Finance (No. 2) Act 2005

2005 CHAPTER 22

PART 1

VALUE ADDED TAX

1 Goods subject to warehousing regime: place of acquisition or supply

In section 18 of VATA 1994 (goods subject to warehousing regime: place and time of acquisition or supply), after subsection (1) insert—

"(1A) The Commissioners may by regulations prescribe circumstances in which subsection (1) above shall not apply."

2 Cars: determination of consideration for fuel supplied for private use

(1) Section 57 of VATA 1994 (determination of consideration for fuel supplied for private use) is amended as follows.

(2) After subsection (4) (power of Treasury by order to substitute a different Table for Table A) insert—

"(4A) The power conferred by subsection (4) above includes power to substitute for Table A a Table (whether or not of the same or a similar configuration) where any description of vehicle may be by reference to any one or more of the following—

(a) the CO_2 emissions figure for the vehicle;

(b) the type or types of fuel or power by which the vehicle is, or is capable of being, propelled;

(c) the cylinder capacity of the engine in cubic centimetres.

(4B) The provision that may be included in any such Table includes provision for the purpose of enabling the consideration to be determined by reference to the Table—

(a) by applying a percentage specified in the Table to a monetary amount specified in the Table, or

(b) by any other method.

(4C) Table A, as from time to time substituted by virtue of subsection (4A) above, may be implemented or supplemented by either or both of the following—

(a) provision in Rules inserted before the Table, prescribing how the consideration is to be determined by reference to the Table;

(b) provision in Notes inserted after the Table in accordance with the following provisions of this section.

(4D) The provision that may be made in Notes includes provision—

(a) with respect to the interpretation or application of the Table or any Rules or Notes;

(b) with respect to the figure that is to be regarded as the CO_2 emissions figure for any vehicle or any particular description of vehicle;

(c) for treating a vehicle as a vehicle with a particular CO_2 emissions figure;

(d) for treating a vehicle with a CO_2 emissions figure as a vehicle with a different CO_2 emissions figure;

(e) for or in connection with determining the consideration appropriate to vehicles of any particular description (in particular, vehicles falling within any one or more of the descriptions in subsection (4E) below).

(4E) The descriptions are—

(a) vehicles capable of being propelled by any particular type or types of fuel or power;

(b) vehicles first registered before 1st January 1998;

(c) vehicles first registered on or after that date which satisfy the condition in subsection (4F) below (registration without a CO_2 emissions figure).

(4F) The condition is that the vehicle is not one which, when it is first registered, is so registered on the basis of—

(a) an EC certificate of conformity that specifies a CO_2 emissions figure, or

(b) a UK approval certificate that specifies such a figure.

(4G) Any Rules or Notes do not form part of the Table, but the Treasury, by order taking effect from the beginning of any prescribed accounting period beginning after the order is made, may—

(a) insert Rules or Notes,

(b) vary or remove Rules or Notes, or

(c) substitute any or all Rules or Notes.".

(3) In subsection (5) (fuel supplied for 2 or more vehicles)—

(a) in paragraph (a), for "Table A above, that Table" substitute "Table A above or any Notes, that Table and those Notes";

(b) in paragraph (b), after "that Table", in both places, insert "or those Notes".

(4) In subsection (7) (cubic capacity of internal combustion engine with reciprocating pistons) after "for the purposes of Table A above" insert "and any Notes".

(5) In subsection (8) (cubic capacity in other cases) after "for the purposes of Table A above" insert "and any Notes".

(6) After subsection (8) insert—

"(9) In this section—

"CO_2 emissions figure" means a CO_2 emissions figure expressed in grams per kilometre driven;

"EC certificate of conformity" means a certificate of conformity issued by a manufacturer under any provision of the law of a Member State implementing Article 6 of Council Directive 70/156/EEC, as from time to time amended;

"Notes" means Notes inserted by virtue of subsection (4C)(b) above;

"Rules" means Rules inserted by virtue of subsection (4C)(a) above;

"UK approval certificate" means a certificate issued under—

(a) section 58(1) or (4) of the Road Traffic Act 1988, or

(b) Article 31A(4) or (5) of the Road Traffic (Northern Ireland) Order 1981.

(10) If the Treasury consider it necessary or expedient to do so in consequence of—

(a) the form or content of any Table substituted or to be substituted by virtue of subsection (4A) above, or

(b) any provision included or to be included in Rules or Notes,

they may by order amend, repeal or replace so much of this section as for the time being follows subsection (1) and precedes Table A and relates to the use of that Table.".

(7) The amendments made by this section come into force on such day or days as the Treasury may appoint by order made by statutory instrument; and different days may be so appointed for different purposes.

3 Credit for, or repayment of, overstated or overpaid VAT

(1) Section 80 of VATA 1994 (recovery of overpaid VAT) is amended as follows.

(2) For subsection (1) (liability of Commissioners to repay overpaid VAT) substitute—

"(1) Where a person—

(a) has accounted to the Commissioners for VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, has brought into account as output tax an amount that was not output tax due,

the Commissioners shall be liable to credit the person with that amount.

(1A) Where the Commissioners—

(a) have assessed a person to VAT for a prescribed accounting period (whenever ended), and

(b) in doing so, have brought into account as output tax an amount that was not output tax due,

they shall be liable to credit the person with that amount.

(1B) Where a person has for a prescribed accounting period (whenever ended) paid to the Commissioners an amount by way of VAT that was not VAT due to them, otherwise than as a result of—

(a) an amount that was not output tax due being brought into account as output tax, or

(b) an amount of input tax allowable under section 26 not being brought into account,

the Commissioners shall be liable to repay to that person the amount so paid.".

(3) In subsection (2) (Commissioners only liable to repay an amount on a claim) before "repay" insert "credit or".

(4) After subsection (2) insert—

"(2A) Where—

(a) as a result of a claim under this section by virtue of subsection (1) or (1A) above an amount falls to be credited to a person, and

(b) after setting any sums against it under or by virtue of this Act, some or all of that amount remains to his credit,

the Commissioners shall be liable to pay (or repay) to him so much of that amount as so remains.".

(5) In subsection (3) (defence of unjust enrichment) for "under this section, that repayment" substitute "under this section by virtue of subsection (1) or (1A) above, that the crediting".

(6) For subsection (3A) (cost of payment borne for practical purposes by third party) substitute—

"(3A) Subsection (3B) below applies for the purposes of subsection (3) above where—

(a) an amount would (apart from subsection (3) above) fall to be credited under subsection (1) or (1A) above to any person ("the taxpayer"), and

(b) the whole or a part of the amount brought into account as mentioned in paragraph (b) of that subsection has, for practical purposes, been borne by a person other than the taxpayer.".

