account, the fair value of the assets at the time of the transfer shall be deemed to be brought into account for the period of account in which the transfer takes place as an increase in the value of the assets of that fund unless the assets are excluded from this subsection by—

- (a) subsection (2C) or (2D) below, or
- (b) section 444AD of the Taxes Act 1988 (transfers of business).

(2C) Assets transferred to discharge liabilities in respect of deposits received from reinsurers or arising out of insurance operations, debenture loans or amounts borrowed from credit institutions are included in subsection (2B) above only if the deposits, loans or amounts borrowed—

- (a) were brought into account for any period of account, but
- (b) were not taken into account as receipts of the period of account under subsection (2) above.

(2D) Assets are excluded from subsection (2B) above if they are transferred for at least their fair value and the consideration for their transfer, when received, forms part of the company's long-term insurance fund.

(2E) If subsection (2B) above applies in relation to the transfer of all the assets of the company's long term insurance fund in accordance with—

- (a) an insurance business transfer scheme, or
- (b) a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State),

the reference in that subsection to an amount being deemed to be brought into account for the period of account in which the transfer takes place is to its being so deemed for the period of account ending immediately before the transfer takes place.”

(3) In subsection (3)—

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- (a) for “that business in a case where an amount is” substitute “ its life assurance business in a case where assets are ”,
  - (b) after “taken into account” insert “ under subsection (2) above ”, and
  - (c) for “that fund within subsection (2)(b) above” substitute “ the long-term insurance fund ”.
- (4) In subsection (4), for paragraph (c) substitute—
- “(c) represents so much of the proceeds of the disposal of an asset of the long-term insurance fund as does not exceed its fair value or an asset acquired for at least its fair value which is added to that fund.”.
- (5) In subsection (5), omit paragraph (b) and the word “but” before it.
- (6) After subsection (6A) insert—
- “(6B) A contract which reinsures risk in respect of insurances to be made only after the making of the contract of reinsurance can constitute a transfer of business by virtue of subsection (6)(c) above only if a potential advantage is conferred on the reinsurer by the contract.
  - (6C) For the purposes of subsection (6B) above a potential advantage is conferred on the reinsurer by the contract if, taking the contract as “the actual provision” for the purposes of Schedule 28AA to the Taxes Act 1988, the effect of making the actual provision instead of the arm’s length provision (within the meaning of that Schedule) would have in relation to the reinsurer the effect specified in paragraph 5(1)(b) of that Schedule.”.
- (7) Subsection (8) is amended as follows.
- (8) After the definition of “demutualisation” insert—
- ““fair value”, in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount;”.
- (9) In the definition of “total reinsurance”, omit “before the making of the contract of reinsurance (or, in a case where there are two or more contracts of reinsurance, the last of them)”.
- (10) In the sidenote, for “brought” substitute “ taken ”.
- (11) Sub-paragraph (6) has effect in relation to contracts of reinsurance made on or after 9th April 2003; and sub-paragraph (9) has effect in relation to reinsurance effected by a single contract made on or after that date or by two or more contracts each of which is made on or after that day.
- (12) But, subject to that, this paragraph has effect for periods of account beginning on or after 1st January 2003.
- 3 (1) In the Finance Act 1989 (c. 26), after section 83 insert—

#### **“83ZA Contingent loans**

- (1) For the purposes of this section a contingent loan is made to an insurance company if—

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- (a) a deposit is received by the company from a reinsurer or arises out of insurance operations of the company,
  - (b) a debenture loan is made to the company, or
  - (c) an amount is borrowed by the company from a credit institution,

and the deposit, debenture loan or amount borrowed is taken into account as a receipt of the company under section 83(2) above.
- (2) For the purposes of this section the time when a contingent loan is made to an insurance company is the time when the assets constituting the deposit, debenture loan or amount borrowed are received by the company.
- (3) For the purposes of this section an insurance company has unrepaid contingent loan liabilities at any time if—
  - (a) one or more contingent loans have been made to the company at or before that time, and
  - (b) amounts will or may at some later time become repayable by the company in respect of the contingent loan or contingent loans.
- (4) Where, at the end of the period of account of an insurance company (“the period of account in question”), the company has unrepaid contingent loan liabilities—
  - (a) subsection (5) below applies if the company did not have unrepaid contingent loan liabilities at the end of the period of account immediately preceding the period of account in question, and
  - (b) subsection (6) below applies if it did.
- (5) Where this subsection applies, the appropriate amount for the period of account in question is allowed as a deduction in calculating the profits of the company for the period of account in question.
- (6) Where this subsection applies—
  - (a) if the appropriate amount for the period of account in question exceeds the appropriate amount for the immediately preceding period of account, the excess is allowed as a deduction in calculating the profits for the period of account in question, but
  - (b) if the appropriate amount for the immediately preceding period of account exceeds the appropriate amount for the period of account in question, the excess is to be taken into account as a receipt of the period of account in question.
- (7) For the purposes of subsections (5) and (6) above the appropriate amount for a period of account is the amount of the unrepaid contingent loan liabilities at the end of the period of account reduced (but not below nil) by the aggregate of—
  - (a) any relevant net transfers to shareholders, and
  - (b) any deficiencies of assets over liabilities received on relevant transferred business.
- (8) In subsection (7)(a) above “relevant net transfers to shareholders” means the aggregate of the positive amounts brought into account as transfers to non-technical account for—
  - (a) the period of account,



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- (b) the period of account in which the relevant contingent loan was made to the company, and
  - (c) any period of account falling between the periods of account mentioned in paragraphs (a) and (b) above,as reduced in accordance with subsection (9) below.
- (9) The reduction to be made from the positive amount brought into account as a transfer to non-technical account for any of the periods of account mentioned in subsection (8) above is so much of the positive amount as does not exceed 12% of the amount allocated to policy holders as bonuses in relation to the period of account.
- (10) In subsection (7)(b) above “deficiencies of assets over liabilities received on relevant transferred business” means any amount by which, on an insurance business transfer scheme having effect to transfer long-term business from a person (“the transferor”) to the company which has taken place since the time when the relevant contingent loan was made to the company—
  - (a) the amount of the liabilities to policy holders and annuitants transferred to the company, exceeded
  - (b) the element of the company’s line 15 figure representing the transferor’s long-term insurance fund.
- (11) In subsections (8) and (10) above “the relevant contingent loan” means—
  - (a) if amounts will or may at some later time become repayable by the company in respect of only one contingent loan, that contingent loan, and
  - (b) if amounts will or may at some later time become repayable by the company in respect of more than one contingent loan, whichever of those contingent loans was made to the company first.
- (12) In subsection (10)(b) above “the element of the company’s line 15 figure representing the transferor’s long-term insurance fund” means so much of the amount brought into account by the company as other income in the period of account in which the transfer took place as represents the assets transferred to the company.
- (13) Where in a period of account of an insurance company—
  - (a) an amount becomes repayable under a contingent loan made to the company, and
  - (b) the amount repayable is brought into account as other expenses for the period of account,so much of the amount repayable as does not exceed the amount specified in subsection (14) below is allowed as a deduction in calculating the profits of the company for the period of account.
- (14) The amount referred to in subsection (13) above is the amount arrived at by deducting from the amount taken into account as a receipt of the company under section 83(2) above in relation to the contingent loan the aggregate of any amounts which—
  - (a) have become repayable in respect of the contingent loan in any earlier period of account, and
  - (b) have been allowed as a deduction in calculating the profits of the company for any such period.

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- (15) The references in subsections (8), (12) and (13) above to an amount being brought into account—
- (a) in a case where the amount taken into account as a receipt of the company under section 83(2) above in relation to the contingent loan or loans in question is an amount brought into account in an account concerned wholly with non-participating business, are to its being brought into account in that account or in any other account concerned wholly with non-participating business, and
  - (b) in a case where the amount so taken into account is an amount brought into account in an account concerned wholly or partly with participating business, are to its being brought into account in that account or in any other account concerned wholly or partly with participating business.
- (16) Where—
- (a) a transfer to another fund brought into account for a period of account as other expenditure in any account concerned wholly with non-participating business is brought into account as other income in an account concerned wholly or partly with participating business, or
  - (b) a transfer to another fund brought into account for a period of account as other expenditure in any account concerned wholly or partly with participating business is brought into account as other income in an account concerned wholly with non-participating business,
- subsection (8) above has effect as if it were a positive amount brought into account as transfers to non-technical account for that period of account in the account in which it is brought into account as other expenditure.
- (17) For the purposes of subsections (15) and (16) above—
- (a) an account is concerned wholly with non-participating business if it relates exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus, and
  - (b) an account is concerned wholly or partly with participating business if it relates wholly or partly to other policies or contracts.”.
- (2) In paragraph 2 of Schedule 11 to the Finance Act 1996 (c. 8) (loan relationships: special provisions for insurers), after sub-paragraph (2) insert—
- “(2A) Where an insurance company stands in the position of a debtor as respects a debt under a contingent loan made to the company (within the meaning of section 83ZA(1) of the Finance Act 1989), the debt is to be regarded for the purposes of this Chapter as not arising from a transaction for the lending of money.”.
- (3) This paragraph has effect in relation to contingent loans made to an insurance company in a period of account beginning on or after 1st January 2003.
- 4 (1) In section 83AA of the Finance Act 1989 (c. 26) (amounts added to long-term insurance fund of a company in excess of company’s loss), omit—
- (a) subsections (3) to (5),
  - (b) subsection (6)(a),
  - (c) subsection (7)(b) and the word “and” before it, and

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- (d) in subsection (10), the definitions of “the relevant accounting period” and “the transferor company”.
- (2) Sub-paragraph (1) has effect for periods of account beginning on or after 1st January 2003.
- 5 (1) In section 83AB(1)(c) of the Finance Act 1989 (treatment of surplus where there is a subsequent transfer of business from company etc)—
- (a) omit sub-paragraph (i), and
- (b) in sub-paragraph (ii), for “that section” substitute “ section 83AA above ”.
- (2) Sub-paragraph (1) has effect for periods of account beginning on or after 1st January 2003.
- 6 (1) In section 88 of the Finance Act 1989 (c. 26) (corporation tax: policy holders' share of profits), after subsection (3) insert—
- “(3A) In subsection (3) above “income and gains of the company’s life assurance business” means the aggregate of—
- (a) income and chargeable gains referable to the company’s basic life assurance and general annuity business, and
- (b) profits of the company chargeable under Case VI of Schedule D under sections 436, 439B and 441 of the Taxes Act 1988 (pension business, life reinsurance business and overseas life assurance business).
- (3B) In subsection (3A)(a) above (and section 89(1B) below) “chargeable gains referable to the company’s basic life assurance and general annuity business”, in relation to an accounting period, means the chargeable gains so far as referable to that business accruing to the company in the accounting period after deducting—
- (a) any allowable losses so referable accruing to the company in the accounting period, and
- (b) so far as they have not been allowed as a deduction from chargeable gains in any previous accounting period, any allowable losses so referable previously accruing to the company.”.
- (2) Section 89 of that Act (meaning of policy holders' share of profits) is amended as follows.
- (3) In subsection (1), for the words after “references to” substitute—
- “(a) in a case where there are no Case I profits of the company for the period in respect of its life assurance business, the amount of the relevant profits, and
- (b) in any other case, the amount arrived at in accordance with subsection (1A) below.”.
- (4) After that subsection insert—
- “(1A) An amount is arrived at in accordance with this subsection by—
- (a) deducting from any profits of the company for the period chargeable under Case VI of Schedule D under sections 436, 439B and 441 of the Taxes Act 1988 (as reduced by any losses under those sections and any charges on income referable to any category of business other than basic life assurance and general annuity business) so

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much of the Case I profits of the company for the period in respect of its life assurance business as does not exceed the amount of any profits of the company for the period so chargeable, and

- (b) deducting any remaining Case I profits of the company for the period in respect of its life assurance business from any BLAGAB profits of the company for the period.

(1B) For the purposes of this section, the BLAGAB profits of a company for an accounting period are the income and chargeable gains referable to the company's basic life assurance and general annuity business reduced by the aggregate amount of—

- (a) any non-trading deficit on the company's loan relationships,  
(b) expenses of management falling to be deducted under section 76 of the Taxes Act 1988, and  
(c) charges on income,

so far as referable to the company's basic life assurance and general annuity business.”.

(5) In subsection (2), for “subsection (1)” substitute “ subsections (1) and (1A) ”.

<sup>F220</sup>(6) .....

(7) In—

- (a) section 434(6A)(b) of the Taxes Act 1988 (franked investment income), and  
(b) the second sentence of section 434A(3) of that Act (computation of losses and limitation on relief),

for “88” substitute “ 89 ”.

(8) In section 434A(2)(a)(i) of the Taxes Act 1988 (computation of losses and limitation on relief), for “for the period, otherwise than in accordance with those provisions, the profits or losses of the company's life assurance business” substitute “ , otherwise than in accordance with those provisions, the relevant profits (within the meaning of section 88(1) of the Finance Act 1989) of the company for the period ”.

(9) In section 437(1A) of the Taxes Act 1988 (general annuity business), for “profits for any accounting period of a company's life assurance business” substitute “ relevant profits (within the meaning of section 88(1) of the Finance Act 1989) of an insurance company for any accounting period ”.

(10) In paragraph 16(1) of Schedule 7 to the Finance Act 1991 (c. 31) (transitional relief for old general annuity contracts), for “profits for any accounting period of an insurance company's life assurance business” substitute “ relevant profits (within the meaning of section 88(1) of the Finance Act 1989) of an insurance company for any accounting period ”.

(11) Section 89(1B) of the Finance Act 1989 (c. 26) (inserted by sub-paragraph (4)) has effect for the purposes of section 210A of the Taxation of Chargeable Gains Act 1992 (c. 12) (inserted by paragraph 14(1)) in relation to any accounting period of a company if it is necessary under that section to determine the company's BLAGAB profits for the period.

(12) But, subject to that, this paragraph has effect for accounting periods ending on or after 9th April 2003.

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### Textual Amendments

**F220** Sch. 33 para. 6(6) repealed (with effect in accordance with s. 42 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(3\)](#)

- 7 (1) In section 89(7) of the Finance Act 1989 (which defines Case I profits for the purposes of determining the policy holders' share of relevant profits and the shareholders' share of income), in the definition of "Case I profits", insert at the end "and adjusted in respect of losses in accordance with section 76(2C) and (2D) of the Taxes Act 1988;".
- (2) Sub-paragraph (1) has effect for accounting periods beginning on or after 1st January 2003.
- (3) But section 76(2C) of the Taxes Act 1988, as it applies by virtue of sub-paragraph (1), has effect as if the reference in it to the amount which would fall, in the case of a company, to be set off under section 393 of that Act were to only so much of that amount as is attributable to losses incurred in the accounting period of the company in which 31st December 2002 is included or any later accounting period.
- 8 <sup>F221</sup>(1) . . . . .
- (2) In section 87(6)(b) of the Finance Act 1989 (c. 26) (management expenses), omit "disregarding section 76(1)(e) of that Act (as set out in subsection (2) above)".
- (3) In paragraph 4 of Schedule 11 to the Finance Act 1996 (c. 8) (non-trading deficits on loan relationships)—
- (a) in sub-paragraph (2), omit "net" (in both places), and
- (b) in sub-paragraph (16), omit the definition of "net income and gains".
- (4) This paragraph has effect for accounting periods beginning on or after 1st January 2003 except those ending before 9th April 2003.

