



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 10

AVOIDANCE: MISCELLANEOUS

134 Finance leasebacks

- (1) After section 228 of the Capital Allowances Act 2001 (c. 2) (sale and leaseback: election) insert—

“Finance leaseback: parties' income and profits

228A Application of sections 228B to 228E

- (1) Sections 228B to 228E apply where—
- (a) plant or machinery is the subject of a sale and finance leaseback for the purposes of section 221, and
 - (b) section 222 (restriction of disposal value) applies.
- (2) Sections 228B to 228D also apply, with the modifications set out in section 228F, where plant or machinery is the subject of a lease and finance leaseback (as defined in section 228F).

228B Lessee's income or profits: deductions

- (1) For the purpose of income tax or corporation tax, in calculating the lessee's income or profits for a period of account the amount deducted in respect of amounts payable under the leaseback may not exceed the permitted maximum.

Status: This is the original version (as it was originally enacted).

- (2) The permitted maximum is the total of—
- (a) finance charges shown in the accounts, and
 - (b) depreciation, taking the value of the plant or machinery at the beginning of the leaseback to be the restricted disposal value.
- (3) In relation to a period of account during which the leaseback terminates, the permitted maximum shall also include an amount calculated in accordance with subsection (4).
- (4) The calculation is—

$$\text{Current Book Value} \times \frac{\text{Original Consideration}}{\text{Original Book Value}}$$

where—

- “Current Book Value” means the net book value of the leased plant or machinery immediately before the termination,
- “Original Consideration” means the consideration payable to S for entering into the relevant transaction, and
- “Original Book Value” means the net book value of the leased plant or machinery at the beginning of the leaseback.

228C Lessee’s income or profits: termination of leaseback

- (1) Subsection (2) applies where the leaseback terminates.
- (2) For the purpose of the calculation of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period in which the termination occurs shall be increased by an amount calculated in accordance with subsection (3).
- (3) The calculation is—

$$\text{Net Consideration} \times \frac{\text{Current Book Value}}{\text{Original Book Value}}$$

where—

- “Net Consideration” means—
- (a) the consideration payable to S for entering into the relevant transaction, minus
 - (b) the restricted disposal value,
- “Current Book Value” means the net book value of the leased plant or machinery immediately before the termination, and
- “Original Book Value” means the net book value of the leased plant or machinery at the beginning of the leaseback.
- (4) In this section “relevant qualifying activity” means the qualifying activity for the purposes of which the leased plant or machinery was used immediately before the termination.
- (5) Section 228B has no effect on the treatment for the purposes of income tax or corporation tax of amounts received by way of refund on the termination of a leaseback of amounts payable under it.

- (6) In subsection (5), “amounts received by way of refund” includes any amount that would be so received in respect of the lessee’s interest under the leaseback if any amounts due to the lessor under the leaseback were disregarded.

228D Lessor’s income or profits

- (1) This section applies in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (2) Where—
- (a) an amount receivable in respect of the lessor’s interest under the leaseback falls to be taken into account in that calculation, and
 - (b) that amount is reduced by an amount due to the lessee under the leaseback,
- that reduction shall be disregarded when taking the amount receivable into account.
- (3) The amounts receivable in respect of the lessor’s interest under the leaseback that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the permitted threshold (whether or not subsection (2) applies).
- (4) The permitted threshold is the total of—
- (a) gross earnings, and
 - (b) the allowable proportion of the capital repayment.
- (5) In subsection (4)(a) “gross earnings” means the amount shown in the lessor’s accounts in respect of the lessor’s gross earnings under the leaseback.
- (6) In subsection (4)(b) “allowable proportion of the capital repayment” means the amount obtained by this calculation—

$$\text{Restricted Disposal Value} \times \frac{\text{Investment Reduction For Period}}{\text{Net Investment}}$$

where—

“Investment Reduction For Period” means the amount shown in the lessor’s accounts in respect of the reduction in net investment in the leaseback, and

“Net Investment” means the amount shown in the lessor’s accounts as the lessor’s net investment in the leaseback at the beginning of its term.

- (7) This section does not apply to a leaseback if the lessee is a lessee by way of an assignment made before 17 March 2004.

228E Lessor’s income or profits: termination of leaseback

- (1) Subsection (2) applies where—
- (a) the leaseback terminates,
 - (b) the lessor disposes of the plant or machinery, and
 - (c) the amount of the disposal value required to be brought into account because of that disposal is limited by section 62.