(7) In subsection (3B) (loss or damage to be disregarded) in paragraph (a), for "repayment" substitute "crediting".

(8) For subsection (4) (time limit on claims) substitute—

"(4) The Commissioners shall not be liable on a claim under this section—

(a) to credit an amount to a person under subsection (1) or (1A) above, or

(b) to repay an amount to a person under subsection (1B) above,

if the claim is made more than 3 years after the relevant date.

(4ZA) The relevant date is—

(a) in the case of a claim by virtue of subsection (1) above, the end of the prescribed accounting period mentioned in that subsection, unless paragraph (b) below applies;

(b) in the case of a claim by virtue of subsection (1) above in respect of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;

(c) in the case of a claim by virtue of subsection (1A) above in respect of an assessment issued on the basis of an erroneous voluntary disclosure, the end of the prescribed accounting period in which the disclosure was made;

(d) in the case of a claim by virtue of subsection (1A) above in any other case, the end of the prescribed accounting period in which the assessment was made;

(e) in the case of a claim by virtue of subsection (1B) above, the date on which the payment was made.

In the case of a person who has ceased to be registered under this Act, any reference in paragraphs (b) to (d) above to a prescribed accounting period includes a reference to a period that would have been a prescribed accounting period had the person continued to be registered under this Act.

(4ZB) For the purposes of this section the cases where there is an erroneous voluntary disclosure are those cases where—

(a) a person discloses to the Commissioners that he has not brought into account for a prescribed accounting period (whenever ended) an amount of output tax due for the period;

(b) the disclosure is made in a later prescribed accounting period (whenever ended); and

(c) some or all of the amount is not output tax due.".

(9) For subsections (4A) and (4B) (recovery of excess repayments) substitute—

"(4A) Where—

(a) an amount has been credited under subsection (1) or (1A) above to any person at any time on or after 26th May 2005, and

(b) the amount so credited exceeded the amount which the Commissioners were liable at that time to credit to that person,

the Commissioners may, to the best of their judgement, assess the excess credited to that person and notify it to him.".

(10) For subsection (7) (no other liability of Commissioners to repay VAT not due) substitute—

"(7) Except as provided by this section, the Commissioners shall not be liable to credit or repay any amount accounted for or paid to them by way of VAT that was not VAT due to them.".

(11) The side-note to the section accordingly becomes "Credit for, or repayment of, overstated or overpaid VAT".

(12) Section 4 contains consequential and supplementary provision.

4 Section 3: consequential and supplementary provision

(1) In consequence of the amendments made by section 3, VATA 1994 is amended as follows.

(2) In section 78 (interest in certain cases of official error) in subsection (1)(a) (overstated output tax) for "and which they are in consequence liable to repay to him" substitute "and, as a result, they are liable under section 80(2A) to pay (or repay) an amount to him,".

(3) In section 80A (arrangements for reimbursing customers)—

(a) in subsection (2)(a), for "repayment" substitute "crediting";

(b) in subsection (2)(b), for "the cost of the original payment of that amount to the Commissioners" substitute "the amount brought into account as mentioned in paragraph (b) of subsection (1) or (1A) of that section";

(c) in subsection (3)(a), for "repayment" substitute "crediting of the amount";

(d) for subsection (3)(b) substitute—

"(b) provision for cases where an amount is credited but an equal amount is not reimbursed in accordance with the arrangements;";

(e) in subsection (3)(c), for "repaid" substitute "paid (or repaid)";

(f) in subsection (4)(a), for "to make the repayments to the Commissioners that they are required to make" substitute "to make the repayments, or give the notifications, to the Commissioners that they are required to make or give";

(g) in subsection (7)—

(i) for "repayment", in the first place, substitute "credit";

(ii) for "the making of any repayment" substitute "the crediting of any amount".

(4) In section 80B (assessment of amounts due under section 80A arrangements) after subsection (1) (person liable to pay an amount) insert—

"(1A) Where—

(a) an amount ("the gross credit") has been credited to any person under subsection (1) or (1A) of section 80,

(b) any sums were set against that amount, in accordance with subsection (2A) of that section, and

(c) the amount reimbursed in accordance with the reimbursement arrangements was less than the gross credit,

subsection (1B) below applies.

(1B) In any such case—

(a) the person shall cease to be entitled to so much of the gross credit as exceeds the amount so reimbursed, and

(b) the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him,

but an amount shall not be assessed under this subsection to the extent that the person is liable to pay it to the Commissioners as mentioned in subsection (1) above.

(1C) In determining the amount that a person is liable to pay as mentioned in subsection (1) above, any amount reimbursed in accordance with the reimbursement arrangements shall be regarded as first reducing so far as possible the amount that he would have been liable so to pay, but for the reimbursement of that amount.

(1D) For the purposes of this section, nil is an amount.

(1E) Any reference in any other provision of this Act to an assessment under subsection (1) above includes, if the context so admits, a reference to an assessment under subsection (1B) above.".

(5) In section 83 (appeals)—

(a) in paragraph (t) (repayment of amounts under section 80 etc) before "repayment" insert "crediting or";

(b) in paragraph (ta) (assessments under section 80B(1) etc) after "80B(1)" insert "or (1B)".

(6) The amendments made by section 3 and this section have effect in any case where a claim under section 80(2) of VATA 1994 is made on or after 26th May 2005, whenever the event occurred in respect of which the claim is made.

5 Reverse charge: gas and electricity valuation

(1) In paragraph 8 of Schedule 6 to VATA 1994 (valuation in case of reverse charge)—

(a) after "8" insert ", or any supply of goods is treated by virtue of section 9A,", and

(b) after "the services" insert "or goods".

(2) This section has effect in relation to supplies made on or after 17th March 2005.

6 Disclosure of value added tax avoidance schemes

(1) Schedule 1 (which contains amendments of Schedule 11A to VATA 1994) has effect.

(2) Subsection (1) and Schedule 1 shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

(3) An order under subsection (2) may—

(a) appoint different days for different purposes, and

(b) contain transitional provisions and savings.

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

PERSONAL TAXATION

Social security pension lump sums

7 Charge to income tax on lump sum

(1) A charge to income tax arises where a person becomes entitled to a social security pension lump sum.

(2) For the purposes of the Tax Acts (including subsection (5)) a social security pension lump sum—

(a) is to be treated as income, but

(b) is not to be taken into account in determining the total income of any person.

(3) The person liable to a charge under this section is the person ("P") entitled to the lump sum, whether or not P is resident, ordinarily resident or domiciled in the United Kingdom.