### Textual Amendments

**F221** Sch. 33 para. 8(1) repealed (with effect in accordance with s. 42 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(3\)](#)

- 9 (1) In section 432D of the Taxes Act 1988 (section 432B apportionment: value of non-participating funds), after "value of assets" (in each place) insert "or as other income".
- (2) Sub-paragraph (1) has effect for periods of account beginning on or after 1st January 2003.
- 10 (1) Section 432E of the Taxes Act 1988 (apportionment of receipts brought into account: participating funds) is amended as follows.
- (2) In subsection (1), for "subsection (2)" substitute "subsections (2) and (2A)".
- (3) In subsection (2), omit—
- (a) paragraph (a), and
- (b) in paragraph (b), the words "in any other case".
- (4) After subsection (2) insert—

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“(2A) In a case where an amount is taken into account under subsection (2) of section 83 of the Finance Act 1989 by virtue of subsection (2B) of that section, the amount determined under subsection (2) above is increased by—

$$\frac{\text{CAS}}{\text{AS}} \times \text{RP}$$

where—

CAS and AS have the same meanings as in subsection (2) above; and

RP is the amount taken into account under subsection (2) of section 83 of the Finance Act 1989 by virtue of subsection (2B) of that section.”.

(5) This paragraph has effect for periods of account beginning on or after 1st January 2003; but sub-paragraph (3) does not have effect in relation to any periods of account ending before 9th April 2003.

11 (1) In section 804B(7) of the Taxes Act 1988 (double taxation relief: insurance companies carrying on more than one category of business)—

(a) in paragraph (a), for “that net amount which is referable by virtue of section 432E to that category” substitute “ the investment income taken into account in that determination which would be referable to that category by virtue of section 432E if the investment income were the only amount included in the net amount ”, and

(b) in paragraph (b), for “net amount” substitute “ investment income ”.

(2) Section 804C of the Taxes Act 1988 (insurance companies: allocation of expenses etc in computations under Case I of Schedule D) is amended as follows.

(3) In subsections (4) and (5), for “relevant amount” substitute “ relevant income ”.

(4) For subsection (13) substitute—

“(13) For the purposes of the operation of this section in relation to any income or gain in respect of which credit falls to be allowed under any arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income and gain as the fraction of the foreign tax that is attributable to that category of business in accordance with section 804B.”.

(5) This paragraph has effect for accounting periods beginning on or after 1st January 2003 except those ending before 9th April 2003.

12 <sup>F222</sup>(1) . . . . .

(2) In section 434(3A) of the Taxes Act 1988 (franked investment income etc), for “The policy holders' share of the franked investment income from investments held in connection with a company's” substitute “ So much of the policy holders' share of the franked investment income from investments of a company’s long-term insurance fund as is referable to its ”.

(3) In section 441(1) and (2) of the Taxes Act 1988 (overseas life assurance business), omit “and section 441A”.

(4) In section 89(2)(b) of the Finance Act 1989 (c. 26) (policy holders' share of profits), for “franked investment income arising in the period which is” substitute “

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distributions received from companies resident in the United Kingdom in the period which are ”.

- (5) Apart from sub-paragraph (3), this paragraph has effect in relation to distributions on or after 9th April 2003.

#### Textual Amendments

**F222** Sch. 33 para. 12(1) repealed (with effect in accordance with s. 42 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(3\)](#)

#### *Rate of tax on policy holders' share of life assurance profits*

- 13 (1) The Finance Act 1989 is amended as follows.
- (2) In section 88(1) (corporation tax rate on policy holders' share of relevant profits of companies carrying on life assurance business to be basic rate of income tax)—
- (a) omit “and section 88A”, and
  - (b) for “basic” substitute “ lower ”.
- (3) Omit section 88A (cases where tax rate already is lower rate).
- (4) In section 89(1) (meaning of “policy holders' share of profits”)—
- (a) for “sections 88 and 88A” substitute “ section 88 ”, and
  - (b) omit “or, as the case may be, basic life assurance and general annuity business”.
- (5) The Taxes Act 1988 is amended as follows.
- (6) In section 438B(5) (income or gains arising from property investment LLP)—
- (a) omit paragraph (b) and the word “and” before it, and
  - (b) for “section 88 of that Act” substitute “ that section ”.
- (7) Section 755A (controlled foreign companies: chargeable profits and creditable tax apportioned to company carrying on life assurance business) is amended as follows.
- (8) In subsection (3), for “88A(1)” substitute “ 88(1) ”.
- (9) For subsection (11) substitute—
- “(11) For the purposes of this section the policy holders' part of any BLAGAB apportioned profit is—
- (a) where subsection (11A) below applies, the whole of that profit, and
  - (b) in any other case, the relevant fraction (within the meaning of subsection (11B) below) of that profit.
- (11A) This subsection applies if—
- (a) the UK company’s life assurance business is mutual business,
  - (b) the policy holders' share of the UK company’s relevant profits for the relevant accounting period is equal to all those profits, or
  - (c) the policy holders' share of the UK company’s relevant profits for the relevant accounting period is more than its BLAGAB profits for that period.

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(11B) The relevant fraction for the purposes of subsection (11)(b) above is the fraction arrived at by dividing—

- (a) the policy holders' share of the UK company's relevant profits for the relevant accounting period, by
- (b) the UK company's BLAGAB profits for that period.

(11C) In subsections (11A) and (11B) above—

- (a) references to the policy holders' share of the UK company's share of the relevant profits are to be construed in accordance with sections 88(3) and 89 of the Finance Act 1989, and
- (b) references to the UK company's BLAGAB profits are to be construed in accordance with section 89(1B) of that Act.”.

<sup>F223</sup>(10) .....

(11) This paragraph has effect for the financial year 2003 and subsequent financial years.

#### Textual Amendments

**F223** Sch. 33 para. 13(10) repealed (with effect in accordance with s. 37 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 2\(1\)](#)

#### Chargeable gains

14 (1) In the Taxation of Chargeable Gains Act 1992 (c. 12), after section 210 insert—

##### “210A Ring-fencing of losses

- (1) Section 8(1) has effect in relation to insurance companies subject to the provisions of this section.
- (2) Non-BLAGAB allowable losses accruing to an insurance company are not allowable as a deduction from the policy holders' share of the BLAGAB chargeable gains accruing to the company.
- (3) BLAGAB allowable losses accruing to an insurance company are allowable as a deduction from non-BLAGAB chargeable gains accruing to the company as permitted by the following provisions of this section (and not otherwise).
- (4) They are allowable as a deduction from only so much of non-BLAGAB chargeable gains accruing to the company in an accounting period as exceeds the aggregate of—
  - (a) non-BLAGAB allowable losses accruing to the company in the accounting period, and
  - (b) non-BLAGAB allowable losses previously accruing to the company which have not been allowed as a deduction from chargeable gains accruing in any previous accounting period.
- (5) And they are allowable as a deduction from non-BLAGAB chargeable gains accruing to the company in an accounting period only to the extent that they do not exceed the permitted amount for the accounting period.



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- (6) The permitted amount for the first accounting period of an insurance company in relation to which this section has effect is the aggregate of—
  - (a) the amount by which shareholders' share for that accounting period of BLAGAB allowable losses accruing to the company in the accounting period exceeds the shareholders' share of BLAGAB chargeable gains so accruing, and
  - (b) the shareholder's share for the immediately preceding accounting period of BLAGAB allowable losses previously accruing to the company which have not been allowed as a deduction from chargeable gains accruing in that immediately preceding accounting period or any earlier accounting period.
- (7) The permitted amount for any subsequent accounting period of the company is arrived at by—
  - (a) deducting from the permitted amount for the immediately preceding accounting period the amount of any BLAGAB allowable losses allowed as a deduction from non-BLAGAB chargeable gains accruing to the company in the immediately preceding accounting period, and
  - (b) adjusting the result in accordance with subsection (8) or (9) below.
- (8) If the BLAGAB chargeable gains accruing to the company in the subsequent accounting period exceed the BLAGAB allowable losses so accruing, the amount arrived at under subsection (7)(a) above is reduced by a fraction of which—
  - (a) the denominator is the BLAGAB allowable losses accruing to the company in any previous accounting period which have not been allowed as a deduction from chargeable gains accruing to the company in any previous accounting period, and
  - (b) the numerator is so many of those allowable losses as are allowed as a deduction from BLAGAB chargeable gains accruing to the company in the accounting period.
- (9) If the BLAGAB allowable losses accruing to the company in the subsequent accounting period exceed the BLAGAB chargeable gains so accruing, the amount arrived at under subsection (7)(a) above is increased by the shareholders' share of the amount by which those allowable losses exceed those chargeable gains.
- (10) For the purposes of this section the policy holders' share of chargeable gains or allowable losses accruing to an insurance company in an accounting period—
  - (a) if the policy holders' share of the relevant profits for the accounting period exceeds the BLAGAB profits of the company for the period (within the meaning of section 89(1B) of the Finance Act 1989), is the whole amount of the chargeable gains or allowable losses, and
  - (b) otherwise, is the same proportion of that whole amount as the policy holders' share of the relevant profits of the company for the accounting period bears to those relevant profits.
- (11) In arriving at the policy holders' share of chargeable gains accruing to an insurance company under subsection (10) above there is to be ignored—

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- (a) any deduction under section 202(9) (mineral leases: capital losses),
  - (b) any reduction under section 213(3) (spreading of losses from deemed disposal of holdings of unit trust etc), and
  - (c) any amount carried back under paragraph 4(3) of Schedule 11 to the Finance Act 1996 (non-trading deficit on loan relationships).
- (12) For the purposes of this section the shareholders' share of chargeable gains or allowable losses in relation to an accounting period of an insurance company is the proportion of the whole which is not represented by the policy holders' share of them in relation to the accounting period.
- (13) In this section—
- “BLAGAB allowable losses”, in relation to an insurance company, means allowable losses referable to the company's basic life assurance and general annuity business,
  - “BLAGAB chargeable gains”, in relation to an insurance company, means chargeable gains referable to the company's basic life assurance and general annuity business,
  - “non-BLAGAB allowable losses”, in relation to an insurance company, means allowable losses of the company which are not BLAGAB allowable losses,
  - “non-BLAGAB chargeable gains”, in relation to an insurance company, means chargeable gains of the company which are not BLAGAB chargeable gains, and
  - “the relevant profits” and “the policy holders' share of the relevant profits” have the same meaning as they have for the purposes of subsection (1) of section 88 of the Finance Act 1989 by virtue of subsection (3) of that section and section 89 of that Act.”.
- (2) Sub-paragraph (1) has effect to limit the deductions which may be made from chargeable gains accruing in—
- (a) any accounting period of an insurance company beginning on or after 23rd December 2002, and
  - (b) any accounting period of an insurance company beginning before that date but ending on or after it,
- in respect of allowable losses accruing in any accounting period (whenever beginning or ending).
- (3) In relation to an accounting period within sub-paragraph (2)(b) the limitations imposed by virtue of sub-paragraph (1) apply only as respects chargeable gains accruing on or after 23rd December 2002.
- 15 (1) In the Taxation of Chargeable Gains Act 1992 (c. 12), after section 210A (inserted by paragraph 14(1)) insert—

**“210B Disposal and acquisition of section 440A securities**

- (1) Subsections (2) to (4) below apply in a case where, within a period of 10 days, an insurance company disposes of a number of section 440A securities and (whether subsequently or previously) acquires a number of section 440A securities if—
  - (a) the securities disposed of decrease the size of a chargeable section 440A holding,

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- (b) the securities acquired increase the size of the same chargeable section 440A holding, and
  - (c) (apart from this section) an allowable loss would accrue on the disposal.
- (2) The securities disposed of shall be identified with the securities acquired.
- (3) The securities disposed of shall be identified with securities acquired before the disposal rather than securities acquired after the disposal and—
  - (a) in the case of securities acquired before the disposal, with those acquired later rather than those acquired earlier, and
  - (b) in the case of securities acquired after the disposal, with those acquired earlier rather than those acquired later.
- (4) Where securities acquired could be identified with securities disposed of either at an earlier or at a later date, they shall be identified with the former rather than the latter; and the identification of securities acquired with securities disposed of on any occasion shall preclude their identification with securities comprised in a later disposal.
- (5) Subsections (2) to (4) above have effect subject to section 105(1).
- (6) Subsections (2) to (4) above do not apply to—
  - (a) securities which are section 212 assets within the meaning of section 214(1) (rights under authorised unit trusts and interests in offshore funds), or
  - (b) securities deemed by section 440 of the Taxes Act to be disposed of and immediately re-acquired by virtue of paragraph 3 of Schedule 19AA to the Taxes Act (assets becoming or ceasing to be assets of overseas life assurance fund).
- (7) Subsections (2) to (4) above do not apply if—
  - (a) the securities disposed of are linked assets appropriated to a BLAGAB internal linked fund,
  - (b) the securities acquired are, on acquisition, appropriated to that or another internal linked fund, and
  - (c) the disposal and acquisition are made with a view to adjusting the value of the assets of that fund, or of those funds, in order to match its or their liabilities.
- (8) In this section—
  - “BLAGAB internal linked fund” means an internal linked fund all the assets appropriated to which are linked solely to basic life assurance and general annuity business,
  - “chargeable section 440A holding” means a holding which is a separate holding by virtue of subsection (2)(a)(iii) or (d) of section 440A of the Taxes Act (and subsections (3) and (4) of that section),
  - “internal linked fund” has the same meaning as in section 432ZA of the Taxes Act, and
  - “section 440A securities” means securities within the meaning of section 440A of the Taxes Act.”.