Status: This is the original version (as it was originally enacted).

- (2) For the purpose of income tax or corporation tax, in calculating the lessor's income or profits for the period in which the termination occurs the amount deducted in respect of any amount refunded to the lessee may not exceed the amount to which the disposal value is limited by section 62.

228F Lease and finance leaseback

- (1) Sections 228B, 228C and 228D apply, with the following modifications, where plant or machinery is the subject of a lease and finance leaseback.
- (2) In determining the permitted maximum for the purposes of section 228B, depreciation shall be disregarded.
- (3) In the calculation under section 228C(3), the amount of the consideration referred to in subsection (6)(b) of this section shall be substituted for the Net Consideration.
- (4) In determining the permitted threshold for the purposes of section 228D, the allowable proportion of the capital repayment shall be disregarded.
- (5) Plant or machinery is the subject of a lease and finance leaseback if—
- (a) a person (“S”) leases the plant or machinery to another (“B”),
 - (b) after the date of that transaction, the use of the plant or machinery falls within sub-paragraph (i), (ii) or (iii) of section 221(1)(b), and
 - (c) it is directly as a consequence of having been leased under a finance lease that the plant or machinery is available to be so used after that date.
- (6) For the purposes of subsection (5), S leases the plant or machinery to B only if—
- (a) S grants B rights over the plant or machinery,
 - (b) consideration is given for that grant, and
 - (c) S is not required to bring all of that consideration into account under this Part.
- (7) Plant or machinery is not the subject of a lease and finance leaseback for the purposes of this section in any case where the condition in subsection (6)(c) is met only because of an election under section 199 made before 18 May 2004.
- (8) In the application of sections 228B to 228D in relation to a lease and finance leaseback—
- (a) references to the lessee are references to the person referred to as S in this section, and
 - (b) references to the lessor are references to the person referred to as B in this section or, where appropriate, to an assignee of that person.

228G Leaseback not accounted for as finance lease in accounts of lessee

- (1) Sections 228B and 228C are subject to this section in their application in relation to a leaseback that is not accounted for as a finance lease in the accounts of the lessee.

- (2) Subsection (3) applies where the leaseback is accounted for as a finance lease in the accounts of a person connected with the lessee; and in that subsection “relevant calculation” means the calculation of—
- (a) the permitted maximum for the purposes of section 228B, or
 - (b) the amount by which the income or profits of the lessee are to be increased in accordance with section 228C.
- (3) Where an amount that falls to be used for the purposes of a relevant calculation—
- (a) cannot be ascertained by reference to the lessee’s accounts because the leaseback is not accounted for as a finance lease in those accounts, but
 - (b) can be ascertained by reference to the connected person’s accounts for one or more periods,
- that amount as ascertained by reference to the connected person’s accounts shall be used for the purposes of the relevant calculation.
- (4) Subsections (5) and (6) apply in a case where the leaseback is not accounted for as a finance lease in the accounts of a person connected with the lessee.
- (5) Sections 228B and 228C do not apply in relation to the leaseback.
- (6) If the term of the leaseback begins on or after 18 May 2004 then, for the purposes of income tax or corporation tax, the income or profits of the lessee from the relevant qualifying activity for the period of account during which the term of the leaseback begins shall be increased by—
- (a) the net consideration for the purposes of section 228C(3) (in the case of a sale and finance leaseback), or
 - (b) the consideration referred to in section 228F(6)(b) (in the case of a lease and finance leaseback).
- (7) For the purposes of this section the leaseback is accounted for as a finance lease in a person’s accounts if—
- (a) the leaseback falls, under generally accepted accounting practice, to be treated in that person’s accounts as a finance lease or loan, or
 - (b) in a case where the leaseback is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.

228H Sections 228A to 228G: supplementary

- (1) In sections 228A to 228G—
- “lessee” does not include a person who is lessee by way of an assignment;
- the “net book value” of leased plant or machinery means the book value of the plant or machinery having regard to any relevant entry in the lessee’s accounts, but—
- (a) also having regard to depreciation up to the time in question, and
 - (b) disregarding any revaluation gains or losses and any impairments;

Status: This is the original version (as it was originally enacted).