(4) The charge is imposed on P for the applicable year of assessment (see subsection (6)).

(5) A charge under this section is a charge in respect of the amount of the lump sum at the following rate—

(a) if P's total income for the applicable year of assessment is nil, 0%;

(b) if P's total income for that year of assessment is greater than nil but does not exceed the starting rate limit for that year, the starting rate for that year;

(c) if P's total income for that year of assessment exceeds the starting rate limit but does not exceed the basic rate limit for that year, the basic rate for that year;

(d) if P's total income for that year of assessment exceeds the basic rate limit for that year, the higher rate for that year.

(6) Section 8 makes provision as to the meaning of "the applicable year of assessment" for the purposes of this section.

(7) Section 9 contains further definitions and makes provision as to commencement.

(8) Section 10 contains consequential amendments.

8 Meaning of "applicable year of assessment" in section 7

(1) For the purposes of section 7 "the applicable year of assessment" has the meaning given by this section.

(2) Subject to subsections (5) to (7), the applicable year of assessment is—

(a) the year of assessment in which the first benefit payment day falls, or

(b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.

(3) For the purposes of subsection (2) "the first benefit payment day" is, subject to subsection (4), the day as from which P's—

(a) Category A or Category B retirement pension,

(b) shared additional pension, or

(c) graduated retirement benefit,

becomes payable following the period of deferment by virtue of which P's entitlement to the lump sum arises.

(4) But where—

(a) the lump sum is a state pension lump sum to which P is entitled under paragraph 7A of Schedule 5 to SSCBA 1992 or paragraph 7A of Schedule 5 to SSCB(NI)A 1992 or a graduated retirement benefit lump sum to which P is entitled under a provision corresponding to either of those paragraphs, and

(b) at the time of S's death, P was entitled to a Category A or Category B retirement pension or (as the case may be) graduated retirement benefit,

the first benefit payment day is the day on which S died; and for this purpose "S" is the person by virtue of whose period of deferment P's entitlement to the lump sum arises.

(5) Subsections (6) and (7) apply where social security regulations make provision enabling the making of an election for a social security pension lump sum to be paid in the year of assessment ("the later year of assessment") next following that given by subsection (2).

(6) If such an election is made by P and is not revoked, the applicable year of assessment is—

(a) the later year of assessment, or

(b) if P dies before the beginning of that year of assessment, the year of assessment in which P dies.

(7) If—

(a) P dies after the beginning of the later year of assessment,

(b) by the time of P's death, P has not notified the Secretary of State as to whether or not P wishes to make such an election,

(c) social security regulations make provision enabling the making of such an election in such a case by the personal representatives of P, and

(d) P's personal representatives make such an election in accordance with the regulations,

the applicable year of assessment is the later year of assessment.

(8) For the purposes of determining the applicable year of assessment, it does not matter when the lump sum is actually paid.

(9) In this section—

"Category A or Category B retirement pension" means Category A or Category B retirement pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;

"graduated retirement benefit" means graduated retirement benefit under section 36 or 37 of NIA 1965 or section 35 or 36 of NIA(NI) 1966;

"shared additional pension" means shared additional pension under Part 2 of SSCBA 1992 or Part 2 of SSCB(NI)A 1992;

"social security regulations" means any regulations under—

(a) the Social Security Administration Act 1992 (c. 5), or

(b) the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

(10) This section is to be construed as one with section 7.

9 Interpretation and commencement

(1) In sections 7 and 8 "social security pension lump sum" means—

(a) a state pension lump sum,

(b) a shared additional pension lump sum, or

(c) a graduated retirement benefit lump sum.

(2) In section 8 and this section—

"graduated retirement benefit lump sum" means a lump sum payable under—

(a) section 36 or 37 of NIA 1965, or

(b) section 35 or 36 of NIA(NI) 1966;

"shared additional pension lump sum" means a lump sum payable under—

(a) section 55C of, and Schedule 5A to, SSCBA 1992, or

(b) section 55C of, and Schedule 5A to, SSCB(NI)A 1992;

"state pension lump sum" means a lump sum payable under—

(a) section 55 of, and Schedule 5 to, SSCBA 1992, or

(b) section 55 of, and Schedule 5 to, SSCB(NI)A 1992.

(3) In section 8 and this section—

"NIA 1965" means the National Insurance Act 1965 (c. 51);

"NIA(NI) 1966" means the National Insurance Act (Northern Ireland) 1966 (c. 6 (N.I.));

"SSCBA 1992" means the Social Security Contributions and Benefits Act 1992 (c. 4);

"SSCB(NI)A 1992" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

(4) Sections 7 and 8 and this section have effect in relation to the year 2006-07 and subsequent years of assessment.

10 Consequential amendments

(1) ITEPA 2003 is amended as follows.

(2) In section 577 (UK social security pensions) after subsection (1) insert—

"(1A) But this section does not apply to any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005).".

(3) In section 683 (PAYE income) in subsection (3) (meaning, subject to subsection (4), of "PAYE pension income") in the opening words, for "subsection (4)" substitute "subsections (3A) and (4)".

(4) In that section, after subsection (3) insert—

"(3A) "PAYE pension income" for a tax year also includes any social security pension lump sum (within the meaning of section 7 of F(No.2)A 2005) in respect of which a charge to income tax arises under that section for that tax year.".

(5) In section 686 (meaning of "payment") in subsection (1) (rules as to when payment of, or on account of, PAYE income is to be treated as made for the purposes of PAYE regulations) at the end of the subsection insert—

"But this is subject to subsection (5) (PAYE pension income: social security pension lump sums).".

(6) In that section, after subsection (4) insert—

"(5) For the purposes of PAYE regulations, a payment of, or on account of, an amount which is PAYE pension income of a person by virtue of section 683(3A) (social security pension lump sums) is to be treated as made at the time when the payment is made.".

(7) In Schedule 1 (abbreviations and defined expressions) in Part 1 (abbreviations of Acts and instruments) insert at the end—

"F(No.2)A 2005	The Finance (No. 2) Act 2005 (c. 22)".

Gift aid

11 Donations to charity by individuals

(1) For section 25(5E) to (5G) of FA 1990 (donations to charity by individuals: benefits: disregard of certain rights of admission) substitute—

"(5E) In determining whether a gift to a charity is a qualifying donation the benefit of any right of admission received in consequence of the gift shall be disregarded if subsections (5F) to (5H) are satisfied in relation to the right.

(5F) This subsection is satisfied if the opportunity to make a gift and to receive the right of admission in consequence is available to the public.