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- (2) Sub-paragraph (1) has effect in relation to disposals on or after 23rd December 2002.
- (3) But sub-paragraph (1) has effect in relation to disposals made by an insurance company during the period—
- (a) beginning with 23rd December 2002, and
  - (b) ending with 31st December 2002,
- only if the amount of the allowable losses referable to the company's life assurance business which would have accrued to the company on the disposals (but for that sub-paragraph) would have been at least £10 million.
- 16 (1) Section 213 of the Taxation of Chargeable Gains Act 1992 (c. 12) (spreading of gains and losses under section 212) is amended as follows.
- (2) In subsection (3)—
- (a) for “subsection (3A)” substitute “ subsection (8H) ”,
  - (b) in paragraph (b), for “one of the next 6” substitute “ either of the next 2 ” and for “subsection” substitute “ section ”,
  - (c) in paragraph (c), for “any intervening accounting period” substitute “ the intervening accounting period (if there is one) ”, and
  - (d) in paragraph (ca), for “none of the intervening accounting periods is” substitute “ the intervening accounting period (if there is one) is not ”.
- (3) Omit subsections (3A) and (3B).
- (4) For subsection (5) substitute—
- “(4A) The following provisions apply where an insurance business transfer scheme has effect to transfer business which consists of the effecting or carrying out of contracts of long-term insurance from one person (“the transferor”) to another (“the transferee”).
- (5) Subject to subsections (5A) to (7) below, any chargeable gain or allowable loss which (assuming that the transferor had continued to carry on the business transferred) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.”.
- (5) After subsection (8) insert—
- “(8A) Subsection (8B) below applies where—
- (a) immediately before the transfer the transferee did not carry on business consisting of the effecting or carrying out of contracts of long-term insurance,
  - (b) the transferor and the transferee are, at the time of the transfer, members of the same group,
  - (c) the net amount for the accounting period of the transferor ending with the day of the transfer, or for the immediately preceding accounting period of the transferor, (“the relevant pre-transfer period of the transferor”) represents an excess of gains over losses,
  - (d) the net amount for the accounting period of the transferee in which the transfer takes place, or for the immediately following accounting period of the transferee, (“the relevant post-transfer period of the

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- transferee”) represents an excess of losses over gains (after taking account of any reductions made by virtue of this section), and
- (e) within 2 years after the end of the relevant post-transfer period of the transferee, the transferor and the transferee make a joint election in respect of the whole or part of the net amount for that period by notice to an officer of the Board.
- (8B) Subject to subsections (8C) to (8E) and (8H) below, the net amounts for both the relevant pre-transfer period of the transferor and the relevant post-transfer period of the transferee shall be reduced by the amount in respect of which the election is made.
- (8C) Subsection (8B) above does not apply if—
- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
  - (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer.
- (8D) If—
- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
  - (b) the relevant pre-transfer period of the transferor is the accounting period ending with the day of the transfer,
- subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferee in which the transfer takes place.
- (8E) If—
- (a) the relevant post-transfer period of the transferee is the accounting period in which the transfer takes place, and
  - (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer,
- subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferor ending with the day of the transfer.
- (8F) The conditions referred to in subsections (8D) and (8E) above are that—
- (a) there is (after taking account of any reductions made by virtue of this section) no net amount for the accounting period, and
  - (b) the company whose accounting period it is did not join a group of companies in the accounting period.
- (8G) A copy of the notice containing an election under subsection (8A)(e) above must accompany the tax return for the relevant post-transfer period of the transferee; and paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.

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- (8H) Subsections (3) and (8A) and (8B) above have effect where the company, or the transferee, in question joins a group of companies in the accounting period for which the net amount represents an excess of losses over gains as if a claim or election could not be made in respect of that net amount except to the extent (if any) that the net amount is an amount which, assuming there to be gains accruing to the company or transferee immediately after the beginning of that period, would fall to be treated under paragraph 4 of Schedule 7AA as a qualifying loss in relation to those gains.
- (8I) References in this section to a company joining a group of companies are to be construed in accordance with paragraph 1 of Schedule 7AA as if those references were contained in that Schedule; and in subsection (8A)(b) above “group” has the same meaning as in that Schedule.”
- (6) This paragraph has effect where the accounting period for which the net amount represents an excess of losses over gains is an accounting period beginning on or after 1st January 2003.
- 17 (1) Section 171A of the Taxation of Chargeable Gains Act 1992 (c. 12) (notional transfers within group) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) Section 440(3) of the Taxes Act does not cause subsection (3) above to prevent the making of an election in a case where B is an insurance company; and in such a case the asset or part deemed to be transferred to B by A, and by B to C, is to be treated for the purposes of subsections (2)(c) and (3) above as not being part of B’s long-term insurance fund.
- “Insurance company” and “long-term insurance fund” have the same meaning as in Chapter 1 of Part 12 of the Taxes Act (see section 431(2) of that Act).”
- (3) In subsection (4), for “that subsection” substitute “ subsection (2) above ”.
- (4) This paragraph has effect in relation to disposals on or after 23rd December 2002.

#### *Transfers of business*

- 18 (1) In the Taxes Act 1988, after section 444A insert—
- “444AA Transfers of business: deemed periodical return**
- (1) This section applies where an insurance business transfer scheme has effect to transfer the whole of the long-term business of one person (“the transferor”).
- (2) Where the last period covered by a periodical return of the transferor ends otherwise than immediately before the transfer, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the period—
- (a) beginning immediately after the last period ending before the transfer which is covered by an actual periodical return of the transferor, and
- (b) ending immediately before the transfer,

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containing such entries as would have been included in an actual periodical return of the transferor covering that period (and so making that period a period of account of the transferor).

- (3) Where the last period covered by a periodical return of the transferor (whether or not by virtue of subsection (2) above) ends immediately before the transfer, there is to be deemed for the relevant purpose to be a periodical return of the transferor—
  - (a) covering the time of the transfer, and
  - (b) containing such entries as would have been included in an actual periodical return covering the time of the transfer,(and so making the time of the transfer a period of account of the transferor for the relevant purpose).
- (4) Where the last period covered by a periodical return of the transferor ends after the transfer, the periodical return covering that period is to be ignored for all purposes of corporation tax other than the relevant purpose.
- (5) In this section “the relevant purpose” means determining for the purposes of section 83(2B) of the Finance Act 1989 whether a transfer is brought into account as part of total expenditure.
- (6) For the purposes of this section “insurance business transfer scheme” includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).”

(2) Sub-paragraph (1) has effect in relation to insurance business transfer schemes (within the meaning of section 444AA of the Taxes Act 1988) taking place on or after 1st January 2003 unless the accounting period of the transferor which ends with the day of the transfer began before that date.

19 (1) In the Taxes Act 1988, after section 444AA (inserted by paragraph 18(1)) insert—

**“444AB Transfers of business: charge on transferor retaining assets**

- (1) This section applies where, immediately after an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to one or more others (“the transferee” or “the transferees”), the transferor—
  - (a) does not carry on long-term business, but
  - (b) holds assets which, immediately before the transfer, were assets of its long-term insurance fund.
- (2) The transferor shall be charged to tax under Case VI of Schedule D in respect of the taxable amount as if it had been received by the transferor during the accounting period beginning immediately after the day of the transfer.
- (3) If the transferor was charged to tax on the profits of its life assurance business under Case I of Schedule D for the accounting period ending with the day of the transfer, the taxable amount is the whole of the previously untaxed amount.
- (4) Otherwise, the taxable amount is the non-BLAGAB fraction of the previously untaxed amount.

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- (5) The previously untaxed amount is the lesser of—
- (a) the fair value of such of the assets held by the transferor immediately after the transfer as were assets of its long-term insurance fund immediately before the transfer, and
  - (b) the amount by which the fair value of the assets of the transferor’s long-term insurance fund immediately before the transfer exceeds the amount of the relevant pre-transfer liabilities.
- (6) In subsection (5) above “fair value”, in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.
- (7) Subject to subsection (8) below, the amount of the relevant pre-transfer liabilities is the aggregate of the amounts shown in column 1 of lines 14 and 49 of Form 14 in the periodical return of the transferor covering the period of account ending immediately before the transfer.
- (8) If the amount of the liabilities transferred exceeds the value of the assets so transferred, as brought into account for the first period of account of the transferee (or any of the transferees) ending after the transfer, the amount of the relevant pre-transfer liabilities is the amount arrived at by deducting the excess from the aggregate of the amounts shown as mentioned in subsection (7) above.
- (9) For the purposes of subsection (4) above the non-BLAGAB fraction of the previously untaxed amount is the fraction of which—
- (a) the numerator is the amount of the liabilities transferred, apart from those which are liabilities of basic life assurance and general annuity business, and
  - (b) the denominator is the amount of the liabilities transferred.
- (10) References in this section to assets held by the transferor after the transfer do not include any held on trust for the transferee or any of the transferees.
- (11) For the purposes of this section “insurance business transfer scheme” includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).”
- (2) Sub-paragraph (1) has effect in relation to insurance business transfer schemes (within the meaning of section 444AB of the Taxes Act 1988) taking place in a period of account of the transferor beginning on or after 1st January 2003.
- 20 (1) In the Taxes Act 1988, after section 444AB (inserted by paragraph 19(1)) insert—

**“444AC Transfers of business: modification of s.83(2) FA 1989**

- (1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”).
- (2) If—
  - (a) the element of the transferee’s line 15 figure representing the transferor’s long-term insurance fund, exceeds



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- (b) the amount of the liabilities to policy holders and annuitants transferred to the transferee,  
the excess is not to be regarded as other income of the transferee for the purposes of section 83(2)(d) of the Finance Act 1989.
- (3) In this section and section 444AD “the element of the transferee’s line 15 figure representing the transferor’s long-term insurance fund” means so much of—
  - (a) the amount which is brought into account by the transferee as other income in the period of account of the transferee in which the transfer takes place, as represents
  - (b) the assets transferred to the transferee.

#### **444AD Transfers of business: modification of s.83(2B) FA 1989**

- (1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”).
- (2) If the transferor and the transferee jointly elect, section 83(2B) of the Finance Act 1989 does not apply to the transferor by reason of the transfer as respects so much of the value of the assets to which it would otherwise so apply as does not exceed the amount specified in subsection (4) below.
- (3) An election under subsection (2) above—
  - (a) is irrevocable, and
  - (b) is to be made by notice to an officer of the Board no later than the end of the period of 28 days beginning with the day following that on which the transfer takes place;and a copy of the notice containing the election must accompany the tax return of the transferee for the first accounting period ending after the transfer.  
  
Paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.
- (4) The amount referred to in subsection (2) above is the amount by which—
  - (a) the fair value of the assets of the long-term insurance fund of the transferee immediately after the transfer, is greater than
  - (b) the element of the transferee’s line 15 figure representing the transferor’s long-term insurance fund.
- (5) In subsection (4) above “fair value”, in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.

#### **444AE Transfers of business: modification of s.83ZA FA 1989**

- (1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”).

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- (2) If a contingent loan made to the transferor (within the meaning of subsection (1) of section 83ZA of the Finance Act 1989) is transferred to the transferee, that section has effect as if—
- (a) the contingent loan had become repayable by the transferor immediately before the transfer, and
  - (b) the contingent loan were made to the transferee immediately after the transfer.”.
- (2) In section 431(2) of the Taxes Act 1988, after the definition of “basic life assurance and general annuity business” insert—
- ““brought into account” has the meaning given by section 83A of the Finance Act 1989;”.
- (3) This paragraph has effect in relation to insurance business transfer schemes taking place on or after 1st January 2003.
- (4) If 30th September 2003 is later than the end of the period specified in subsection (3) (b) of section 444AD of the Taxes Act 1988 (inserted by sub-paragraph (1)), an election under subsection (2) of that section may be made no later than that date.
- 21 (1) In the Taxation of Chargeable Gains Act 1992 (c. 12), after section 211 insert—

**“211ZA Transfers of business: transfer of unused losses**

- (1) This section applies where—
- (a) an insurance business transfer scheme has effect to transfer business consisting of or including basic life assurance and general annuity business from one person (“the transferor”) to another (“the transferee”) or more than one others (“the transferees”), and
  - (b) the transferor has relevant unused losses.
- (2) For the purposes of subsection (1)(b) above the transferor has relevant unused losses if—
- (a) BLAGAB allowable losses accrue to the transferor in the accounting period ending with the day of the transfer or have so accrued in any earlier accounting period, and
  - (b) they are not deducted from chargeable gains accruing to the transferor in that accounting period and have not been deducted from chargeable gains so accruing in any previous accounting period.
- (3) Subject as follows—
- (a) for the purposes of ascertaining the transferor’s total profits for any accounting period after that in which the transfer takes place, the relevant unused losses are deemed not to have accrued to the transferor, but
  - (b) (instead) they are treated as accruing to the transferee (in accordance with subsection (4) below).
- (4) The losses treated as accruing to the transferee under subsection (3)(b) above shall be deemed to be BLAGAB allowable losses accruing to the transferee in the accounting period of the transferee in which the transfer takes place.

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- (5) But those losses are not allowable as a deduction from chargeable gains accruing before the transfer takes place.
  - (6) For the purposes of section 210A (ring-fencing of losses), the shareholders' share of those losses is to be taken to be the same proportion as would be the shareholders' share of them if they had remained losses of the transferor.
  - (7) If only part of the transferor's basic life assurance and general annuity business is transferred, subsection (3) above applies as if the references to the relevant unused losses were to such part of the relevant unused losses as is appropriate.
  - (8) If the transfer is to more than one others, subsection (3)(b) above applies as if the reference to the relevant unused losses being treated as accruing to the transferee were to such part of the relevant unused losses as is appropriate being treated as accruing to each of the transferees.
  - (9) Any question arising as to the operation of subsection (7) or (8) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee (or the one of the transferees concerned) shall be entitled to appear and be heard or to make representations in writing.
  - (10) In this section "BLAGAB allowable losses" means allowable losses referable to the transferor's basic life assurance and general annuity business."
- (2) Sub-paragraph (1) has effect in relation to insurance business transfer schemes taking place on or after 1st January 2003.
- 22 (1) In section 431 of the Taxes Act 1988 (interpretative provisions relating to insurance companies), after subsection (2) insert—
- “(2ZA) Subsections (2ZB) and (2ZC) below apply where an insurance business transfer scheme has effect to transfer long-term business from one person (“the transferor”) to another (“the transferee”).
- (2ZB) If the transfer takes place otherwise than on the last day of a period of account of the transferor, references to—
- (a) opening liabilities of the transferor,
  - (b) opening values or net values of assets of the transferor, or
  - (c) the opening amount of the investment reserve of the transferor,
- for the period of account, so far as relating to the business transferred, are to the part of those liabilities or values, or that reserve, which bears to the whole the proportion A/C.
- (2ZC) If the transfer takes place otherwise than on the first day of a period of account of the transferee, references to—
- (a) closing liabilities of the transferee,
  - (b) closing values or net values of assets of the transferee, or
  - (c) the closing amount of the investment reserve of the transferee,
- for the period of account, so far as relating to the business transferred, are to the part of those liabilities or values, or that reserve, which bears to the whole the proportion B/C.

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(>) For the purposes of subsection (2ZC) above—

- (a) closing liabilities of the transferee are to be taken not to relate to the business transferred to the extent that they are liabilities which, immediately before the transfer, were reinsured by the transferor with the transferee, but
- (b) closing liabilities of the transferee are to be taken to relate to the business transferred to the extent that they are liabilities which, immediately before the transfer, were reinsured by the transferee with the transferor if the business transferred consists of or includes that reinsurance business.

(2ZE) In subsections (2ZB) and (2ZC) above—

A is the number of days in the period beginning with the period of account and ending with the day of the transfer,

B is the number of days in the period beginning with the day of the transfer and ending with the period of account, and

C is one-half of the number of days in the period of account.”.

(2) Sub-paragraph (1) has effect in relation to insurance business transfer schemes taking place on or after 1st January 2003 unless the accounting period of the transferor which ends with the day of the transfer began before that date.

23 (1) Section 442A of the Taxes Act 1988 (investment return treated as accruing in respect of reinsured risk) is amended as follows.