“restricted disposal value” means the disposal value under section 222;

“termination” in relation to a leaseback includes (except in section 228E)—

- (a) the assignment of the lessee’s interest,
 - (b) the making of any arrangements (apart from an assignment of the lessee’s interest) under which a person other than the lessee becomes liable to make some or all payments under the leaseback, and
 - (c) a variation as a result of which the leaseback ceases to be a finance lease.
- (2) In a case where accounts drawn up are not correct accounts, or no accounts are drawn up—
- (a) the provisions of sections 228A to 228G apply as if correct accounts had been drawn up, and
 - (b) amounts referred to in any of those sections as shown in accounts are those that would have been shown in correct accounts.
- (3) In a case where accounts are drawn up in reliance upon amounts derived from an earlier period of account for which correct accounts were not drawn up, or no accounts were drawn up, amounts referred to in sections 228A to 228G as shown in the accounts for the later period are those that would have been shown if correct accounts had been drawn up for the earlier period.
- (4) In subsections (2) and (3) “correct accounts” means accounts drawn up in accordance with generally accepted accounting practice.

228J Plant or machinery subject to further operating lease

- (1) This section applies where—
- (a) plant or machinery is the subject of—
 - (i) a sale and finance leaseback, or
 - (ii) a lease and finance leaseback, and
 - (b) some or all of the plant or machinery becomes, while the subject of the leaseback, also the subject of a lease in relation to which the following conditions are met—
 - (i) the term of the lease begins on or after 18 May 2004;
 - (ii) S, or a person connected with S, is the lessee under the lease;
 - (iii) the lease is not accounted for as a finance lease in the accounts of the lessee.
- (2) For the purpose of income tax or corporation tax, in calculating the lessee’s income or profits for a period of account the amount deducted in respect of amounts payable under the operating lease shall not exceed the relevant amount.
- (3) Subsections (4) and (5) apply in relation to the calculation of the lessor’s income or profits for a period of account for the purpose of income tax or corporation tax.
- (4) Where—

- (a) an amount receivable in respect of the lessor's interest under the operating lease falls to be taken into account in that calculation, and
 - (b) that amount is reduced by an amount due to the lessee under the operating lease,
- that reduction shall be disregarded when taking the amount receivable into account.
- (5) The amounts receivable in respect of the lessor's interest under the operating lease that fall to be taken into account in that calculation may be disregarded to the extent that they exceed the relevant amount (whether or not subsection (4) applies).
- (6) Where only some of the plant or machinery is the subject of the operating lease, subsections (2) to (5) shall apply subject to such apportionments as may be just and reasonable.
- (7) For the purposes of this section a lease is accounted for as a finance lease in a person's accounts if—
- (a) the lease falls, under generally accepted accounting practice, to be treated in that person's accounts as a finance lease or loan, or
 - (b) in a case where the lease is comprised in other arrangements, those arrangements fall, under generally accepted accounting practice, to be so treated.
- (8) In this section—
- “lease and finance leaseback” has the meaning given in section 228F;
 - “lessee” means the lessee under the operating lease;
 - “lessor” means the lessor under the operating lease;
 - “operating lease” means the lease referred to in subsection (1)(b);
 - “relevant amount” means an amount equal to the permitted maximum under section 228B as it applies in relation to the leaseback.”.
- (2) In sections 228A to 228J of the Capital Allowances Act 2001 (c. 2) (as inserted by subsection (1) above), a reference to a provision of that Act includes a reference to an equivalent provision of the Capital Allowances Act 1990 (c. 1) (with any necessary modification).
- (3) This section applies to income tax and corporation tax chargeable in relation to periods that end on or after 17 March 2004.
- (4) Schedule 23 contains transitional provision.

135 Rent factoring of leases of plant or machinery

- (1) After section 785 of the Taxes Act 1988 insert—

“785A Rent factoring of leases of plant or machinery

- (1) This section applies in any case where the following conditions are satisfied—
- (a) a person (call him “P”) is entitled to receive rentals under a lease of plant or machinery,

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- (b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,
 - (c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,
 - (d) apart from this section, some or all of the amount or value of the consideration for the transfer (“the relevant portion of the consideration”) would fall to be brought into account neither—
 - (i) as income, nor
 - (ii) as a capital allowances disposal receipt,
 for the purpose of calculating P’s tax liability.
- (2) In any such case, the relevant portion of the consideration—
- (a) shall be treated for tax purposes as income of P,
 - (b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and
 - (c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.
- (3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P’s tax liability.
- (4) Where P is a partnership, any reference in this section to calculating P’s tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.
- (5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.
- (6) In this section—
- “capital allowances disposal receipt” means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);
 - “lease” includes an underlease, sublease, tenancy or licence and an agreement for any of those things;
 - “tax liability” means liability to income tax or corporation tax.”.
- (2) The amendment made by this section has effect where arrangements for the transfer from one person to another of a right to receive rentals are entered into on or after 2nd July 2004.