(5G) This subsection is satisfied if the right of admission is a right granted by the charity for the purpose of viewing property preserved, maintained, kept or created by a charity in pursuance of its charitable purposes, including, in particular—

(a) buildings,
(b) grounds or other land,
(c) plants,
(d) animals,
(e) works of art (but not performances),
(f) artefacts, and
(g) property of a scientific nature.

(5H) This subsection is satisfied if—

(a) the right of admission applies, during a period of at least one year, at all times at which the public can obtain admission, or
(b) a member of the public could purchase the same right of admission and the amount of the gift is greater by at least 10% than the amount which he would have to pay.

(5I) In subsection (5E) "right of admission" means a right of admission—

(a) of the person who makes the gift or of that person and one or more members of his family (whether or not the right must be exercised by all those persons at the same time),
(b) to premises or property to which the public are admitted on payment of an admission fee, and
(c) without payment of the admission fee or on payment of a reduced fee;

and in the application of subsection (5H)(b) "the same right of admission" means a right relating to the same property, classes of person and periods of time as the right received in consequence of the gift.

(5J) For the purposes of subsection (5H)(a) a right of admission shall be treated as applying at all times at which the public can obtain admission despite the

fact that the right does not apply on days specified by the charity, being days on each of which an event is to take place on the premises to which the right relates; provided that no more than 5 days are specified for that purpose in relation to—

(a) the period during which the right applies, in the case of a period of one year, or

(b) each calendar year during all or part of which the right applies, in the case of a right applying for a period of more than one year."

(2) This section shall have effect in relation to gifts made on or after 6th April 2006.

Employee securities

12 Employee securities: anti-avoidance

Schedule 2 contains amendments relating to employee securities.

CHAPTER 2

SCIENTIFIC RESEARCH ORGANISATIONS

13 Corporation tax exemption for organisations

(1) Section 508 of ICTA (tax exemption for scientific research organisations) is amended as follows.

(2) In subsection (1) (Associations undertaking scientific research and approved by Secretary of State), for paragraph (a) substitute—

"(a) an Association has as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade; and".

(3) In that subsection, for ", be allowed in the case of the Association" substitute "in relation to any accounting period, be allowed in the case of the Association for that accounting period".

(4) After that subsection insert—

"(1A) The Treasury may by regulations prescribe circumstances in which the conditions in subsection (1) above shall be deemed not to be complied with.

(1B) The Treasury may by regulations make provision specifying for the purposes of paragraph (a) of that subsection—

(a) what shall be deemed to be, or not to be, an Association,

(b) circumstances in which an Association shall be deemed to have, or not to have, the undertaking of research and development as its object,

(c) circumstances in which the undertaking of research and development shall be deemed to be, or not to be, capable of leading to or facilitating an extension of a class of trade, or

(d) what shall be deemed to be, or not to be, a class of trade."

(5) For subsection (3) (meaning of "scientific research") substitute—

"(3) Section 837A (meaning of "research and development") applies for the purposes of subsection (1)(a) above.

(4) Regulations under subsection (3) of that section (power to prescribe activities which are, or are not, research and development) may make provision for the purposes of that section as it applies by virtue of subsection (3) of this section which is additional to, or different from, the provision made otherwise for the purposes of that section."

(6) This section has effect in relation to accounting periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint.

14 Income tax deduction for payments to organisations

(1) Section 88 of ITTOIA 2005 (income tax deduction for payments to research associations etc.) is amended as follows.

(2) In subsection (1) (conditions for deduction), for the words from the beginning of paragraph (a) to "research" in paragraph (b) substitute—

"(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 of ICTA and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the person belongs, or

(b) pays any sum to be used for scientific research related to that class of trade".

(3) In subsection (4), omit paragraph (a) (meaning of "approved" in relation to scientific research association).

(4) In subsection (5) (references to scientific research related to a class of trade), for "references in this section" substitute "reference in subsection (1)(b)".

(5) This section has effect in relation to sums paid to an Association during any accounting period of the Association beginning on or after the day appointed under section 13(6).

15 Corporation tax deduction for payments to organisations

(1) Section 82B of ICTA (corporation tax deduction for payments to research associations etc.) is amended as follows.

(2) In subsection (1) (conditions for deduction), for the words from the beginning of paragraph (a) to "above" in paragraph (b) substitute—

"(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the company belongs, or

(b) pays any sum to be used for scientific research related to that class of trade".

(3) In subsection (3) (reference to scientific research related to a class of trade), for "this section" substitute "subsection (1)(b) above".

(4) This section has effect in relation to sums paid to an Association during any accounting period of the Association beginning on or after the day appointed under section 13(6).

CHAPTER 3

AUTHORISED INVESTMENT FUNDS ETC

16 Open-ended investment companies

After section 468 of ICTA (authorised unit trust schemes) insert—

"**468A Open-ended investment companies**

(1) In relation to an open-ended investment company the rate of corporation tax for the financial year 2005 and subsequent financial years shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned (and sections 13, 13AA and 13AB shall not apply).

(2) In this section "open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies.

(3) Each of the parts of an umbrella company shall be regarded for the purposes of this section as an open-ended investment company and the umbrella company as a whole shall not be so regarded (and shall not, unless an enactment expressly provides otherwise, be regarded as a company for any other purpose of the Tax Acts).

(4) In subsection (3) "umbrella company" means an open-ended investment company—

(a) in respect of which the instrument of incorporation provides arrangements for separate pooling of the contributions of the shareholders and the profits or income out of which payments are to be made to them, and

(b) the shareholders of which are entitled to exchange rights in one pool for rights in another,

and a reference to part of an umbrella company is a reference to a separate pool."

17 Authorised unit trusts and open-ended investment companies

(1) The following provisions shall cease to have effect—

(a) sections 468H to 468Q of ICTA (authorised unit trusts),

(b) paragraphs 2A and 2B of Schedule 10 to FA 1996 (authorised unit trusts and open-ended investment companies: loan relationships),

(c) paragraphs 32 and 33 of Schedule 26 to FA 2002 (collective investment schemes: derivative contracts),

(d) section 373(4) and (6) of ITTOIA 2005 (open-ended investment company: interest distributions), and

(e) section 376(4) and (6) of ITTOIA 2005 (authorised unit trust: interest distributions).

(2) In this Chapter "authorised investment funds" means—

(a) authorised unit trust schemes, and

(b) open-ended investment companies.