(2) In subsection (1), for “over the period of” substitute “ while the risk remains reinsured by the company under ”.

(3) After subsection (3) insert—

“(3A) Where a transfer of the reinsurance arrangement from one insurance company (“the transferor”) to another (“the transferee”) is effected by novation or an insurance business transfer scheme, for the purpose of calculating the investment return to be treated as accruing to the transferee in respect of the policy or contract after the transfer, the references to the company in subsection (3)(a), (b) and (c) above include (as well as the transferee)—

- (a) the transferor, and
- (b) any insurance company from which the reinsurance arrangement was transferred on an earlier transfer effected by novation or an insurance business transfer scheme.”.

(4) In subsection (4), omit “to the company”.

(5) This paragraph has effect in relation to transfers of reinsurance arrangements taking place on or after 1st January 2003.

24 (1) Section 444A of the Taxes Act 1988 (transfers of business: losses etc) is amended as follows.

(2) In subsection (3), insert at the end “ if the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to the transfer). ”.

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(3) After that subsection insert—

“(3ZA) Where subsection (3) above has effect, sections 343(2), (4), (5) and (7) to (12) and 344 apply in relation to the business in which the loss arose construing—

(a) references to the predecessor and the successor as to (respectively) the transferor and the transferee, and

(b) references to section 343(3) as to subsection (3) of this section, except that nothing in section 343(8) to (10) and (12) applies in relation to the transferee.”.

(4) This paragraph has effect in relation to insurance business transfer schemes taking place on or after 1st January 2003 unless the accounting period of the transferor which ends with the day of the transfer, or the accounting period of the transferee during which the transfer takes place, began before that date.

*Meaning of “investment reserve” etc*

25 In section 431(2) of the Taxes Act 1988 (interpretative provisions relating to insurance companies), after the definition of “insurance company” insert—

““investment reserve”, in relation to an insurance company, means the excess of the value of the assets of the company’s long-term business over the aggregate of—

(a) the value of the liabilities of that business, and

(b) any money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) of the company not within paragraph (a) above which are owed in respect of that business;”.

26 In section 432A(9A) of the Taxes Act 1988 (apportionment of income and gains: meaning of “net value”), for the words after “assets over” substitute “ the value of money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) attributable to an internal linked fund which are not owed in respect of long-term liabilities. ”.

27 In paragraph 4(5) of Schedule 19AA to the Taxes Act 1988 (overseas life assurance fund), in the definition of “investment reserve”, for paragraphs (a) and (b) substitute—

“(a) the value of the liabilities of that business, and

(b) any money debts of the company not within paragraph (a) above which are owed in respect of that business;”.

28 Paragraphs 25 to 27 have effect in relation to periods of account beginning on or after 1st January 2003.

*Meaning of “period of account”*

29 In section 431(2) of the Taxes Act 1988 (interpretative provisions relating to insurance companies), after the definition of “periodical return” insert—

““period of account” means the period covered by a periodical return;”.

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*Rationalisation of interpretation provisions*

30 In section 84(2) and (3) of the Finance Act 1989 (c. 26) (interpretation of sections 85 to 89 and further provisions about insurance companies), for “the sections referred to in subsection (1) above” substitute “ sections 85 to 89 below ”.

31 In the Finance Act 1989, after section 90 insert—

**“90A Interpretation**

Expressions used in any of sections 82 to 90 above (or Schedule 8A to this Act) and in Chapter 1 of Part 12 of the Taxes Act 1988 have the same meaning in those sections (or that Schedule) as in that Chapter.”.

32 In the Taxation of Chargeable Gains Act 1992 (c. 12), after section 214B insert—

**“214BA Interpretation**

Expressions used in this Chapter and in Chapter 1 of Part 12 of the Taxes Act have the same meaning in this Chapter as in that Chapter.”.

SCHEDULE 34

Section 171

POLICIES OF LIFE INSURANCE ETC: MISCELLANEOUS AMENDMENTS

**PART 1**

GROUP LIFE POLICIES

*Exception of certain group life policies from Chapter 2 of Part 13*

- 1 (1) Section 539 of the Taxes Act 1988 (introductory) is amended as follows.
- (2) In subsection (2) (policies and contracts to which the Chapter does not apply) at the end of paragraph (d) add “; or
- (e) to any group life policy having as its sole object the provision, on the death or disability of any of the individuals insured under the policy, of a sum substantially the same as any amount then outstanding under a loan made by a credit union to that individual; or
  - (f) to any group life policy with respect to which the conditions in section 539A are satisfied (“an excepted group life policy”).”.
- (3) In subsection (3) (defined expressions) insert each of the following definitions at the appropriate place—
- ““credit union” means a society registered as a credit union under the Industrial and Provident Societies Act 1965 or the Credit Unions (Northern Ireland) Order 1985;”;
  - ““excepted group life policy” shall be construed in accordance with subsection (2)(f) above;”;

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““group life policy” means a policy of life insurance whose terms provide—

- (a) for the payment of benefits on the death of more than one individual; and
- (b) for those benefits to be paid on the death of each of those individuals;”.

*Excepted group life policies*

2 After section 539 of the Taxes Act 1988 insert—

**“539A The conditions for being an excepted group life policy**

- (1) The conditions mentioned in section 539(2)(f) (excepted group life policies) are those set out in the following provisions of this section.
- (2) Condition 1 is that under the terms of the policy a sum or other benefit of a capital nature is payable or arises on the death of each of the individuals insured under the policy who dies without attaining an age which is specified in the policy and is not greater than 75 years.

In determining whether this condition is satisfied, disregard any terms of the policy which exclude from benefit the death of a person in specified circumstances, if the exclusion applies in relation to death in those circumstances in the case of each of the individuals insured under the policy.

- (3) Condition 2 is that under the terms of the policy—
  - (a) the same method is to be used for calculating the sums or other benefits of a capital nature payable or arising on each death, and
  - (b) if there is any limitation on those sums or other benefits, the limitation is the same in the case of any death.
- (4) Condition 3 is that the policy does not have, and is not capable of having, on any day—
  - (a) a surrender value that exceeds the proportion of the premiums paid which, on a time apportionment, is referable to the unexpired paid-up period beginning with that day, or
  - (b) if there is no such period, any surrender value.

For the purposes of this subsection the unexpired paid-up period beginning with any day is the period (if any) which—

- (i) begins with that day, and
  - (ii) ends with the earliest subsequent day on which—
    - (a) a payment of premium falls due under the policy, or
    - (b) the term of the policy ends.
- (5) Condition 4 is that no sums or other benefits may be paid or conferred under the policy, except as mentioned in condition 1 or condition 3.
  - (6) Condition 5 is that any sums payable or other benefits arising under the policy must (whether directly or indirectly) be paid to or for, or conferred on, or applied at the direction of—
    - (a) an individual or charity beneficially entitled to them, or

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- (b) a trustee or other person acting in a fiduciary capacity who will secure that the sums or other benefits are paid to or for, or conferred on, or applied in favour of, an individual or charity beneficially.

In this subsection “charity” means any body of persons or trust established for charitable purposes only.

(7) Condition 6 is that no person—

- (a) who is an individual whose life is insured under the policy, or  
 (b) who is, within the meaning of section 839, connected with an individual whose life is so insured,

may, by virtue of a group membership right relating to that individual, receive (directly or indirectly) any death benefit in respect of another group member.

In this subsection—

- (i) “group membership right”, in relation to an individual, means any right (including the right of any person to be considered by trustees in their exercise of a discretion) that is referable to that individual’s being one of the individuals whose lives are insured by the policy; and  
 (ii) “death benefit in respect of another group member” means—  
 (a) any sums or other benefits payable or arising under the policy on the death of any other of those individuals, or  
 (b) anything representing any such sums or benefits.

(8) Condition 7 is that a tax avoidance purpose is not the main purpose, or one of the main purposes, for which a person is at any time—

- (a) the holder, or one of the holders, of the policy, or  
 (b) the person, or one of the persons, beneficially entitled under the policy.

In this subsection—

- (i) “tax avoidance purpose” means any purpose that consists in securing a tax advantage (whether for the holder of the policy or any other person); and  
 (ii) “tax advantage” has the same meaning as in Chapter 1 of Part 17 (tax avoidance).”.

*Retrospective exception of past and present pure protection group life policies*

- 3 (1) For the purposes of Chapter 2 of Part 13 of the Taxes Act 1988 (and any former enactment that is re-enacted in that Chapter), any event happening before 9th April 2003 in relation to a policy of life insurance which, at the time of the event, was a pure protection group life policy shall be deemed not to have been a chargeable event.
- (2) For the purposes of this paragraph a policy of life insurance is at any time a pure protection group life policy if at that time it is a group life policy whose terms do not provide for any sums or other benefits to be paid or conferred except on death or disability.

*Existing group life policies: time for compliance with the conditions in section 539A*

- 4 (1) Where—



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- (a) on 9th April 2003 a policy of life insurance issued in respect of an insurance made before that date is a group life policy but the conditions in section 539A of the Taxes Act 1988 are not satisfied,
- (b) on or after that date, the terms of the policy are varied so that those conditions are satisfied before 6th April 2004, and
- (c) during the period beginning with 9th April 2003 and ending with the date when the variation takes effect (“the transitional period”), no sums become payable, and no other benefits arise, under the policy except on death or disability,

the conditions in section 539A of the Taxes Act 1988 shall be taken for the purposes of Chapter 2 of Part 13 of the Taxes Act 1988 to have been satisfied with respect to the policy throughout the transitional period.

- (2) Where, for the purposes of Chapter 2 of Part 13 of the Taxes Act 1988,—
  - (a) on 9th April 2003 a policy of life insurance issued in respect of an insurance made before that date (“the old policy”) is a group life policy but the conditions in section 539A of the Taxes Act 1988 are not satisfied,
  - (b) on or after that date, the terms of the insurance are varied solely for the purpose of securing that those conditions are satisfied before 6th April 2004 with respect to a policy in respect of the insurance, and
  - (c) as a result of the variation, the old policy is replaced by a new policy (“the new policy”),

sub-paragraph (3) applies.

- (3) Where this sub-paragraph applies—
  - (a) the old policy and the new policy shall be treated for the purposes of—
    - (i) paragraph 3(1),
    - (ii) sub-paragraph (1), and
    - (iii) Chapter 2 of Part 13 of the Taxes Act 1988,as a single policy issued in respect of an insurance made at the time of the making of the insurance in respect of which the old policy was issued, and
  - (b) that deemed single policy shall be treated for the purposes of sub-paragraph (1) as if the variation mentioned in sub-paragraph (2)(b) had been a variation of its terms taking effect on the date on which that variation takes effect (but not resulting in the replacement of the deemed single policy).

*Deaths before 6th April 2004: period for insurer to give certificate under section 552(1)(a)*

- 5 (1) If any death giving rise to benefits under a group life policy occurs—
- (a) on or after 9th April 2003, but
  - (b) before 6th April 2004,
- subsection (6) of section 552 of the Taxes Act 1988 (relevant three month period for insurer to give certificate under section 552(1)(a) to policy holder) shall have effect in relation to that policy and that death as if there were included among the paragraphs of that subsection the unnumbered paragraph set out in sub-paragraph (2).
- (2) That paragraph is—
    - “( ) if the event is a death and the policy in question is a group life policy, the period of three months following 5th April 2004;”.

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**PART 2**

CHARITABLE AND NON-CHARITABLE TRUSTS

*Interpretation*

- 6 In section 539 of the Taxes Act 1988 (introductory) in subsection (3), insert each of the following definitions at the appropriate place—
- ““charitable trust” means any trust established for charitable purposes only;”;
- ““non-charitable trust” means any trust other than a charitable trust.”.

*Method of charging gain to tax*

- 7 (1) Section 547 of the Taxes Act 1988 is amended as follows.
- F224 (2) .....
- (3) In paragraph (b) of that subsection (which refers to trusts created by a company) before “trusts” insert “ non-charitable ”.
- F225 (4) .....
- F226 (5) .....
- F227 (6) .....
- F228 (7) .....
- F229 (8) .....
- F230 (9) .....
- F231 (10) .....
- F232 (11) .....
- F233 (12) .....

**Textual Amendments**

- F224** Sch. 34 para. 7(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))
- F225** Sch. 34 para. 7(4) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))
- F226** Sch. 34 para. 7(5) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))
- F227** Sch. 34 para. 7(6) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))
- F228** Sch. 34 para. 7(7) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))
- F229** Sch. 34 para. 7(8) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

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- F230** Sch. 34 para. 7(9) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)
- F231** Sch. 34 para. 7(10) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)
- F232** Sch. 34 para. 7(11) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)
- F233** Sch. 34 para. 7(12) repealed (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 3** (with Sch. 2)

*Method of charging gain to tax: multiple interests*

- 8
- (1) Section 547A of the Taxes Act 1988 is amended as follows.
  - (2) In subsection (3) (the cases where a person has a relevant interest) in paragraph (a) (which refers to trusts created by an individual) before “trusts” insert “ non-charitable ”.
  - (3) In paragraph (b) of that subsection (which refers to trusts created by a company) before “trusts” insert “ non-charitable ”.
  - (4) After paragraph (c) of that subsection (personal representatives) insert—  
“(cc) in the case of trustees of a charitable trust, if a share in the rights is held by them or as security for a debt owed by them;”.
  - (5) In paragraph (d) of that subsection (trustees) after “trustees” insert “ of a non-charitable trust ”.
  - (6) For the word “or” at the end of sub-paragraph (i) of that paragraph substitute the following sub-paragraph—  
“(ia) if a share in the rights is held by them which does not also fall within paragraph (a), (b) or (c) above or sub-paragraph (i) above; or”.
  - (7) In subsection (6) (rights or share held on trusts created by two or more persons) before “trusts”, where first occurring, insert “ non-charitable ”.
  - (8) In subsection (10) (case where different shares of the whole trust property originate from different persons)—
    - (a) in paragraph (a), before “trusts” insert “ non-charitable ”; and
    - (b) in the closing words, before “trusts” insert “ non-charitable ”.

*Deemed surrender of certain loans*

- 9
- (1) Section 548(1) of the Taxes Act 1988 is amended as follows.
  - <sup>F234</sup>(2) .....
  - (3) In paragraph (c) (condition that sum is lent to, or at the direction of, the individual or company by, or by arrangement with, the body issuing etc the policy or contract) after “company” insert “ or those trustees ”.

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**Textual Amendments**

**F234** Sch. 34 para. 9(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Right of individual to recover tax from trustees*

**F235**10 .....

**Textual Amendments**

**F235** Sch. 34 para. 10 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Right of company to recover tax from trustees*

11 In section 551A of the Taxes Act 1988, in subsection (1) (company liable as settlor) in paragraph (b), for “trust” substitute “ non-charitable trusts ”.