136 **Manufactured dividends**

Schedule 24 to this Act (which makes provision in relation to cases where payments are or have been made, or treated as made, which are representative of dividends on shares of companies resident in the United Kingdom) has effect.

137 Manufactured payments under arrangements having an unallowable purpose

- (1) In Schedule 23A to the Taxes Act 1988 (manufactured dividends and interest) after paragraph 7 (irregular manufactured payments) insert—

“Manufactured payments under arrangements having an unallowable purpose

- 7A (1) This paragraph applies in any case where—
- (a) a manufactured payment falls to be made by a company in an accounting period in pursuance of any arrangements (see sub-paragraphs (9) and (10) for definitions), and
 - (b) the arrangements have an unallowable purpose at any time (see sub-paragraphs (3) to (5)).

But this is subject to sub-paragraph (8) below (cases where tax relief is denied apart from this paragraph).

- (2) The company is not entitled, by virtue of anything in this Schedule or any provision of regulations under it, or otherwise, to any relevant tax relief (see sub-paragraph (10)), to the extent that the relief is in respect of, or referable to, the whole or any part of so much of the manufactured payment as, on a just and reasonable apportionment, is attributable to the unallowable purpose.
- (3) Arrangements have an unallowable purpose at any time if at that time the purposes for which the company is a party to—
 - (a) the arrangements,
 - (b) any related transaction (see sub-paragraphs (6) and (7)), or
 - (c) any transaction in pursuance of the arrangements,include a purpose (“the unallowable purpose”) which is not among the business or other commercial purposes of the company.
- (4) The business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (5) Where one of the purposes for which a company is at any time a party to—
 - (a) any arrangements,
 - (b) any related transaction in the case of any arrangements, or
 - (c) any transaction in pursuance of any arrangements,is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.
- (6) One or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—
 - (a) the likely effect of the transactions, and
 - (b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.

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- (7) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—
- (a) are not between the same parties, or
 - (b) are not between the parties to the arrangements.

- (8) This paragraph does not apply if, as a result of any of the following provisions—

- (a) section 75(4)(b) (expenses of management of companies with investment business: unallowable purposes),
- (b) section 76(4)(d) (expenses of insurance companies: unallowable purposes),
- (c) paragraph 13 of Schedule 9 to the Finance Act 1996 (loan relationships with unallowable purposes),

the company in question is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the manufactured payment.

The references to sections 75 and 76 are references to those provisions as they have effect in relation to accounting periods beginning on or after 1st April 2004.

- (9) Any reference in this paragraph to a manufactured payment falling to be made by a company includes a reference to a manufactured payment which is deemed by or under any provision of the Tax Acts to be made by a company (and references to a transaction, or to a company being party to a transaction, are to be construed accordingly).

- (10) In this paragraph—

“arrangements” includes schemes, arrangements and understandings of any kind, whether or not legally enforceable, and shall be taken to include any related transactions;

“manufactured payment” means any of the following—

- (a) any manufactured dividend;
- (b) any manufactured interest;
- (c) any manufactured overseas dividend;

“related transaction” shall be construed in accordance with sub-paragraphs (6) and (7) above;

“relevant tax relief” means any of the following—

- (a) any deduction in computing profits or gains for the purposes of corporation tax;
- (b) any deduction against total profits;
- (c) the bringing into account of any debit for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);
- (d) the surrender of an amount by way of group relief;

“tax advantage” has the same meaning as in Chapter 1 of Part 17 (tax avoidance);

“tax avoidance purpose” means any purpose that consists in securing a tax advantage (whether for the company in question or any other person);

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and sub-paragraphs (3) to (7) above have effect for the purposes of this paragraph.”.

- (2) In section 95 of the Taxes Act 1988 (taxation of dealers in respect of distributions etc) before subsection (2) insert—

“(1C) The application of subsection (1) above in relation to a payment made by a dealer is subject to paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose).”.

This amendment has effect on and after the commencement date.

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

- (a) in the case of new arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the commencement date, and
- (b) in the case of old arrangements, in relation to manufactured payments made, or deemed by or under any provision of the Tax Acts to be made, on or after the day on which this Act is passed.