(3) The Treasury may, by regulations—

(a) make provision about the treatment of authorised investment funds for the purposes of an enactment relating to taxation;

(b) provide for the modification of an enactment relating to taxation in its application in relation to—

(i) authorised investment funds,

(ii) shareholders or unit holders in authorised investment funds, or

(iii) transactions involving authorised investment funds;

(c) impose requirements on persons responsible for the management of an authorised investment fund in relation to the provision of information, the form of accounts, the keeping of records or other administrative matters.

(4) For the purposes of this Chapter—

(a) "unit trust scheme" has the meaning given by section 237 of the Financial Services and Markets Act 2000 (c. 8),

(b) a unit trust scheme is authorised in relation to an accounting period if an order under section 243 of the Financial Services and Markets Act 2000 is in force in relation to that scheme during the whole or part of that accounting period,

(c) "unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme,

(d) a reference to a shareholder or unit holder includes a person beneficially entitled to shares or units (and a reference to owning units or shares shall be construed accordingly),

(e) "open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies,

(f) "associate" has the meaning given by section 417 of ICTA,

(g) "net asset value" means the value of the assets of the authorised investment fund, after the deduction of specified liabilities,

(h) a reference to a distribution includes investing an amount on behalf of a unit holder or shareholder in respect of his accumulation units or accumulation shares,

(i) "distribution accounts" means accounts showing—

(i) the total amount available for distribution to unit holders or shareholders, and

(ii) how that amount is computed,

(j) the "distribution date" for a distribution period in relation to an authorised investment fund means—

(i) the date specified by or in accordance with the terms of the trust or the instrument of incorporation of the company for any distribution for that distribution period, or

(ii) if no date is specified, the last day of that distribution period,

(k) "distribution period" in relation to an authorised investment fund means a period by reference to which the total amount available for distribution to unit holders or shareholders is ascertained,

(l) "umbrella company" has the meaning given by section 468A of ICTA,

(m) "umbrella scheme" has the meaning given by section 468 of ICTA, and

(n) section 839 of ICTA (connected persons) applies.

18 Section 17(3): specific powers

(1) Regulations under section 17(3)(a) or (b) may make provision about distributions which may, in particular—

(a) require an authorised investment fund to comply with prescribed rules for determining (whether by reference to a formula or otherwise) what proportion of an amount shown in distribution accounts as available for distribution is to be distributed by way of dividends and what proportion is to be distributed by way of yearly interest;

(b) permit persons responsible for the management of an authorised investment fund to elect to distribute entirely by way of dividends;

(c) require distribution accounts to show the amount available for distribution—

(i) by way of dividends;

(ii) by way of yearly interest;

(d) allow a distribution of yearly interest for a distribution period to be deducted, in the prescribed manner, in computing the profits of the authorised investment fund for the accounting period in which the last day of that distribution period falls;

(e) make provision for determining the distribution date in relation to a distribution period of an authorised investment fund;

(f) permit distributions to be made, in prescribed circumstances, to or for the benefit of a person not ordinarily resident in the United Kingdom without deducting tax;

(g) permit distributions to be made without deducting tax, in prescribed circumstances, to a person ordinarily resident in the United Kingdom who is unlikely to be liable to pay an amount by way of income tax for the year of assessment in which the distribution is made;

(h) include provision, in respect of a unit holder or shareholder who is within the charge to corporation tax, about—

(i) the liability to corporation tax resulting from receipt of a distribution, and

(ii) the method of computing that liability.

(2) Regulations under section 17(3)(a) or (b) may, in particular—

(a) make special provision for loan relationships held by an authorised investment fund;

(b) make special provision for derivative contracts held by an authorised investment fund;

(c) modify the meaning of "relevant holding" for the purposes of—

(i) paragraph 4 of Schedule 10 to FA 1996 (loan relationships), and

(ii) paragraph 36 of Schedule 26 to FA 2002 (derivative contracts);

(d) make special provision in relation to the treatment of umbrella companies and umbrella schemes (or shareholders or unit holders in umbrella companies or umbrella schemes);

(e) prohibit action which favours a class of unit holders or shareholders.

(3) Regulations under section 17(3)(a) or (b) may, in particular—

(a) make special provision in relation to a person who, alone or together with associates or connected persons, owns (otherwise than as a nominee) units or shares, in a fund designated by the Financial Services Authority as a Qualified Investor Scheme, which represent 10% or more (or such other percentage as the regulations may specify) of the net asset value of the fund;

(b) include exceptions from provision made by virtue of paragraph (a) above including, in particular, an exception relating to units or shares held—

(i) by a charity (within the meaning of section 506(1) of ICTA),

(ii) by a registered pension scheme (within the meaning of section 150 of FA 2004),

(iii) by an insurance company (within the meaning of section 431(2) of ICTA) as assets of its long-term insurance fund (within the meaning of that section), or

(iv) by such other persons, in such circumstances, as the regulations may specify.

(4) Regulations under section 17(3)(c) may, in particular, require persons responsible for the management of an authorised investment fund to supply information to, and make available books, documents and other records for inspection by, the Commissioners for Her Majesty's Revenue and Customs.

(5) Regulations under section 17(3) may, in particular—

(a) amend a reference in an enactment to a provision repealed by section 17(1);

(b) make different provision for different circumstances;

(c) make incidental, consequential, supplemental or transitional provision.

19 Section 17: commencement and procedure

(1) Section 17(1) shall come into force on such day as the Treasury may appoint by order.

(2) An order under subsection (1) may—

(a) commence only a specified repeal;

(b) commence different repeals at different times;

(c) commence a repeal at different times for different purposes;

(d) include savings.

(3) Regulations under section 17(3) shall be subject to annulment by a resolution of the House of Commons.

(4) But the first set of regulations under section 17(3) may not be made unless a draft has been laid before and approved by resolution of the House of Commons.

20 Unauthorised unit trusts: chargeable gains

(1) Section 100 of TCGA 1992 (exemption for authorised unit trusts, etc) shall be amended as follows.

(2) After subsection (2) insert—

"(2A) In determining whether subsection (2) applies no account shall be taken of units in a scheme which—

(a) have been disposed of by a unit holder, and

(b) are held by the managers of the scheme (in that capacity) pending disposal.

(2B) In determining whether subsection (2) applies no account shall be taken of the possibility of a charge to corporation tax on income in respect of a gain accruing on a disposal by—

(a) an insurance company (within the meaning given by section 431 of the Taxes Act), or

(b) a friendly society (being an incorporated friendly society or registered friendly society within the meaning given by section 466(2) of the Taxes Act)."

(3) This section shall have effect for the year 2005-06 and subsequent years of assessment.