*Section 547(1)(cc) and (d)(ia): exception for certain old policies and contracts*

**F236**12 .....

**Textual Amendments**

**F236** Sch. 34 para. 12 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

**PART 3**

MEANING OF “LIFE ANNUITY”

*Restriction of “life annuity” to contracts to which section 656 of the Taxes Act 1988 applies*

**F237**13 .....

**Textual Amendments**

**F237** Sch. 34 para. 13 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

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## PART 4

### ROLLOVER OF GAIN ON MATURITY INTO NEW POLICY

#### *Repeal of section 540(2) of the Taxes Act 1988*

- 14 (1) Section 540(2) of the Taxes Act 1988 (maturity not a chargeable event if option exercised to re-invest whole proceeds of maturing policy in new policy) shall cease to have effect.
- (2) This paragraph is subject to paragraph 15.

#### *Saving for certain policies maturing on or after 9th April 2003*

- 15 (1) The maturity of a policy of life insurance (“the old policy”) on or after 9th April 2003 is not a chargeable event for the purposes of Chapter 2 of Part 13 of the Taxes Act 1988 [<sup>F238</sup>or Chapter 9 of Part 4 of the Income Tax (Trading and Other Income) Act 2005] if—
- (a) a new policy is issued in consequence of the exercise of an option conferred by the old policy,
  - (b) all sums becoming payable under the old policy on or after 9th April 2003 are retained by the company with which the insurance was made and applied in the payment of one or more premiums under the new policy, and
  - (c) sub-paragraph (2) applies.
- (2) This sub-paragraph applies if—
- (a) the option was exercised in writing on or before 8th April 2003, or
  - (b) the old policy matures on or before 30th April 2003 and has not been varied on or after 9th April 2003 so as to—
    - (i) change the date of maturity of the policy,
    - (ii) change any option conferred by the policy, or
    - (iii) confer any option.

#### **Textual Amendments**

**F238** Words in Sch. 34 para. 15(1) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), Sch. 1 para. 625 (with Sch. 2)

### GAINS ON POLICIES OF LIFE INSURANCE ETC: RATE OF TAX

#### *Application of the lower rate*

- 1 (1) Section 1A of the Taxes Act 1988 (application of lower rate to income from savings and distributions) is amended as follows.

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- (2) In subsection (2) (which specifies the income to which the lower rate applies) omit the word “and” immediately preceding paragraph (c) and at the end of that paragraph insert “; and
  - (d) any amount included in an individual’s total income by virtue of section 547(1)(a) (chargeable event gains on life policies etc).”.
- (3) In subsection (5) (ordering rule for highest part of income for the purposes of the Income Tax Acts) after “the Income Tax Acts” insert “ (other than section 550) ”.

*Method of charging gains from policies of life insurance etc to tax*

F239<sub>2</sub> .....

**Textual Amendments**  
**F239** Sch. 35 para. 2 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Relief where gain charged at a higher rate*

F240<sub>3</sub> .....

**Textual Amendments**  
**F240** Sch. 35 para. 3 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Gains included in aggregate income of estate of deceased*

- 4 In section 699A(4)(b) of the Taxes Act 1988 (sums included in aggregate income of estate of the deceased by virtue of section 547(1)(c) to be assumed to bear tax at the basic rate) for “the basic rate” substitute “ the lower rate ”.

*Income to be disregarded in determining highest part of person’s income*

- 5 In section 833(3)(b) of the Taxes Act 1988 (which provides that, where income falls to be treated as the highest part of a person’s income, his income shall be calculated without regard to any amount included in total income by virtue of section 547(1)(a)) after “section 547(1)(a)” add “ which is a sum in relation to which section 547(5) applies ”.

.....

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### Textual Amendments

**F241** Sch. 36 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 626, Sch. 3 \(with Sch. 2\)](#)

## SCHEDULE 37

Section 178

### LOAN RELATIONSHIPS: AMENDMENTS

#### PART 1

#### AMENDMENTS TO SCHEDULE 9 TO THE FINANCE ACT 1996

##### *Introductory*

- 1 Schedule 9 to the Finance Act 1996 (c. 8) (loan relationships: special computational provisions) is amended as follows.

##### *Late interest*

- 2 (1) Paragraph 2 is amended as follows.
- (2) After sub-paragraph (5) insert—
- “(5A) A person who is a participator in a company which controls another company shall be treated for the purposes of this paragraph as also being a participator in that other company.”.
- (3) In sub-paragraph (6), in the definition of “participator” (which is expressed to have effect in relation to a close company) omit “close”.
- (4) The amendments made by this paragraph have effect in relation to interest which would, apart from paragraph 2 of Schedule 9 to the Finance Act 1996 (c. 8), be treated as accruing on or after 9th April 2003.

##### *Continuity of treatment: groups etc*

- 3 (1) Paragraph 12 is amended as follows.
- (2) In sub-paragraph (2) (determination of credits and debits to be brought into account) in paragraph (a) (disregard of the transaction or series of transactions except for certain purposes) after “except” insert—
- “(i) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account; or
- (ii) ”.
- (3) In paragraph (b) of that sub-paragraph (transferor and transferee deemed to be the same person, except for that purpose) for “that purpose” substitute “those purposes”.

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- (4) In sub-paragraph (2A) (amount to be brought into account where transferor company uses authorised mark to market basis of accounting) for paragraph (a) substitute—
- “(a) the amount to be brought into account by the transferor company in respect of the transaction, the result of the series of transactions, or the transfer must be—
- (i) where an asset is to be brought into account, the fair value of the asset, or of the rights under or interest in the asset, and
- (ii) where a liability is to be brought into account, the fair value of the liability,
- as at the date on which the transferee company becomes party to the loan relationship;
- (aa) the amount to be brought into account by the transferee company in respect of the transaction, the result of the series of transactions, or the transfer must be the same as the amount brought into account by the transferor company in respect of the transaction, or, as the case may be, the result of the series of transactions, or the transfer; and”.
- (5) In sub-paragraph (6) (novation: equivalent rights) after “rights” insert “, or (as the case may be) its obligations, ”.
- (6) After sub-paragraph (7) (cases where rights are “equivalent”) insert—
- “(7A) For the purposes of sub-paragraph (6) above a person’s obligations under a debtor relationship are equivalent to obligations under another such relationship if they subject the holder of the liability representing the relationship—
- (a) to the same obligations to the same persons as to capital, interest and dividends, and
- (b) to the same remedies for the enforcement of those obligations, notwithstanding any difference in the total nominal amounts of the assets representing the corresponding creditor relationships, in the form in which those assets are held or in the manner in which they can be transferred.”.
- (7) The amendments made by this paragraph have effect where the date on which the transferee company becomes party to the loan relationship falls on or after 9th April 2003.

*Discounted securities where companies have a connection*

- 4 (1) In paragraph 17, for sub-paragraph (8) (reference to person standing in the position of creditor to include person indirectly standing in that position) substitute—
- “(8) Any reference in this paragraph to a company which stands in the position of a creditor as respects a relevant discounted security includes a reference to a company which indirectly stands in that position by reference to a series of loan relationships or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor.”.
- (2) The amendment made by this paragraph has effect in relation to relevant periods beginning on or after 9th April 2003.
- (3) If, in the case of an issuing company, 9th April 2003 falls in a relevant period beginning before that day—



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- (a) the amendment made by this paragraph also has effect in relation to a proportionate part of the debits of that company relating to the amount of the discount that is referable to that period, and
  - (b) that proportion is the proportion which the part of that period—
    - (i) beginning with 9th April 2003, and
    - (ii) ending with the end of that period,bears to the whole of that period.
- (4) Expressions used in sub-paragraph (2) or (3) and in paragraph 17 of Schedule 9 to the Finance Act 1996 (c. 8) have the same meaning in that sub-paragraph as in that paragraph.

*Discounted securities of close companies*

- 5 (1) Paragraph 18 is amended as follows.
- (2) In sub-paragraph (2C) (reference to person standing in the position of creditor to include person indirectly standing in that position) for the words from “includes a reference” to the end of that sub-paragraph substitute “ includes a reference to a person who indirectly stands in that position by reference to a series of loan relationships or money debts which would be loan relationships if a company directly stood in the position of creditor or debtor ”.
- (3) After sub-paragraph (3B) (meaning of “control”) insert—
- “(3C) A person who is a participator in a company which controls another company shall be treated for the purposes of this paragraph as also being a participator in that other company.”.
- (4) The amendments made by this paragraph have effect in relation to relevant periods beginning on or after 9th April 2003.
- (5) If, in the case of an issuing company, 9th April 2003 falls in a relevant period beginning before that day—
- (a) the amendments made by this paragraph also have effect in relation to a proportionate part of the debits of that company relating to the amount of the discount that is referable to that period, and
  - (b) that proportion is the proportion which the part of that period—
    - (i) beginning with 9th April 2003, and
    - (ii) ending with the end of that period,bears to the whole of that period.
- (6) Expressions used in sub-paragraph (4) or (5) and in paragraph 18 of Schedule 9 to the Finance Act 1996 (c. 8) have the same meaning in that sub-paragraph as in that paragraph.

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## PART 2

### TRANSITIONAL PROVISIONS

#### *Transitional provisions*

- 6 (1) In Schedule 25 to the Finance Act 2002 (c. 23) (loan relationships) in Part 3 (transitional provisions) after paragraph 61 insert—

*“Non-trading deficit carried forward from last old accounting period*

- 61A Any amount carried forward to a new accounting period under subsection (3) of section 83 of the Finance Act 1996 (carry forward of so much of the non-trading deficit on a company’s loan relationships as is not the subject of a claim under subsection (2) of that section)—
- (a) shall be disregarded for the purposes of any claim under subsection (2) of that section; and
  - (b) shall not be surrendered as group relief by virtue of section 403 of the Taxes Act 1988.”

- (2) The Finance Act 2002 (c. 23) shall be taken to have been originally enacted with the amendment made by this paragraph.

## SCHEDULE 38

Section 181

### SALE AND REPURCHASE OF SECURITIES ETC

#### *Increase of repurchase price of UK securities by amount of deemed manufactured dividend*

- 1 In section 737C of the Taxes Act 1988 (deemed manufactured payments)—
- (a) in subsection (3)(b) (repurchase price of UK equities to be treated as increased by gross amount of deemed manufactured dividend), omit “gross”, and
  - (b) omit subsection (4) (definition of gross amount).

#### *Deemed manufactured payment where transferor or connected person makes payment representative of dividend*

- 2 (1) Section 737A of the Taxes Act 1988 (deemed manufactured payments) is amended as follows.
- (2) In subsection (1), for “the conditions set out in subsection (2) below” substitute “either the conditions set out in subsection (2) below or the conditions set out in subsection (2A) below”.
  - (3) In subsection (2), for “conditions” substitute “first set of conditions referred to in subsection (1) above”.
  - (4) After that subsection insert—
 

“(2A) The second set of conditions referred to in subsection (1) above are that—

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- (a) a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,
    - (b) the transferor or a person connected with him is required under any agreement mentioned in subsection (1) above to make a payment representative of the dividend,
    - (c) there is no requirement under any such agreement for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and
    - (d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account is taken of the circumstances referred to in paragraphs (a) to (c).”.
  - (5) In subsection (3), for “subsection (2)” substitute “ subsections (2) and (2A) ”.
  - (6) In subsection (5)(a), after “(2)(a)” insert “ or (2A)(a) ”.
- 3 In section 737C of the Taxes Act 1988 (deemed manufactured payments: further provisions), after “737A(2)(a)” (in each place) insert “ or (2A)(a) ”.
- Provisions to cover both “put” and “call” options*
- 4 In section 727A(1) of the Taxes Act 1988 (accrued income scheme not to apply to transfers of securities under repo agreements), for the words from “and under” to the end of paragraph (b) substitute “and the transferor or a person connected with him—
- (a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
  - (b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.
- 5 In section 730A(1) of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities), for paragraph (b) substitute—
- “(b) the original owner or a person connected with him—
    - (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
    - (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises; and”.
- 6 In section 731(2D) of the Taxes Act 1988 (provisions about purchase and sale of securities not to apply to repo agreements etc) for the words from “and, in” to “is entitled” in paragraph (c) substitute “and the original owner—
- (a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement,
  - (b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises, or
  - (c) under that agreement or any related agreement, is entitled”.

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- 7 In section 737A(1) of the Taxes Act 1988 (deemed manufactured payments), for the words from “and under” to the end of paragraph (b) substitute “and the transferor or a person connected with him—
- (a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
  - (b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises;”.
- 8 In section 737E(8) of the Taxes Act 1988 (power to modify provisions about repo arrangements), for paragraph (b) substitute—
- “(b) that person or a person connected with him—
- (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
  - (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.
- 9 In paragraph 12(4) of Schedule 7AC to the Taxation of Chargeable Gains Act 1992 (c. 12) (exemptions for disposals by companies with substantial shareholding: effect of repurchase agreement), for paragraph (b) substitute—
- “(b) the original owner or a person connected with him—
- (i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or
  - (ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.”.

*Option premium to be reflected in sale price unless brought into account under derivative contracts provisions*

- 10 In section 730A of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities), after subsection (8) insert—
- “(8A) In this section references to the sale price are to be construed—
- (a) in a case where the securities are bought back by the transferor or a person connected with him in compliance with a requirement imposed in consequence of the exercise of an option acquired under the agreement to sell the securities or any related agreement, as references to what would otherwise be the sale price plus the amount of any consideration given for the option, and
  - (b) in a case where the securities are so bought back in the exercise of an option so acquired, as references to what would otherwise be the sale price less the amount of any consideration so given,
- unless the consideration is brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts).”.

*Exchange gains and losses*

- 11 (1) Section 730A of the Taxes Act 1988 (treatment of price differential on sale and repurchase of securities) is amended as follows.