- (4) But where—

- (a) as a result of old arrangements, any income arose or accrued, or any gain accrued, to a company before the commencement date,
- (b) the income or gain is or was within the charge to corporation tax, and
- (c) a manufactured payment in pursuance of the arrangements is made, or deemed by or under any provision of the Tax Acts to be made, by the company on or after the day on which this Act is passed,

the amendment made by subsection (1) does not have effect in relation to so much of the manufactured payment as (on such just and reasonable apportionments as may be necessary) represents the income or gain.

- (5) For the purposes of subsection (4)—

- (a) “income” includes any income deemed by or under any provision of the Tax Acts to arise or accrue,
- (b) “gain” includes any gain deemed by or under any provision of the Tax Acts to accrue.

- (6) In this section—

“the commencement date” means 2nd July 2004;

“new arrangements” means any arrangements other than old arrangements;

“old arrangements” means arrangements which were, or some part of which was, entered into or acted upon before the commencement date.

- (7) For the purposes of subsection (6), the cases where arrangements were, or some part of any arrangements was, acted upon before the commencement date are those cases where a transaction in pursuance of the arrangements, or of any part of the arrangements, has taken place before that date.

138 Gilt strips

- (1) Schedule 13 to the Finance Act 1996 (c. 8) (discounted securities: income tax provisions) is amended as follows.

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(2) In paragraph 8 (transfers between connected persons deemed to be at market value) after sub-paragraph (3) insert—

“(4) Where the relevant discounted security is a strip, its market value at any time shall be determined for the purposes of this paragraph in accordance with paragraph 14E below.”.

(3) In paragraph 9 (other transactions deemed to be at market value) after sub-paragraph (2) insert—

“(3) Where the relevant discounted security is a strip, its market value at any time shall be determined for the purposes of this paragraph in accordance with paragraph 14E below.”.

(4) In paragraph 14 (strips of government securities) for sub-paragraph (6) (regulations as to manner of determining market value) substitute—

“(6) Paragraph 14E below makes provision as to the manner of determining for the purposes of this paragraph the market value at any time of—

- (a) any strip, or
- (b) any security exchanged for strips of that security.”.

(5) After paragraph 14A (strips of government securities: losses) insert—

“Strips of government securities: manipulation of acquisition, sale or redemption price

14B (1) This paragraph applies in any case where, as a result of any scheme or arrangement,—

- (a) the amount paid by a person in respect of his acquisition of a strip is or was more than the market value of the strip at the time of that acquisition,
- (b) the amount payable to a person on a transfer of a strip by him is less than the market value of the strip at the time of the transfer, or
- (c) on redemption of a strip, the amount payable to a person, as the person holding the strip, is less than the market value of the strip on the day before redemption,

and the obtaining of a tax advantage by any person is the main benefit, or one of the main benefits, that might have been expected to accrue from, or from any provision of, the scheme or arrangement.

- (2) In a case falling within sub-paragraph (1)(a) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above on a transfer of the strip by him as if he had paid in respect of his acquisition of the strip an amount equal to the market value of the strip at the time of that acquisition.
- (3) In a case falling within sub-paragraph (1)(b) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above as if the amount payable to him on the transfer were an amount equal to the market value of the strip at the time of the transfer.
- (4) In a case falling within sub-paragraph (1)(c) above, the person shall be treated for the purposes of paragraphs 1(2)(b) and 14A(3)(b) above as if

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the amount payable to him on redemption were an amount equal to the market value of the strip on the day before redemption.

- (5) For the purposes of this paragraph, no account shall be taken of any costs incurred in connection with any transfer or redemption of a strip or its acquisition.
- (6) Paragraph 14E below makes provision as to the manner of determining for the purposes of this paragraph the market value at any time of a strip.
- (7) In this paragraph “tax advantage” has the meaning given by section 709(1) of the Taxes Act 1988.”.

(6) After paragraph 14B insert—

“Strips: manipulation of price: associated payment giving rise to capital gains tax loss

14C (1) Where—

- (a) as a result of any scheme or arrangement which has an unallowable purpose, the circumstances are, or might have been, as mentioned in paragraph (a), (b) or (c) of paragraph 14B(1) above,
- (b) under the scheme or arrangement, a payment falls to be made otherwise than in respect of the acquisition or disposal of a strip, and
- (c) as a result of that payment or the circumstances in which it is made, a loss accrues to any person for the purposes of capital gains tax,

the loss shall not be an allowable loss for the purposes of capital gains tax.