21 Unit trusts: treatment of accumulation units

(1) In Chapter 3 of Part 3 of TCGA 1992 (collective investment schemes, etc) after section 99A insert—

"**99B Calculation of the disposal cost of accumulation units**

(1) For the purposes of computing the gain accruing on a disposal by a unit holder of units in a unit trust scheme and for the purposes of all other provisions of this Act, an amount shall be treated as expenditure falling within section 38(1)(b) if—

(a) it represents income from the investments subject to the unit trust scheme,

(b) it has been reinvested in respect of the units on behalf of the unit holder (without an issue of new units), and

(c) it is either—

(i) charged to income tax as income of the unit holder (or would be charged to income tax as his income but for a relief which has effect in respect of it) for the purposes of the Income Tax Acts, or

(ii) taken into account as a receipt in calculating profits, gains or losses of the unit holder for the purposes of the Income Tax Acts.

(2) Where an amount is treated as expenditure by virtue of subsection (1), the expenditure shall be treated for the purposes of this Act as having been incurred—

(a) in relation to an authorised unit trust, on the distribution date for the distribution period in respect of which the amount is reinvested, and

(b) in relation to any other unit trust scheme, on the date on which the amount is reinvested.

(3) In subsection (2)(a) "distribution date" and "distribution period" shall have the meaning given by section 468H of the Taxes Act."

(2) This section shall have effect in relation to a disposal of units on or after 16th March 2005.

22 Section 349B ICTA: exemption for distributions to PEP/ISA managers

(1) Section 349B(4) of ICTA (requirement for individual to be entitled to income tax exemption) shall be amended as follows.

(2) In paragraph (a) after "of a plan" insert "of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply".

(3) Paragraph (b) shall cease to have effect.

(4) This section shall have effect in relation to payments made on or after 6th April 2005.

23 Offshore funds

(1) In section 761 of ICTA (charge on offshore income gain)—

(a) in subsection (2)—

(i) for "sections 2(1) and 10" substitute "sections 2(1), 10 and 10B", and

(ii) for "section 11(2)(b)" substitute "section 11(2A)(c)", and

(b) in subsection (3)—

(i) for "section 10" substitute "sections 10 and 10B",

(ii) for "subsection (1) of that section" substitute "subsection (1) of section 10", and

(iii) for "and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words "situated in the United Kingdom"" substitute "and paragraphs (a) and (b) of subsection (1) of section 10B (which make similar provision in relation to corporation tax) shall have effect with the omission of the words "situated in the United Kingdom and"".

(2) For paragraph 1(1)(d) of Schedule 27 to ICTA (distributing funds) substitute—

"(d) the form of the distribution is such that—

(i) if any sum forming part of it were received in the United Kingdom by an individual resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005, or

(ii) if any sum forming part of it were received in the United Kingdom by a company resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax in accordance with section 18 of ICTA (Schedule D)—

(a) under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom, or

(b) under Case V of Schedule D;".

(3) For paragraph 3(1)(a) of that Schedule (distributing funds) substitute—

"(a) the holders of interests in the fund who are individuals domiciled and resident in the United Kingdom—

(i) are chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005 in respect of such of those sums as are referable to their interests; or

(ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom;

(aa) the holders of interests in the fund which are companies resident in the United Kingdom—

(i) are chargeable to tax under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom;

(ii) are chargeable to tax under Case V of Schedule D; or

(iii) if any of that income is derived from assets within the United Kingdom, would have been chargeable under sub-paragraph (i) or (ii) had the assets been outside the United Kingdom; and".

(4) In paragraph 3(1)(b) of that Schedule (distributing funds) for "sub-paragraph (i) or (ii)" substitute "paragraph (a) or (aa)".

CHAPTER 4

AVOIDANCE INVOLVING TAX ARBITRAGE

24 Deduction cases

(1) If the Commissioners for Her Majesty's Revenue and Customs consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to a transaction to which a company falling within subsection (2) is party, they may give the company a notice under this section.

(2) A company falls within this subsection if—

(a) it is resident in the United Kingdom, or

(b) it is resident outside the United Kingdom but is within the charge to corporation tax.

(3) Condition A is that the transaction to which the company is party forms part of a scheme that is a qualifying scheme.

(4) Condition B is that the scheme is such that for the purposes of corporation tax the company is in a position to claim or has claimed an amount by way of deduction in respect of the transaction or is in a position to set off or has set off against profits in an accounting period an amount relating to the transaction.

(5) Condition C is that the main purpose, or one of the main purposes, of the scheme is to achieve a UK tax advantage for the company.

(6) Condition D is that the amount of the UK tax advantage in question is more than a minimal amount.

(7) A notice under this section is a notice—

(a) specifying the transaction in relation to which the Commissioners consider that conditions A to D are or may be satisfied,

(b) specifying the accounting period in relation to which the Commissioners consider that condition B is or may be satisfied as regards the transaction, and

(c) informing the company that as a consequence section 25 (rules relating to deductions) has effect in relation to the transaction.

(8) Nothing in this section prevents the Commissioners from giving a company falling within subsection (2) a notice under this section as regards two or more transactions.

(9) Schedule 3 makes provision about what constitutes a qualifying scheme.

25 Rules relating to deductions

(1) The following provisions of this section apply in relation to a transaction if—

(a) a notice specifying the transaction is given to a company under section 24, and

(b) when the notice is given, conditions A to D of section 24 are satisfied in relation to the transaction.

(2) The company must compute (or recompute) for the purposes of corporation tax its income or chargeable gains, or its liability to corporation tax—

(a) for the accounting period specified in the notice under section 24, and

(b) for any subsequent accounting period,

in accordance with rules A and B.

(3) Rule A is that, in respect of the specified transaction, no amount is allowable as a deduction for the purposes of the Corporation Tax Acts to the extent that, in relation to the expense in question, an amount may be otherwise deducted or allowed in computing the income, profits or losses of any person for the purposes of any tax (including any foreign tax) other than—

(a) petroleum revenue tax, or

(b) the tax chargeable under section 501A(1) of ICTA (supplementary charge in respect of ring fence trades).

(4) The reference in subsection (3) to an amount otherwise deducted or allowed in computing the income, profits or losses of any person for the purposes there mentioned includes a reference to an amount that would be so deducted or allowed but for any rule that has the same effect as rule A.

(5) For the purposes of subsection (4) "rule" means—

(a) a provision of the Tax Acts, or

(b) a rule having effect under the tax law of any territory outside the United Kingdom.