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- (2) In subsection (4) (adjustment of repurchase price), for “this section and sections 737A and 737C” substitute “ the excepted provisions specified in subsection (4A) below ”.
- (3) At the end of that subsection add as a second sentence— “ This subsection is subject to subsection (4B) below. ”.
- (4) After that subsection insert—
- “(4A) The excepted provisions are—
- (a) this section,
- (b) section 730BB, apart from subsection (7),
- (c) section 737A, and
- (d) section 737C.
- (4B) Where section 730BB(7) has effect (repurchase price to be treated as increased or reduced for certain purposes), subsection (4) above does not have effect for any purpose other than that of determining the amount that falls to be increased or reduced under section 730BB(7).”.
- 12 After section 730B of the Taxes Act 1988 insert—

**“730BB Exchange gains and losses on sale and repurchase of securities**

- (1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—
- (a) the circumstances are as set out in section 730A(1)(a) and (b);
- (b) the company is the repurchaser of the securities or (subject to subsection (11) below) the interim holder;
- (c) the conditions in subsection (2) or (3) below are satisfied; and
- (d) subsection (10) below does not prevent this section from applying, and references to a relationship to which this section applies, and to a company’s being a party to such a relationship, shall be construed accordingly.
- (2) The conditions in this subsection are that—
- (a) the sale price and the repurchase price are expressed in a currency other than sterling;
- (b) there is a difference between—
- (i) the sterling equivalent of the sale price as at the date of the transfer of the securities to the interim holder (“the first sum”); and
- (ii) the sterling equivalent of the sale price as at the date they are bought back by the repurchaser (“the second sum”); and
- (c) the case is not one where section 93 of the Finance Act 1993 (accounts of a company in a currency other than sterling) applies in relation to the company.
- (3) The conditions in this subsection are that—
- (a) the case is one where section 93 of the Finance Act 1993 applies in relation to the company;

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- (b) the sale price and the repurchase price are expressed in a currency other than the relevant foreign currency (within the meaning of that section) in relation to the company; and
  - (c) there is a difference between—
    - (i) the relevant foreign currency equivalent of the sale price as at the date of the transfer of the securities to the interim holder (“the first sum”); and
    - (ii) the relevant foreign currency equivalent of the sale price as at the date they are bought back by the repurchaser (“the second sum”).
- (4) Where a company has a relationship to which this section applies and—
- (a) the company is the repurchaser and the first sum exceeds the second sum; or
  - (b) the company is the interim holder and the second sum exceeds the first sum,
- the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange gain (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.
- (5) Where a company has a relationship to which this section applies and—
- (a) the company is the repurchaser and the second sum exceeds the first sum; or
  - (b) the company is the interim holder and the first sum exceeds the second sum,
- the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange loss (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.
- (6) Where an exchange gain or loss is treated by virtue of subsection (4) or (5) above as arising to a company from a relationship to which this section applies—
- (a) Chapter 2 of Part 4 of the Finance Act 1996 shall have effect in relation to the exchange gain or loss as it would have effect if it were an exchange gain or loss (as the case may be) arising to the company from a loan relationship to which it is a party; but
  - (b) the only debits and credits to be brought into account for the purposes of that Chapter by virtue of this section in respect of the relationship to which this section applies are those relating to the exchange gains and losses,
- and, subject to paragraph (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.
- (7) Where a company has a relationship to which this section applies, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 730A, 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—

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- (a) in a case where an exchange gain arises to the company by virtue of subsection (4)(a) above or an exchange loss arises to the company by virtue of subsection (5)(b) above, as increased by the amount by which the first sum exceeds the second sum, and
  - (b) in a case where an exchange gain arises to the company by virtue of subsection (4)(b) above or an exchange loss arises to the company by virtue of subsection (5)(a) above, as reduced by the amount by which the second sum exceeds the first sum.
- (8) Any question whether debits or credits brought into account in accordance with subsection (6) above in relation to any company—
  - (a) are to be brought into account under section 82(2) of the Finance Act 1996 (trading loan relationships); or
  - (b) are to be treated as non-trading debits or credits,shall be determined (subject to Schedule 11 to that Act (insurance companies)) according to the extent (if any) to which the company is a party to the repurchase in the course of activities forming an integral part of a trade carried on by that company.
- (9) To the extent that debits or credits fall to be brought into account by a company under section 82(2) of that Act in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as being a party to the relationship for the purposes of a trade carried on by the company.
- (10) Except where regulations under section 737E otherwise provide, this section does not apply if—
  - (a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or
  - (b) all of the benefits and risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.
- (11) Where—
  - (a) the repurchase price is more than the sale price, so that by virtue of section 730A(2)(a) a payment of interest is treated as made by the repurchaser on a deemed loan from the interim holder; but
  - (b) the payment of interest is treated as made to a person other than the interim holder,references to the “interim holder” in subsections (1), (4) and (5) above shall be read as references to the person to whom the payment of interest is treated as made.
- (12) Any reference in this section to the “relevant foreign currency equivalent” of an amount is, in the case of any company, a reference to the amount's equivalent expressed in the relevant foreign currency (within the meaning of section 93 of the Finance Act 1993) in relation to the company.
- (13) Expressions used in this section and in section 730A have the same meaning in this section as in that section.”

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- 13 (1) Section 737E of the Taxes Act 1988 (power to modify sections 727A, 730A and 737A to 737C) is amended as follows.
- (2) In subsections (1) and (2), after “730A” insert “, 730BB ”.
- (3) In subsection (3), after “730A” insert “ or 730BB ”.
- (4) In consequence of the amendments made by this paragraph, the sidenote becomes “Power to modify sections 727A, 730A, 730BB and 737A to 737C”.
- 14 In section 100 of the Finance Act 1996 (c. 8) (exchange gains and losses on debts etc not arising from the lending of money), after subsection (2) insert—
- “(2A) Where—
- (a) a company has a relationship to which section 730BB of the Taxes Act 1988 applies (exchange gains and losses on sale and repurchase of securities),
- (b) in the case of that relationship the circumstances mentioned in section 730A(1)(b) of that Act are such as to give rise to a money debt, and
- (c) the company stands, or has stood, in the position of a creditor or debtor as respects that money debt,
- the company shall not be regarded for the purposes of the Corporation Tax Acts as having, by reason of that money debt, a relationship to which this section applies, so far as relating to exchange gains and losses.”.

#### *Exceptions*

- 15 In section 727A(1) of the Taxes Act 1988 (accrued income scheme not to apply to transfers of securities under repo agreements), insert at the end “ except in a case where section 730A of the Taxes Act 1988 is prevented from applying by subsection (8) of that section. ”.
- 16 In section 730A(8)(b) of the Taxes Act 1988 (treatment of price differential on sale and repurchase: exclusion of cases where all benefits or risks are for interim holder), for “benefits or risks” substitute “ benefits and risks ”.
- 17 In section 737C(11A) of the Taxes Act 1988 (purposes for which deemed increase of repurchase price has effect), insert at the end “ or where that section is prevented from applying by subsection (8) of that section. ”.
- 18 (1) Paragraph 15 of Schedule 9 to the Finance Act 1996 (c. 8) (repo transactions not related transactions for purposes of loan relationship provisions) is amended as follows.
- (2) In sub-paragraph (3), after “means” insert “ (subject to sub-paragraph (3A)) ”.
- (3) After that sub-paragraph insert—
- “(3A) Arrangements are not repo or stock-lending arrangements if they are excluded from section 730A of the Taxes Act 1988 by subsection (8) of that section.”.



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*Connected persons*

- 19 In paragraph 15(3)(b) of Schedule 9 to the Finance Act 1996 (repo transactions not related transactions for purposes of loan relationship provisions), omit “, or a person connected with him,”.

*Correction of section 730A(6B) of the Taxes Act 1988*

- 20 In section 730A(6B) of the Taxes Act 1988 (trading loan relationship debits and credits falling to be brought into account under section 82(2))—
- (a) for “section 82(2) above” substitute “section 82(2) of the Finance Act 1996”, and
  - (b) for “the Finance Act 1996” substitute “that Act”.

*Commencement*

- 21 (1) Paragraph 1 has effect in relation to repurchase prices becoming due on or after 9th April 2003.
- (2) Paragraphs 2 to 19 have effect in relation to agreements to sell securities made on or after 9th April 2003.
- (3) Paragraph 20 has effect in relation to accounting periods beginning on or after 1st October 2002.

SCHEDULE 39

Section 182

RELEVANT DISCOUNTED SECURITIES: WITHDRAWAL OF RELIEF FOR COSTS AND LOSSES, ETC

*Withdrawal of relief for incidental costs*

F242<sub>1</sub> .....

**Textual Amendments**

F242 Sch. 39 paras. 1-4 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Withdrawal of relief for losses*

F242<sub>2</sub> .....

**Textual Amendments**

F242 Sch. 39 paras. 1-4 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Withdrawal of loss relief: exception for strips of government securities*

F242<sub>3</sub> .....

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**Textual Amendments**

**F242** Sch. 39 paras. 1-4 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Extension of provisions about strips to strips of foreign government securities*

**F242**<sup>4</sup> .....

**Textual Amendments**

**F242** Sch. 39 paras. 1-4 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Consequential amendments*

**5** **F243**(1) .....

**F243**(2) .....

**F243**(3) .....

(4) In section 710(3) of the Taxes Act 1988 (categories of security not included in accrued income scheme) after paragraph (e) insert—

“(f) any relevant discounted security within the meaning of Schedule 13 to the Finance Act 1996 (see paragraphs 3 and 14(1) of that Schedule).”.

**Textual Amendments**

**F243** Sch. 39 para. 5(1)-(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

*Commencement and transitional provisions*

**F244**<sup>6</sup> .....

**Textual Amendments**

**F244** Sch. 39 para. 6 repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 3](#) (with [Sch. 2](#))

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## SCHEDULE 40

Section 195

### ACQUISITION BY COMPANY OF ITS OWN SHARES

#### *Venture capital trusts*

- 1 In Schedule 15B to the Taxes Act 1988 (venture capital trusts: relief from income tax), in paragraph 1 (entitlement to claim relief on investment), after sub-paragraph (9) insert—
- “(10) An individual is not eligible for relief under this Part of this Schedule by reference to any shares which are treated as issued to him by virtue of section 195(8) of the Finance Act 2003 (tax treatment of disposal by company of its own shares).
- (11) Where a company which is a venture capital trust issues to any individual eligible shares to which sub-paragraph (10) above applies, it must—
- (a) at the time of the issue of those shares, give that individual a notice stating that he is not eligible for relief under this Part of this Schedule by reference to those shares, and
- (b) no later than three months after the issue of those shares, give a copy of that notice to an officer of the Board.”

#### **Commencement Information**

**I126** Sch. 40 para. 1 has effect as specified by [The Finance Act 2003, Section 195 and Schedule 40 \(Appointed Day\) Order 2003 \(S.I. 2003/3077\)](#), [art. 2](#)

#### *Stamp duty and stamp duty reserve tax*

- 2 In section 66 of the Finance Act 1986 (c. 41) (stamp duty: company’s purchase of own shares)—
- (a) in subsection (2)—
- (i) for “The return which relates to the shares” substitute “ Any return which relates to any of the shares ”,
- (ii) after “169” insert “ (1) or (1B) ”, and
- (iii) after “transferring the shares” insert “ to which it relates ”,
- (b) after that subsection insert—
- “(2A) Any return which relates to the cancellation of any of the shares purchased and is delivered to the registrar of companies under section 169A of the Companies Act 1985 shall be chargeable under this subsection with stamp duty of £5.”, and
- (c) in subsection (3), after “169” insert “ (1) or (1B) ”.

#### **Commencement Information**

**I127** Sch. 40 para. 2 has effect as specified by [The Finance Act 2003, Section 195 and Schedule 40 \(Appointed Day\) Order 2003 \(S.I. 2003/3077\)](#), [art. 2](#)

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- 3 In section 90 of that Act (exemptions from stamp duty reserve tax), after subsection (7) insert—

“(7A) Section 87 above does not apply as regards an agreement to transfer any shares in a company which are held by the company (whether in accordance with section 162A of the Companies Act 1985 (treasury shares) or otherwise).”.

#### Commencement Information

**I128** Sch. 40 para. 3 has effect as specified by [The Finance Act 2003, Section 195 and Schedule 40 \(Appointed Day\) Order 2003 \(S.I. 2003/3077\)](#), **art. 2**

- 4 (1) Section 92 of that Act (stamp duty reserve tax: repayment or cancellation of tax) is amended as follows.

- (2) After subsection (1B) insert—

“(1C) If, as regards an agreement to transfer shares in a company to that company (“the own-shares agreement”)—

- (a) tax is charged under section 87 above, and
- (b) it is proved to the Board’s satisfaction that at a time in the period of six years beginning on the relevant day (as defined in section 87(3)) the conditions mentioned in subsection (1D) have been fulfilled in respect of those shares,

subsections (2) to (4A) apply.

- (1D) The conditions referred to in subsection (1C) are—

- (a) that, in relation to the transfer made in pursuance of the own-shares agreement, a return has been made in respect of each of those shares in accordance with section 169(1) or (1B) of the Companies Act 1985 (disclosure by company of purchase of own shares), and
- (b) that any such return has been duly stamped in accordance with section 66.”.

- (3) In subsection (2), after “subsection (1)” insert “ or, as the case may be, (1C) ”.

#### Commencement Information

**I129** Sch. 40 para. 4 has effect as specified by [The Finance Act 2003, Section 195 and Schedule 40 \(Appointed Day\) Order 2003 \(S.I. 2003/3077\)](#), **art. 2**

- 5 In Schedule 13 to the Finance Act 1999 (c. 16) (stamp duty: instruments chargeable and rates of duty), in Part 1 (conveyance or transfer on sale), in paragraph 1 (stamp duty charge), after sub-paragraph (2) insert—

“(3) Sub-paragraph (1) is subject to sub-paragraphs (4) to (6).

- (4) Where a company acquires any shares in itself by virtue of section 162 of the Companies Act 1985 (power of company to purchase own shares) or otherwise, sub-paragraph (1) does not apply to any instrument by which the shares are transferred to the company.

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- (5) Where a company holds any shares in itself by virtue of section 162A of that Act (treasury shares) or otherwise, any instrument to which sub-paragraph (6) applies is to be treated for the purposes of this Schedule as a conveyance otherwise than on sale, and paragraph 16 applies accordingly.
- (6) This sub-paragraph applies to any instrument for the sale or transfer of any of the shares by the company, other than an instrument which, in the absence of sub-paragraph (5), would be an instrument in relation to which—
- (a) section 67(2) of the Finance Act 1986 (transfer to person whose business is issuing depository receipts etc), or
  - (b) section 70(2) of that Act (transfer to person who provides clearance services etc),
- applied.”.

**Commencement Information**

**I130** Sch. 40 para. 5 has effect as specified by [The Finance Act 2003, Section 195 and Schedule 40 \(Appointed Day\) Order 2003 \(S.I. 2003/3077\)](#), **art. 2**

SCHEDULE 41

Section 196

COMPANIES IN ADMINISTRATION

*Accounting period for company in administration*

- 1 (1) Section 12 of the Taxes Act 1988 (corporation tax: basis of, and periods for, assessment) is amended as follows.
- (2) In subsection (3), after paragraph (d) insert—  
“(da) the company ceasing to be in administration;”.
- (3) After subsection (5A) insert—  
“(5B) For the purposes of subsection (3)(da) a company ceases to be in administration when it ceases to be in administration under Schedule B1 to the Insolvency Act 1986 or any corresponding event occurs otherwise than under that Act.”.
- (4) In subsection (7) (accounting periods where company is wound up), after the words “subject to” insert  
“ subsection (7ZA) below and ”.
- (5) After subsection (7) insert—  
“(7ZA) Notwithstanding anything in subsections (1) to (6) above, where a company enters administration—  
(a) an accounting period of the company shall end immediately before the day the company enters administration, and

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- (b) if immediately before the company enters administration it is in the course of being wound up, subsection (7) ceases to apply at the end of that accounting period.

For this purpose a company enters administration when it enters administration under Schedule B1 to the Insolvency Act 1986 or is subject to any corresponding procedure otherwise than under that Act.”.

- (6) In subsection (7A) for “subsections (1) to (7)” substitute “ subsections (1) to (7ZA) ”.

*Responsibility of officers of company in administration*

- 2 (1) Section 108 of the Taxes Management Act 1970 (c. 9) (responsibility of company officers) is amended as follows.