- (2) For the purposes of this paragraph a scheme or arrangement has an unallowable purpose if the main benefit, or one of the main benefits, that might have been expected to result from, or from any provision of, the scheme or arrangement (apart from paragraph 14B above and this paragraph) is—
 - (a) the obtaining of a tax advantage by any person, or
 - (b) the accrual to any person of an allowable loss for the purposes of capital gains tax.
- (3) In this paragraph “tax advantage” has the meaning given by section 709(1) of the Taxes Act 1988.”.

(7) After paragraph 14C insert—

“Restriction of profits and losses on strips by reference to original acquisition cost

14D (1) This paragraph has effect for the purpose of excluding from charge or, as the case may be, relief under this Schedule so much of—

- (a) any profit realised by a person from the discount on a strip, or
- (b) any loss sustained by a person from the discount on a strip,

as is referable to a relevant amount being less than the person’s original acquisition cost for the strip.

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For this purpose a relevant amount is any amount that falls to be brought into account as paid in respect of the acquisition of the strip or as payable on the transfer or redemption of the strip.

- (2) Where, on the transfer or redemption of a strip,—
- (a) a person realises a profit (apart from this paragraph) from the discount on the strip and amount C exceeds amount A, or
 - (b) a person sustains a loss (apart from this paragraph) from the discount on the strip and amount C exceeds amount P,

then, for the purposes of the other provisions of this Schedule, the profit or loss shall be restricted or eliminated in accordance with the following provisions of this paragraph.

- (3) For the purposes of this paragraph—
- “amount A” is the amount that falls to be brought into account as the amount paid by the person in respect of his acquisition of the strip in determining the amount of the profit or loss apart from this paragraph;
 - “amount C” is the person’s original acquisition cost for the strip (see sub-paragraph (6) below);
 - “amount L” is the amount (apart from this paragraph) of the loss mentioned in sub-paragraph (2)(b) above;
 - “amount P” is the amount that falls to be brought into account as the amount payable on the transfer or redemption of the strip in determining the amount of the profit or loss apart from this paragraph.
- (4) In a case falling within sub-paragraph (2)(a) above (person realising a profit)—
- (a) if amount P exceeds amount C, the amount of the profit is restricted to the amount of that excess;
 - (b) if amount P does not exceed amount C, the person shall be treated as not realising a profit from the discount on the strip.
- (5) In a case falling within sub-paragraph (2)(b) above (person sustaining a loss)—
- (a) if amount A exceeds amount C, the amount of the loss is restricted to so much of amount L as remains after deducting from it the amount by which amount C exceeds amount P;
 - (b) if amount A does not exceed amount C, the person shall be treated for the purposes of this Schedule as not sustaining a loss from the discount on the strip.
- (6) For the purposes of this paragraph a person’s “original acquisition cost” in the case of a strip is the amount which—
- (a) disregarding any deemed transfers or re-acquisitions under paragraph 14(4) above (other than the transfer mentioned in sub-paragraph (2) above, if it is such a transfer), but
 - (b) otherwise giving effect, so far as applicable, to paragraph 8, 9, 14 or 14B above (each of which treats a person acquiring a security as having paid an amount equal to its market value determined in accordance with paragraph 14E below),

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would fall to be taken into account as the amount paid by the person in respect of his acquisition of the strip in determining whether a profit is realised, or a loss is sustained, from the discount on the strip.

(7) In this paragraph any reference to a transfer includes a reference to a deemed transfer under paragraph 14(4) above.

(8) In this paragraph any reference to sustaining a loss from the discount on a strip shall be construed in accordance with paragraph 14A above.”.

(8) After paragraph 14D insert—

“Market value of strips etc for the purposes of paragraphs 8, 9, 14 and 14B

14E (1) This paragraph makes provision as to the manner of determining—

- (a) for the purposes of paragraph 8, 9, 14 or 14B above, the market value at any time of a strip, and
- (b) for the purposes of paragraph 14(2) above, the market value at any time of a security exchanged for strips of that security.

(2) The market value on any day of a strip or security quoted in the Daily List shall be—

- (a) the lower of the two figures shown in the Daily List for the strip or security for that day,

plus

- (b) one-quarter of the difference between those two figures,

unless the Stock Exchange is closed on that day.