(6) Rule B applies if—

(a) a transaction, or a series of transactions, forming part of the scheme by reference to which conditions A to D are satisfied makes or imposes provision as a result of which one person ("the payer") makes a payment and another

person ("the payee") receives, or becomes entitled to receive, a payment or payments,

(b) in respect of the payment by the payer, an amount may be deducted or otherwise allowed to the payer, or to another person who is party to, or concerned in, the scheme, in computing any profits or losses for tax purposes, and

(c) in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions, or part of such payment or payments, the payee is not liable to tax or, if liable, his liability to tax is reduced as a result of provision made or imposed by the scheme.

(7) Without prejudice to the generality of subsection (6)(c), the payee's liability to tax in respect of the payment or payments that he receives or is entitled to receive as a result of the transaction or series of transactions shall be treated for the purposes of subsection (6)(c) as reduced as a result of provision made or imposed by the scheme if—

(a) an amount arising from the transaction or series of transactions forming part of the scheme, or from another transaction or series of transactions forming part of the scheme, falls to be deducted or otherwise allowed to the payee in computing for tax purposes any profits or losses arising from the payment or payments or the entitlement to receive the payment or payments, or

(b) an amount of relief arising from the transaction or series of transactions forming part of the scheme, or from another transaction or series of transactions forming part of the scheme, may be deducted from the amount of income or gains arising from the payment or payments or the entitlement to receive the payment or payments.

(8) The requirement in subsection (6)(c) is not satisfied if the payee is not liable to tax because he is not liable to tax on any income or gains received by him or for his benefit under the tax law of any territory.

(9) The requirement in subsection (6)(c) is not satisfied if, or to the extent that, the payee is not subject to tax because his liability to tax is subject to an exemption falling within subsection (10).

(10) An exemption falls within this subsection if—

(a) it exempts a person from being liable to tax in respect of income or gains, without providing for that income or those gains to be treated as the income or gains of one or more other persons, and

(b) it is conferred by a provision contained in or having the force of an Act or by a provision of the tax law of any territory outside the United Kingdom.

(11) Rule B is that the aggregate of the amounts allowable as a deduction for the purposes of the Corporation Tax Acts in computing any profits to the company arising from—

(a) the specified transaction, and

(b) any other transaction that forms part of the scheme and to which the company is party,

is to be reduced in accordance with subsections (12) and (13).

(12) If, in respect of the payment or payments that the payee receives or is entitled to receive, the payee is not liable to tax for the purposes of the requirement in subsection (6)(c), the aggregate is to be reduced to nil.

(13) If, in respect of the payment or payments, the payee is liable to tax as regards part or his liability to tax is reduced as described in subsection (6)(c), the aggregate is to be reduced to such proportion of the aggregate as is equal to the proportion of the payment or payments on which the payee is liable to tax; and for this purpose the amount by which the payee's liability is reduced is to be treated as an amount on which the payee is not liable to tax.

(14) The company may choose to incorporate in its company tax return for the specified accounting period such relevant adjustments as are necessary for counteracting those effects of the scheme that are referable to the purpose referred to in condition C.

(15) If, as a consequence of incorporating relevant adjustments in that company tax return, the company counteracts those effects of the scheme that are referable to the purpose referred to in condition C, the company is to be treated, so far as regards the scheme, as having complied with subsection (2).

(16) The following are relevant adjustments—

(a) treating all or part of a deduction allowable for corporation tax purposes as not being allowable;

(b) treating all or part of an amount that for corporation tax purposes may be set off against profits in an accounting period as not falling to be set off.

(17) In this section, references to tax purposes include a reference to the purposes of any foreign tax; and foreign tax has the meaning given by section 403D of ICTA.

(18) In this section, "company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule.

26 Receipts cases

(1) If the Commissioners for Her Majesty's Revenue and Customs consider, on reasonable grounds, that conditions A to E are or may be satisfied in relation to a company resident in the United Kingdom, they may give the company a notice under this section.

(2) Condition A is that a scheme makes or imposes provision ("the actual provision") as between the company and another person ("the paying party") by means of a transaction or series of transactions.

(3) Condition B is that the actual provision includes the making by the paying party, by means of a transaction or series of transactions, of a payment that is a qualifying payment in relation to the company.

(4) Condition C is that, as regards the qualifying payment made by the paying party, there is an amount that—

(a) is available as a deduction for the purposes of the Tax Acts, or

(b) may be deducted or otherwise allowed in respect of the payment under the tax law of any territory outside the United Kingdom,

and does not fall to be disregarded as described in subsection (5).

(5) An amount is to be disregarded if or to the extent that it is, for tax purposes, set against any income arising to the paying party from the transaction or transactions forming part of the scheme.

(6) Condition C is not to be treated as satisfied if—

(a) the paying party is a dealer,

(b) in the ordinary course of his business, he incurs losses in respect of the transaction or transactions forming part of the scheme to which he is party, and

(c) the amount by reference to which condition C would, but for this subsection, be satisfied is an amount in respect of those losses.

(7) In subsection (6), "dealer" means a person who is a dealer in relation to a distribution within the meaning of section 95(2) of ICTA or who would, if he were resident in the United Kingdom, be such a dealer.

(8) Condition D is that at least part of the qualifying payment is not an amount to which subsection (9) or (10) applies.

(9) This subsection applies to an amount that is, for the purposes of the Corporation Tax Acts—

(a) income or gains arising to the company in the accounting period in which the qualifying payment was made in relation to the company, or

(b) income arising to any other company resident in the United Kingdom in a corresponding accounting period.

(10) This subsection applies to an amount that is taken into account in determining the debits and credits to be brought into account by a company for the purposes of Chapter 2 of Part 4 of FA 1996 as respects a share in another company by virtue of section 91A or 91B of FA 1996 (shares treated as loan relationships).

(11) Condition E is that the company and the paying party expected on entering into the scheme that a benefit would arise as a result of condition D being satisfied (whether by reference to all or part of the qualifying payment).

(12) A notice under this section is a notice—

(a) informing the company of the Commissioners' view under subsection (1),

(b) specifying the qualifying payment by reference to which the Commissioners consider conditions B to E are or may be satisfied,

(c) specifying the accounting period of the company in which the payment is made, and

(d) informing the company that as a consequence section 27 has effect in relation to the payment.

(13) For the purposes of this section a payment is a qualifying payment in relation to a company if it constitutes a contribution to the capital of the company.

(14) For the purposes of this section the accounting period of a company ("company A") corresponds to the accounting period of another company ("company B") if at least one day of company A's accounting period falls within company B's accounting period.

27 Rule as to qualifying payment

(1) The following provisions of this section apply in relation to a payment that is a qualifying payment in relation to a company if—

(a) a notice specifying that payment is given to the company under section 26, and

(b) when the notice is given, conditions A to E of section 26 are satisfied in relation to the company.