- (2) In subsection (3)(a)—

- (a) after first “liquidator” insert “ or administrator ”, and  
(b) after second “liquidator” insert “ or, as the case may be, administrator ”.

- (3) After subsection (3) insert—

“(4) For the purposes of subsection (3)(a), where two or more persons are appointed to act jointly or concurrently as the administrator of a company, the proper officer is—

- (a) such one of them as is specified in a notice given to the Board by those persons for the purposes of this section, or  
(b) where the Board is not so notified, such one or more of those persons as the Board may designate as the proper officer for those purposes.”.

*Tax on companies in administration*

- 3 After section 342 of the Taxes Act 1988 (tax on company in liquidation) insert—

**“342A Tax on companies in administration**

- (1) In this section—

- (a) references to the relevant event, in relation to a company in administration, are references—  
(i) to the administrator sending a notice in respect of the company under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (company moving from administration to dissolution), or  
(ii) in the case of a company which enters administration otherwise than under that Act, to the doing of any other act for a like purpose, and  
(b) references to a company’s final year are references to the financial year in which the relevant event occurs, and references to the company’s penultimate year are references to the last financial year preceding its final year.

- (2) Subject to subsections (3) and (4)—

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- (a) corporation tax shall be charged on the profits of the company arising in the administration in its final year at the rate of corporation tax fixed or proposed for the penultimate year, but
  - (b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.
- (3) If, before the relevant event, any of the rates or fractions mentioned in subsection (2) has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.
- (4) If, in the case of the company's final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.
- (5) In subsection (4) "the company's final accounting period" means the last accounting period of the company before the relevant event.
- (6) An assessment on the company's profits for an accounting period in which the company is in administration shall not be invalid because made before the end of the accounting period.
- (7) In making an assessment after the company enters administration and before the date of the relevant event, the administrator may act on an assumption as to when that date will fall so far as it governs section 12(3).
- (8) The assumption of the wrong date shall not alter the company's final and penultimate year and, if the right date is later—
  - (a) an accounting period shall end on the date assumed and a new accounting period shall begin, and
  - (b) thereafter, section 12(3) shall apply as if the company had entered administration at the beginning of that new accounting period.
- (9) Subsections (7) and (9) of section 342 apply in relation to this section as they apply in relation to that section, except that in subsection (7) of that section the reference to the completion of the winding up is to be read as a reference to the relevant event.
- (10) Where the company entered administration before its final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) apply in relation to the company's profits arising at any time in its penultimate year."

*Debit for bad debt where parties connected and creditor insolvent*

- 4 (1) Paragraph 6A of Schedule 9 to the Finance Act 1996 (c. 8) (bad debt etc: parties having connection and creditor in insolvent liquidation etc) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) in paragraph (a), for "has gone into" substitute "is in",
  - (b) for paragraph (b) substitute—  
" (b) that company is in insolvent administration; ", and

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- (c) in paragraph (d), for “an event has occurred, or circumstances exist,” substitute “ circumstances exist ”.
- (3) In sub-paragraph (2)—
  - (a) in paragraph (a) for “after the commencement” substitute “ in the course ”, and
  - (b) in paragraph (b) for “when the administration order is in force” substitute “ in the course of the administration ”.
- (4) For sub-paragraph (3) substitute—
  - “(3) For the purposes of this paragraph a company is in insolvent liquidation during the period which—
    - (a) begins when it goes into liquidation, as defined in section 247(2) of the Insolvency Act 1986 or Article 6(2) of the Insolvency (Northern Ireland) Order 1989, at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, and
    - (b) ends when the winding up is completed or otherwise brought to an end (whether under paragraph 37 or 38 of Schedule B1 to the Insolvency Act 1986 or otherwise).
  - (4) For the purposes of this paragraph a company in administration is in insolvent administration if—
    - (a) in the case of an administration under Schedule B1 to the Insolvency Act 1986, it entered administration at a time when its assets were insufficient for the payment of its debts and other liabilities and the expenses of the administration, or
    - (b) in a case where an administration order has effect under Part 3 of the Insolvency (Northern Ireland) Order 1989, the order was made at such a time.”.

#### *Commencement*

- 5 (1) Subject to sub-paragraph (2), this Schedule has effect in relation to companies which enter administration (whether under the Insolvency Act 1986 (c. 45) or otherwise) on or after the commencement of section 248 of the Enterprise Act 2002 (c. 40) (which substitutes Part 2 of the Insolvency Act 1986 (administration)).
- (2) Paragraph 4 has effect in relation to companies which—
  - (a) are in insolvent liquidation or insolvent administration immediately before 9th April 2003, or
  - (b) go into insolvent liquidation or insolvent administration on or after that date.
 For this purpose “insolvent liquidation” and “insolvent administration” are to be construed in accordance with paragraph 6A of Schedule 9 to the Finance Act 1996 (c. 8) (as amended by paragraph 4 above).



*Status: Point in time view as at 18/04/2005.*

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## SCHEDULE 42

Section 200

### CONTROLLED FOREIGN COMPANIES: EXEMPT ACTIVITIES

#### *Introductory*

- 1 Part 2 of Schedule 25 to the Taxes Act 1988 (controlled foreign companies: exempt activities) is amended as follows.

#### *Companies engaged in wholesale, distributive, financial or service business*

- 2 (1) Paragraph 6 (meaning of “engaged in exempt activities”) is amended as follows.
- (2) In sub-paragraph (1)(c) (requirement that any of sub-paragraphs (2) to (4A) applies to the company) for “(2) to (4A)” substitute “ (2), (3), (4) or (4A) ”.
- (3) In sub-paragraph (2A) (persons from whom less than 50% of the gross trading receipts of a wholesale etc business of the controlled foreign company must be derived) omit the word “and” immediately preceding paragraph (c) and at the end of that paragraph add “;
- (d) persons not falling within paragraphs (a) to (c) above which are companies resident in the United Kingdom;
  - (e) persons not falling within paragraphs (a) to (c) above which are companies not resident in the United Kingdom which carry on business through a branch or agency in the United Kingdom;
  - (f) persons not falling within paragraphs (a) to (c) above who are individuals habitually resident in the United Kingdom;

but where the company is a controlled foreign company falling within sub-paragraph (2B) below, paragraphs (d) to (f) above shall be disregarded. ”.

- (4) After sub-paragraph (2A) insert—

“(2B) A controlled foreign company falls within this sub-paragraph if either—

- (a) its main business is the effecting or carrying out of contracts of long-term insurance, other than protection business; or
- (b) it is a member of an insurance group and its main business is insuring or reinsuring large risks.

Paragraph 11A below has effect for the interpretation of this sub-paragraph.

(2C) For the purposes of sub-paragraph (2)(b) above, a company’s gross trading receipts from a business shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (2A)(e) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person’s branch or agency in the United Kingdom.”.

- (5) In sub-paragraph (4C) (which defines for the purposes of sub-paragraph (2)(b) a “25 per cent assessable interest”, an expression not used in sub-paragraph (2)(b) but used in sub-paragraph (2A)(b)) for “(2)(b)” substitute “ (2A)(b) ”.

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*Companies engaged in business of banking etc*

- 3 (1) Paragraph 11 (provisions relating to wholesale, distributive, financial or service business) is amended as follows.
- (2) In sub-paragraph (3) (controlled foreign company engaged in business of banking etc) for paragraph (a) (interest from UK company not to be regarded as receipt derived from connected or associated persons) substitute—
- “(a) no payment of interest received from a company resident in the United Kingdom which is connected or associated with the controlled foreign company shall be regarded for the purposes of paragraph 6(2)(b) above as a receipt derived directly or indirectly from a person falling within paragraph 6(2A) above, but”.
- (3) At the end of paragraph (b) of that sub-paragraph (the capitalisation test) add “, and
- (c) it shall also be conclusively presumed that the condition in paragraph 6(2)(b) is not fulfilled if 10% or more of the company’s gross trading receipts from all businesses carried on by it in the accounting period in question, taken together, are receipts other than interest and are directly or indirectly derived from persons—
- (i) which are companies resident in the United Kingdom,
- (ii) which are companies not resident in the United Kingdom but which carry on business through a branch or agency in the United Kingdom, or
- (iii) who are individuals habitually resident in the United Kingdom,
- but for this purpose a company’s gross trading receipts shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (ii) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person’s branch or agency in the United Kingdom.”.

*Interpretation of paragraph 6(2B)*

- 4 After paragraph 11 insert—
- “11A(1) This paragraph has effect for the interpretation of paragraph 6(2B) above.
- (2) “Contract of long-term insurance” means any contract falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- (3) “Protection business” means contracts of long-term insurance where—
- (a) either—
- (i) the contract has no surrender value; or
- (ii) the consideration consists of a single premium and the surrender value does not exceed the amount of that premium; and
- (b) the contract makes no provision for its conversion or extension in a manner which would result in its ceasing to fall within paragraph (a) above;
- and references to protection business include a reference to reinsurance of protection business.

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- (4) “Insurance group” shall be construed in accordance with section 255A(5) of the Companies Act 1985 (meaning of “insurance group” in Part 7) but reading Part 7 of that Act—
- (a) as if it extended to Northern Ireland, and
  - (b) as if any reference to a company (within the meaning of that Act) included a reference to a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986,
- but does not include such an insurance group if it falls within sub-paragraph (5) below.
- (5) Such an insurance group falls within this sub-paragraph if (within the meaning of that Part as so read) the parent company is a subsidiary undertaking of a parent company which is neither—
- (a) the parent company of an insurance group; nor
  - (b) a subsidiary undertaking of the parent company of an insurance group.
- (6) A controlled foreign company is, in accordance with sub-paragraphs (4) and (5) above, a “member of an insurance group” if (within the meaning of that Part as so read) it is the parent company, or a subsidiary undertaking of the parent company, of an insurance group which is by virtue of sub-paragraph (4) above an insurance group for the purposes of paragraph 6(2B) above.
- (7) A company’s main business is “insuring or reinsuring large risks” if (and only if)—
- (a) the company’s main business is the effecting or carrying out of contracts of insurance; and
  - (b) 50% or more of its gross trading receipts from that business are derived from insuring or reinsuring large risks.
- “Large risks” is defined in paragraph 11B below.
- (8) In this paragraph—
- “contract of insurance” has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - “contract of long-term insurance” has the meaning given by sub-paragraph (2) above.
- 11B (1) In paragraph 11A above “large risks” means—
- (a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;
  - (b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;
  - (c) risks falling within classes 3, 8, 9, 10, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in sub-paragraph (2) below is satisfied.
- (2) The condition referred to in sub-paragraph (1)(c) above is that, in the case of that business of the policy holder, at least two of the three following criteria

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were exceeded in the most recent financial year beginning on or after 1st January 1999 for which the information is available—

- (a) balance sheet total: 6.2 million euros;
- (b) net turnover: 12.8 million euros;
- (c) number of employees: 250.

(3) For the purposes of sub-paragraph (2) above as it applies where the policy holder is a company, within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986,—

- (a) “balance sheet total” has the meaning given by section 247(5) of that Act or Article 255(5) of that Order;
- (b) “net turnover” has the meaning given to “turnover” by section 262(1) of that Act or Article 270(1) of that Order; and
- (c) “number of employees” has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;

and for a financial year which is a company’s financial year but not in fact a year, the net turnover of the company shall be proportionately reduced.

(4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive [83/349/EEC](#)) are drawn up, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to those accounts.

(5) For the purposes of sub-paragraph (1)(c) above as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to the aggregate of the figures of the description in question for all the members of the professional association, joint venture or temporary grouping.

(6) In sub-paragraphs (1) to (5) above “business” includes a trade or profession and, for the purposes of sub-paragraph (1)(c) above, any activity of a professional association, joint venture or temporary grouping.

(7) For the purposes of this paragraph, where an amount is denominated in any accounts in a currency other than the euro, it shall be converted into its equivalent in euros using the London closing exchange rate for that currency and the euro for the last day of the period to which the accounts relate.

(8) In this paragraph—

“euro” means the single currency adopted or proposed to be adopted as its currency by a member State in accordance with the Treaty establishing the European Community;

“financial year”, in relation to any person, means the period (not exceeding 12 months) for which that person makes up accounts.”.

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## SCHEDULE 43

Section 216

### REPEALS

#### PART 1

##### EXCISE DUTIES

###### (1) GENERAL BETTING DUTY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	Section 5A. In section 5C, subsections (2) and (3) and, in subsection (4), the words “In the case of a bet which is excluded from subsection (2) by virtue of subsection (3),”.

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- 1 The repeal of section 5A has effect in accordance with section 6(6) of this Act.
- 2 The repeals in section 5C have effect in accordance with section 7(5) and (6) of this Act.

###### (2) BINGO DUTY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	In Schedule 3— <ol style="list-style-type: none"><li>(a) paragraphs 11, 12 and 15;</li><li>(b) paragraph 16(2)(b) and the word “or” preceding it.</li></ol>

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These repeals have effect in accordance with section 9 of this Act.

###### (3) AMUSEMENT MACHINE LICENCE DUTY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Betting and Gaming Duties Act 1981 (c. 63)	In section 26— <ol style="list-style-type: none"><li>(a) the definition of “coin” in subsection (2);</li><li>(b) subsection (4).</li></ol>

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These repeals have effect in accordance with section 11(3) of this Act.

###### (4) VEHICLE EXCISE DUTY

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<i>Short title and chapter</i>	<i>Extent of repeal</i>
Vehicle Excise and Registration Act 1994 (c. 22)	Section 16.

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This repeal has effect in accordance with section 16 of this Act.

## PART 2

### VALUE ADDED TAX

#### FACE-VALUE VOUCHERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Value Added Tax Act 1994 (c. 23)	In Schedule 6, paragraph 5.

This repeal has effect in accordance with paragraph 4 of Schedule 1 to this Act.

## PART 3

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

#### (1) PROVISION OF SERVICES THROUGH INTERMEDIARY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 49(2). In section 56(7), paragraph (c) and the word “and” preceding it.

These repeals have effect in accordance with section 136(4) of this Act.

#### (2) TAXABLE BENEFITS: CARS: CO<sub>2</sub> EMISSIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In the table in section 139(4), in the entry for 2004-05 and subsequent tax years, the words “and subsequent tax years”.

#### (3) APPROVED SHARE PLANS AND SCHEMES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 701(2)(c)(i), the words “or 4 (approved CSOP schemes)”. In Schedule 2, paragraphs 18(1)(a) and 47(3). In Schedule 3, in paragraph 34(5), the words following paragraph (b).

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#### (4) EMPLOYEE SECURITIES AND OPTIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 19(2), the entries relating to Chapters 8 and 9 of Part 3. In section 32(2), the entries relating to Chapters 8 and 9 of Part 3. In section 63(1), the entries relating to Chapters 8 and 9 of Part 3. Section 64(5) and (6). Chapters 8 and 9 of Part 3. In section 216— (a) in subsection (4), the entries relating to Chapters 8 and 9 of Part 3; (b) in subsection (6), the entries relating to sections 195(3) and 199(4). Section 227(4)(d), (f) and (h). Section 491. Sections 494 and 495. Section 518. Section 519(4). Section 520. Section 523. Section 524(4). Section 525. Section 528. In section 701(2)(b), the words “subject to section 700(6),”. In Part 2 of Schedule 1, the entries listed in paragraph 42(2) of Schedule 22 to this Act. In Schedule 7, paragraphs 30, 31, 47, 48, 50 to 53, 55(2)(a), 59 to 62, 66 and 67.
Finance Act 2003	In Schedule 23, in paragraph 31, the entry relating to “subject to forfeiture”.