(3) If the Stock Exchange is closed on any day, the market value on that day of any such strip or security shall be taken to be its market value on the latest previous day or earliest subsequent day on which the Stock Exchange is open, whichever affords the lower value.

(4) In the case of a strip or security which—

- (a) is a security, or a strip of a security, issued by or on behalf of the government of a territory outside the United Kingdom, and
- (b) is not quoted in the Daily List, but
- (c) is quoted in a foreign stock exchange list,

the market value shall be determined in accordance with sub-paragraph (5) below.

(5) In any such case, sub-paragraphs (2) and (3) above shall have effect for determining the market value of the strip or security, but for this purpose those provisions shall have effect—

- (a) with the substitution for references to the Daily List of references to the foreign stock exchange list,
- (b) with the substitution for references to the Stock Exchange of references to the foreign stock exchange to which that list relates, and
- (c) with any modifications which are necessary by reason of the form of quotation adopted in the foreign stock exchange list (including,

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in a case where a single figure only is published, taking that figure as the market value).

- (6) Where a strip or security is quoted in more than one foreign stock exchange list—
- (a) any such list published for a foreign stock exchange in the territory of the issuing government shall be used for the purposes of sub-paragraph (5) above in preference to any other such list, and
 - (b) any such list published for a foreign stock exchange which is regarded as the major exchange in that territory for strips or securities shall be used for those purposes in preference to any other such list.
- (7) In this paragraph—
- “the Daily List” means the The Stock Exchange Daily Official List;
- “foreign stock exchange” means a recognised stock exchange in a territory outside the United Kingdom on which strips are traded;
- “foreign stock exchange list” means any publication which performs in the case of a foreign stock exchange a function equivalent, or broadly similar, to that performed by the Daily List in relation to strips;
- “issuing government” means the government which issued the security mentioned in sub-paragraph (4)(a) above.
- (8) The Treasury may by regulations make provision as to the manner of determining, for any of the purposes mentioned in sub-paragraph (1) above, the market value at any time of—
- (a) any strip, or
 - (b) any security exchanged for strips of that security.
- (9) Regulations under sub-paragraph (8) above may—
- (a) amend or modify any provision of this paragraph other than that sub-paragraph, sub-paragraph (1) above or this sub-paragraph;
 - (b) make different provision for different cases; and
 - (c) contain such incidental, supplemental, consequential and transitional provision and savings as the Treasury may think fit.”.

(9) In paragraph 15(1) (general interpretation) in the definition of “market value” (which applies except in paragraph 14) for “(except in paragraph 14 above)” substitute “(except as provided in relation to paragraph 8, 9, 14 or 14B above by paragraph 14E above)”.

(10) The amendments made by—

 - (a) subsections (2) and (3), and
 - (b) subsections (8) and (9), so far as relating to paragraph 8 or 9 of Schedule 13 to the Finance Act 1996 (c. 8),

have effect in relation to any transfer of a strip on or after 17th March 2004.

(11) The amendments made by—

 - (a) subsection (4), and

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- (b) subsections (8) and (9), so far as relating to paragraph 14 of Schedule 13 to the Finance Act 1996,
have effect in relation to exchanges on or after 17th March 2004 and deemed transfers and re-acquisitions under sub-paragraph (4) of that paragraph on or after that date.
- (12) The amendments made by—
(a) subsection (5), and
(b) subsections (8) and (9), so far as relating to paragraph 14B of Schedule 13 to the Finance Act 1996,
have effect in relation to any strip held on 15th January 2004 or acquired after that date (and see subsection (15)).
- (13) The amendment made by subsection (6) has effect in relation to losses accruing on or after 17th March 2004.
- (14) The amendment made by subsection (7) has effect in relation to any strip acquired on or after 15th January 2004 (and see subsection (15)).
- (15) In determining when a strip is acquired for the purposes of subsection (12) or (14), any deemed transfers or re-acquisitions under paragraph 14(4) of Schedule 13 to the Finance Act 1996 shall be disregarded.