These repeals have effect in accordance with Schedule 22 to this Act.

#### (5) DEDUCTIONS FOR EMPLOYEE BENEFIT CONTRIBUTIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2002 (c. 23)	In Schedule 29, in paragraph 113(3)(a) the words “or benefits” and “, or held by an intermediary,”.

These repeals have effect in accordance with paragraph 11(1) of Schedule 24 to this Act.

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#### (6) REFERENCES TO BRANCH OR AGENCY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 118(1), the definitions of “branch or agency” and “branch or agent”.
Income and Corporation Taxes Act 1988 (c. 1)	Section 95(1A)(e).
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 10— (a) subsection (3); (b) in subsection (4), the words “or corporation tax”.
Finance Act 1994 (c. 9)	In section 219(4A), the words “11(2)(a) or”.
Finance Act 1995 (c. 4)	In section 126— (a) in subsection (1), the words “, corporation tax”; (b) in subsection (2)(c), the words from “or fall” to “non-resident”; (c) in subsection (2), paragraph (d) and the word “and” preceding it; (d) in subsection (9), paragraph (b) and the word “and” preceding it. In section 127— (a) in subsection (5)(b), the words “or 129”; (b) in subsection (19), paragraph (b) and the word “and” preceding it. Section 129.
Finance (No. 2) Act 1997 (c. 58)	Section 24(3)(e).

These repeals have effect in relation to accounting periods beginning on or after 1st January 2003.

#### (7) CAPITAL GAINS TAX: REPORTING LIMITS AND ANNUAL EXEMPT AMOUNT

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 3(6). In Schedule 1, paragraph 2(3).

These repeals have effect in accordance with paragraph 7 of Schedule 28 to this Act.

#### (8) CHARGEABLE GAINS: EARN-OUT RIGHTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 138A— (a) in subsection (2), paragraph (c) and the word “and” preceding it;



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(b) in subsection (4), paragraph (e) and the word “and” preceding it.

These repeals have effect in accordance with section 161 of this Act.

(9) FIRST-YEAR ALLOWANCES FOR EXPENDITURE ON ECO-FRIENDLY PLANT OR MACHINERY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Capital Allowances Act 2001 (c. 2)	In section 39, the word “or” at the end of the entry relating to section 45E. In section 46(1), the word “or” at the end of the entry relating to section 45E. In Part 2 of Schedule 1, in the first column of the entry relating to the expression “long life asset expenditure”, the words “Chapter 10 of”.

These repeals have effect in accordance with section 167 of this Act.

(10) RELIEF FOR RESEARCH AND DEVELOPMENT

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2000 (c. 17)	In Schedule 20, in paragraph 5(3)— (a) the words “the following rules apply”; (b) paragraphs (a) and (b); (c) in paragraph (c), the words “in any other case,”.
Finance Act 2002 (c. 23)	In Schedule 12— (a) in paragraph 7(2), the word “and” preceding paragraph (b); (b) in paragraph 11(3), the word “and” preceding paragraph (b); (c) in paragraph 15(1), the word “or” preceding paragraph (c); (d) in paragraph 17, the word “and” preceding paragraph (c). In Schedule 13, in paragraph 5(3), the word “and” preceding paragraph (d).

These repeals have effect in accordance with section 168 of this Act.

(11) TONNAGE TAX: CAPITAL ALLOWANCES FOR LESSORS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2000 (c. 17)	In Schedule 22— (a) the word “finance” in the first sentence of paragraph 41(4), in paragraphs 89(1),

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- 90(1), 92(1), 94(1), 98(1)(a) and 99(1)(a) and in the heading to paragraph 93;
- (b) in paragraph 93(1), the words “finance” and “either”;
- (c) in paragraph 147, the entry for “finance lease (and lessor and lessee) (in Part X)”.

These repeals have effect in relation to any lease (within the meaning given by paragraph 5 of Schedule 32 to this Act) entered into on or after 19th December 2002.

## (12) INSURANCE COMPANIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	<p>Section 432A(9B).</p> <p>In section 432E(2), paragraph (a) and, in paragraph (b), the words “in any other case”.</p> <p>In section 436(3)(a), the words after “modifications”.</p> <p>In section 438B(5), paragraph (b) and the word “and” before it.</p> <p>In section 439B(3)(a), the words “and in particular with the omission of the words “and any amounts of tax which are expended on behalf of” in section 82(1)(a)”.</p> <p>In section 441—</p> <ul style="list-style-type: none"> <li>(a) in subsections (1) and (2), the words “and section 441A”;</li> <li>(b) in subsection (4)(a), the words “and in particular with the omission of the words “and any amounts of tax which are expended on behalf of” in section 82(1)(a)”.</li> </ul> <p>In section 442A(4), the words “to the company”.</p> <p>In Schedule 28AA, in paragraph 5(6)(b), the words “or 88A”.</p>
Finance Act 1989 (c. 26)	<p>In section 83—</p> <ul style="list-style-type: none"> <li>(a) in subsection (5), paragraph (b) and the word “but” before it;</li> <li>(b) subsection (6A);</li> <li>(c) in subsection (8), in the definition of “total reinsurance”, the words “before the making of the contract of reinsurance (or, in a case where there are two or more contracts of reinsurance, the last of them)”.</li> </ul> <p>In section 83AA—</p> <ul style="list-style-type: none"> <li>(a) subsections (3) to (5) and (6)(a);</li> <li>(b) in subsection (7), paragraph (b) and the word “and” before it;</li> </ul>

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	<p>(c) in subsection (10), the definitions of “the relevant accounting period” and “the transferor company”.</p> <p>Section 83AB(1)(c)(i).</p> <p>In section 83A(2), the second sentence.</p> <p>Section 84(1).</p> <p>In section 87(6)(b), the words “, disregarding section 76(1)(e) of that Act (as set out in subsection (2) above),”.</p> <p>In section 88(1), the words “and section 88A”.</p> <p>Section 88A.</p> <p>In section 89—</p> <p>(a) in subsection (1), the words “or, as the case may be, basic life assurance and general annuity business”;</p> <p>(b) in subsection (7), the definition of “the Prudential Sourcebook (Insurers)”.</p>
Finance Act 1990 (c. 29)	<p>Section 43.</p> <p>Section 45(5).</p>
Finance Act 1991 (c. 31)	<p>In Schedule 7—</p> <p>(a) in paragraph 1(a), the words “and (e)”;</p> <p>(b) paragraph 11.</p>
Taxation of Chargeable Gains Act 1992 (c. 12)	<p>In section 204(4), the words from “and in subsection (3)” onwards.</p> <p>Section 211(1A).</p> <p>In section 212(7), the words following paragraph (b).</p> <p>Section 213(3A) and (3B).</p> <p>In Schedule 7AD, in paragraph 10(1), the definitions of “insurance company”, “long-term business” and “long-term insurance fund”.</p> <p>In Schedule 7B, in paragraph 1, the words “(as defined in section 431(2) of the Taxes Act)”.</p>
Finance Act 1996 (c. 8)	<p>In Schedule 6, paragraph 26.</p> <p>In Schedule 11, in paragraph 4—</p> <p>(a) in sub-paragraph (2), the word “net” (in both places);</p> <p>(b) in sub-paragraph (16), the definition of “net income and gains”.</p>
Finance Act 1998 (c. 36)	<p>Section 137(4) and (7).</p>
Finance Act 2000 (c. 17)	<p>In Schedule 30, paragraph 18(3).</p>
Finance Act 2002 (c. 23)	<p>In Schedule 25, paragraph 46.</p>

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1 The repeals in sections 432A, 436, 439B and 441(4)(a) of the Taxes Act 1988, the repeals in sections 83(5), 83AA and 83AB of the Finance Act 1989, the repeal of section 43 of the Finance Act 1990 and the repeals in the Finance Act 2000 and

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- the Finance Act 2002 have effect for periods of account beginning on or after 1st January 2003.
- 2 The repeals in section 432E of the Taxes Act 1988 have effect in accordance with paragraph 10(5) of Schedule 33 to this Act.
- 3 The repeals in section 438B of, and in Schedule 28AA to, the Taxes Act 1988, the repeal in section 88 of the Finance Act 1989, the repeal of section 88A of that Act, the repeal in section 89(1) of that Act and the repeal in Schedule 6 to the Finance Act 1996 have effect for the financial year 2003 and subsequent financial years.
- 4 The repeal in section 442A of the Taxes Act 1988 has effect in accordance with paragraph 23(5) of Schedule 33 to this Act.
- 5 The repeal in section 83(8) of the Finance Act 1989 has effect in accordance with paragraph 2(11) of that Schedule.
- 6 The repeals in section 87 of the Finance Act 1989, paragraph 1(a) of Schedule 7 to the Finance Act 1991 and Schedule 11 to the Finance Act 1996 have effect in accordance with paragraph 8(4) of that Schedule.
- 7 The repeal of section 45(5) of the Finance Act 1990 has effect in relation to distributions on or after 9th April 2003.
- 8 The repeals in section 213 of the Taxation of Chargeable Gains Act 1992 and the Finance Act 1998 have effect in accordance with paragraph 16(6) of Schedule 33 to this Act.

(13) LIFE INSURANCE POLICIES ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 1A(2), the word “and” at the end of paragraph (b). Section 540(2). In Schedule 15, in paragraph 3(8), the words from “and” preceding paragraph (b)(iii) to the end of paragraph (c).

- 1 The repeal in section 1A of the Taxes Act 1988 has effect in accordance with section 173 of this Act.
- 2 The repeal of section 540(2) of that Act has effect in accordance with section 171 of, and Part 4 of Schedule 34 to, this Act.
- 3 The repeal in Schedule 15 to that Act has effect in accordance with section 172(6) of this Act.

(14) LOAN RELATIONSHIPS: LATE INTEREST

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1996 (c. 8)	In Schedule 9, in paragraph 2(6), in the definition of “participator”, the word “close”.

This repeal has effect in accordance with paragraph 2(4) of Schedule 37 to this Act.

*Status: Point in time view as at 18/04/2005.*

*Changes to legislation: Finance Act 2003 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(15) REPOS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 737C— (a) in subsection (3)(b), the word “gross”; (b) subsection (4).
Finance Act 1996 (c. 8)	In Schedule 9, in paragraph 15(3)(b), the words “, or a person connected with him,”.

- 1 The repeals in the Taxes Act 1988 have effect in accordance with sub-paragraph (1) of paragraph 21 of Schedule 38 to this Act.
- 2 The repeal in the Finance Act 1996 has effect in accordance with sub-paragraph (2) of that paragraph.

(16) RELEVANT DISCOUNTED SECURITIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1996 (c. 8)	In Schedule 13— (a) in paragraph 1(3)(a), the words “reduced by the amount of any relevant costs”; (b) paragraph 1(4); (c) paragraph 2; (d) paragraph 6(4) to (6); (e) paragraphs 7, 9A and 11; (f) in paragraph 14(2) and (3), the words “gilt-edged”; (g) in paragraph 14(4), the words after paragraph (c).
Finance Act 2002 (c. 23)	Section 104(3).

These repeals have effect in accordance with paragraph 6 of Schedule 39 to this Act.

(17) COURT COMMON INVESTMENT FUNDS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 469A— (a) in subsection (2), the words “(subject to subsection (3) below)”; (b) subsection (3).

These repeals have effect in relation to income arising to a common investment fund (within the meaning of section 183 of this Act) on or after 6th April 2003.

*Status: Point in time view as at 18/04/2005.*

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## PART 4

### OTHER TAXES

#### (1) INHERITANCE TAX: AUTHORISED UNIT TRUSTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Inheritance Tax Act 1984 (c. 51)	In section 178(1), in the definition of “qualifying investments”, the words “(as defined in section 468 of the Taxes Act 1988)”.
Income and Corporation Taxes Act 1988 (c. 1)	In Schedule 29, in the table in paragraph 32, the entry relating to section 178(1) of the Inheritance Tax Act 1984.

These repeals have effect in relation to transfers of value and other events occurring on or after 16th October 2002.

#### (2) CLIMATE CHANGE LEVY

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2000 (c. 17)	In Schedule 6— (a) paragraph 15(5); (b) in paragraph 41(1)(c), the words “for any period”; (c) in paragraph 100(1), the words “for an accounting period”; (d) paragraph 148(6); (e) in paragraph 149(1), the words “the percentage that is to be stated in a certificate under paragraph 148 as”.

These repeals, except the ones in paragraphs 41(1)(c) and 100(1), have effect in accordance with section 189(5) of this Act.

## PART 5

### MISCELLANEOUS

#### (1) EXCHANGE OF INFORMATION BETWEEN TAX AUTHORITIES OF MEMBER STATES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1978 (c. 42)	Section 77.
Finance Act 1980 (c. 48)	Section 17.
Finance Act 1990 (c. 29)	In section 125, subsection (5) and the words after “appoint” in subsection (6).

*Status: Point in time view as at 18/04/2005.*

*Changes to legislation: Finance Act 2003 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Finance Act 1993 (c. 34) Section 22.

(2) CONTROLLED FOREIGN COMPANIES: EXEMPT ACTIVITIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In Part 2 of Schedule 25, in paragraph 6(2A), the word “and” preceding paragraph (c).

This repeal has effect in accordance with section 200 of this Act.

(3) AUTHORISED UNIT TRUSTS: INTEREST DISTRIBUTIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 468O(2) to (4). In section 468P— (a) subsection (4); (b) in subsection (5), the words “or (4)” and the words “or, as the case may be, resident” (in both places); (c) subsections (8) and (9).
Finance Act 1996 (c. 8)	In Schedule 7, paragraph 17.
Finance Act 2002 (c. 23)	Section 96(3)(a).

These repeals have effect in relation to interest distributions made on or after 16th October 2002.

(4) NATIONAL SAVINGS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1980 (c. 48)	In section 120, subsections (4), (5) and (8) and, in subsection (9), the words “and subsection (8) above from the passing of this Act”.
Finance Act 1998 (c. 36)	In section 162, subsection (1)(a), and the word “and” before it, and subsections (2) and (5).

(5) OTHER FINANCIAL MATTERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
National Loans Act 1968 (c. 13)	Section 15(3). Section 19(3). Section 21(3). In Schedule 5A— (a) paragraph 8 (and the heading before it); (b) paragraph 13(2).

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Finance Act 1982 (c. 39)

Section 152(3).

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The repeal of section 21(3) of the National Loans Act 1968 has effect in accordance with section 212(5) of this Act.



**Status:**

Point in time view as at 18/04/2005.

**Changes to legislation:**

Finance Act 2003 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.