139 Gifts of shares, securities and real property to charities etc

- (1) Section 587B of the Taxes Act 1988 (gifts of shares, securities and real property to charities etc) is amended as follows.
- (2) For subsection (4) (the relevant amount) substitute—
“(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—
(a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);
(b) where the disposal is at an undervalue, the amount by which—
(i) the value described in paragraph (a) above, exceeds
(ii) the amount or value of the consideration for the disposal,
or, if there is no such excess, nil.”.
- (3) After subsection (8) insert—
“(8A) The value of the net benefit to the charity is—
(a) the market value of the qualifying investment, unless subsection (8B) below applies;
(b) where that subsection applies, that market value reduced by the aggregate amount of the related liabilities of the charity (see subsections (8E) to (8G)).
(8B) This subsection applies in any case where—
(a) the charity is, or becomes, subject to an obligation to any person (whether or not the person making the disposal or a person connected with him), and
(b) one or more of the conditions in subsection (8C) below is satisfied.

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- (8C) For the purposes of subsection (8B) above—
- (a) condition 1 is that, taking into account all the circumstances (including, in particular, the difference in the value of the net benefit to the charity if subsection (8B) applies and if it does not), it is reasonable to suppose that the disposal of the qualifying investment to the charity would not have been made in the absence of the obligation;
 - (b) condition 2 is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a related investment (see subsection (8D)).

- (8D) In subsection (8C) above “related investment” means any of the following—
- (a) any asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount);
 - (b) any asset derived from, or representing, the qualifying investment whether in whole or in part and whether directly or indirectly;
 - (c) any asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.

- (8E) For the purposes of this section, the liabilities which are related liabilities in the case of any qualifying investment are the liabilities of the charity under each of the obligations that fall within subsection (8B) above (as read with subsection (8C) above) in relation to that investment.

- (8F) Where an obligation is contingent and the contingency occurs, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, under the obligation is the amount or value of the liability actually incurred in consequence of the occurrence of the contingency.

- (8G) Where an obligation is contingent and the contingency does not occur, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, is nil.”.

- (4) In subsection (9) (definitions) insert each of the following definitions at the appropriate place—

““obligation” includes a reference to each of the following—

- (a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;
- (b) a series of obligations (whether or not between the same parties);”;

““related liabilities” shall be construed in accordance with subsection (8E) above;”;

““value of the net benefit to the charity” shall be construed in accordance with subsection (8A) above;”.

- (5) After subsection (10) (market value) insert—

“(10A) Section 839 (connected persons) applies for the purposes of this section.”.

- (6) The amendments made by this section have effect in relation to any disposal to a charity on or after 2nd July 2004, except where the disposal is in performance of a contract entered into before that date and not varied on or after that date.

140 Life policies etc.: restriction of corresponding deficiency relief

- (1) In Chapter 2 of Part 13 of the Taxes Act 1988 (life policies, life annuities and capital redemption policies), section 549 (certain deficiencies allowable as deductions) is amended as follows.
- (2) In subsection (1) for the words from “the total amount” to the end substitute “the allowable amount”.
- (3) After that subsection insert—
- “(1A) The allowable amount is the total of any amounts that—
- (a) were treated as a gain by virtue of section 541(1)(d), 543(1)(c) or 546C(7) on the previous happenings of chargeable events, and
 - (b) formed part of that individual’s total income for a previous year of assessment.”.
- (4) This section applies in relation to a deficiency occurring in connection with a policy of life insurance if—
- (a) it is issued in respect of an insurance made on or after 3rd March 2004, or
 - (b) it is issued in respect of an insurance made before that date but on or after that date—
 - (i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the policy being regarded for this purpose as a variation),
 - (ii) there is an assignment (whether or not for money or money’s worth) of the rights, or a share of the rights, conferred by the policy, or
 - (iii) all or part of the rights conferred by the policy become held as security for a debt.
- (5) This section applies in relation to a deficiency occurring in connection with a contract for a life annuity if—
- (a) it is entered into on or after 3rd March 2004, or
 - (b) it is entered into before that date but on or after that date—
 - (i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the contract being regarded for this purpose as a variation),
 - (ii) there is an assignment (whether or not for money or money’s worth) of the rights, or a share of the rights, conferred by the contract, or
 - (iii) all or part of the rights conferred by the contract become held as security for a debt.
- (6) This section applies in relation to a deficiency occurring in connection with a capital redemption policy if—
- (a) it is effected on or after 3rd March 2004, or
 - (b) it is effected before that date but on or after that date—
 - (i) it is varied so as to increase the benefits secured (any exercise of rights conferred by the policy being regarded for this purpose as a variation),

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- (ii) there is an assignment (whether or not for money or money's worth) of the rights, or a share of the rights, conferred by the policy, or
- (iii) all or part of the rights conferred by the policy become held as security for a debt.