(2) The company must compute (or recompute) for the purposes of corporation tax for the accounting period specified in the notice its income or chargeable gains, or its liability to corporation tax, as if the relevant part of the qualifying payment were an amount of income chargeable under Case VI of Schedule D arising to the company in that period.

(3) The relevant part of the qualifying payment is the part by reference to which conditions C and D are satisfied; and, where conditions C and D are satisfied in relation to the whole of the qualifying payment, the relevant part is the whole of the qualifying payment.

(4) In this section "qualifying payment" has the same meaning as in section 26.

28 Notices under sections 24 and 26

(1) Subsection (2) applies if the Commissioners for Her Majesty's Revenue and Customs give a notice to a company under section 24 or 26 before the company has made its company tax return for the accounting period specified in the notice.

(2) If the company makes its return for that period before the end of the period of 90 days beginning with the day on which the notice is given, it may—

(a) make a return that disregards the notice, and

(b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the provision referred to in the notice.

(3) If a company has made a company tax return for an accounting period, the Commissioners may only give the company a notice under section 24 or 26 in relation to that period if a notice of enquiry has been given to the company in respect of its return for that period.

(4) After any enquiries into the return for that period have been completed, the Commissioners may only give the company a notice under section 24 or 26 if the requirements in subsections (5) and (7) are satisfied.

(5) The first requirement is that at the time the enquiries into the return were completed, the Commissioners could not have been reasonably expected, on the basis of information made available to them or to an officer of Revenue and Customs before that time, to have been aware that the circumstances were such that a notice under section 24 or 26 could have been given to the company in relation to that period.

(6) Paragraph 44(2) and (3) of Schedule 18 to FA 1998 (information made available) applies for the purposes of subsection (5) as it applies for the purposes of paragraph 44(1).

(7) The second requirement is that—

(a) the company was requested to produce or provide information during an enquiry into the return for that period, and

(b) if the company had duly complied with the request, the Commissioners could reasonably have been expected to give the company a notice under section 24 or 26 in relation to that period.

(8) If a company is given a notice under section 24 or 26 in relation to an accounting period after having made a company tax return for that period, the company may amend the return for the purpose of complying with the provision referred to in the notice at any

time before the end of the period of 90 days beginning with the day on which the notice is given.

(9) If the notice under section 24 or 26 is given to the company after it has been given a notice of enquiry in respect of its return for the period, no closure notice may be given in relation to the company's tax return until—

(a) the end of the period of 90 days beginning with the day on which the notice under section 24 or 26 is given, or

(b) the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.

(10) If the notice under section 24 or 26 is given to the company after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—

(a) the end of the period of 90 days beginning with the day on which the notice under section 24 or 26 is given, or

(b) the earlier amendment of the company tax return for the purpose of complying with the provision referred to in the notice.

(11) Subsections (2)(b) and (8) do not prevent a company tax return for a period becoming incorrect if—

(a) a notice under section 24 or 26 is given to the company in relation to that period,

(b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the provision referred to in the notice, and

(c) the return ought to have been so amended.

(12) In this section—

"closure notice" means a notice under paragraph 32 of Schedule 18 to FA 1998;

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to FA 1998, as read with paragraph 4 of that Schedule;

"discovery assessment" means an assessment under paragraph 41 of Schedule 18 to FA 1998;

"notice of enquiry" means a notice under paragraph 24 of Schedule 18 to FA 1998.

29 Amendments relating to company tax returns

(1) In Schedule 18 to FA 1998 (company tax returns, assessments, etc), in paragraph 25(1) (scope of enquiry) after "relief)" insert "or a notice under section 24 or 26 of the Finance (No. 2) Act 2005 (avoidance involving tax arbitrage)".

(2) In paragraph 42 of that Schedule (restrictions on power to make discovery assessment etc), in sub-paragraph (2A), after "1988" insert "or section 24 or 26 of the Finance (No. 2) Act 2005".

30 Interpretation

(1) For the purposes of this Chapter—

(a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;

(b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and

(c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—

(i) would not have been entered into independently of the other or others, or

(ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(2) For the purposes of this Chapter, a scheme achieves a UK tax advantage for a person if in consequence of the scheme the person is in a position to obtain, or has obtained—

(a) a relief or increased relief from income tax or corporation tax,

(b) a repayment or increased repayment of income tax or corporation tax, or

(c) the avoidance or reduction of a charge to income tax or corporation tax.

(3) In subsection (2)(a) the reference to relief includes a reference to a tax credit.

(4) For the purposes of subsection (2)(c) avoidance or reduction may in particular be effected by—

(a) receipts accruing in such a way that the recipient does not pay or bear tax on them, or

(b) a deduction in computing profits or gains.

31 Commencement

(1) The deduction cases provisions have effect in relation to accounting periods of a company beginning on or after 16th March 2005.

(2) Where an accounting period of a company begins before, and ends on or after 16th March 2005, it shall be assumed for the purposes of the deduction cases provisions (and subsection (1) of this section) that that accounting period ("the straddling period") consists of two separate accounting periods—

(a) the first beginning with the straddling period and ending with 15th March 2005, and

(b) the second beginning with 16th March 2005 and ending with the straddling period,

and the company's profits and losses shall be computed accordingly for tax purposes.

(3) The deduction cases provisions do not have effect so far as regards a transaction to which a company is party on 16th March 2005 and which on that date forms part of a scheme, if—

(a) the company is not on 16th March 2005 connected with a person who is on that date also party to, or concerned in, the scheme, and

(b) the scheme ceases to exist before 31st August 2005.

Section 839 of ICTA applies for the purposes of this subsection.

(4) The receipts cases provisions have effect in relation to any contribution to the capital of a company resident in the United Kingdom that is made on or after 16th March 2005.

(5) In this section—

"the deduction cases provisions" means—

(a) sections 24 and 25 and Schedule 3, and

(b) sections 28 to 30 so far as relating to the provisions in paragraph (a);

"the receipts cases provisions" means—

(a) sections 26 and 27, and

(b) sections 28 to 30 so far as relating to the provisions in paragraph (a).

CHAPTER 5

CHARGEABLE GAINS

Residence, location of assets etc

32 Temporary non-residents

(1) Section 10A of TCGA 1992 is amended as follows.

(2) In subsection (3) (certain gains or losses to be excluded from being treated by virtue of subsection (2) as accruing to the taxpayer in year of return)—

(a) in paragraph (a), for "he was neither resident nor ordinarily resident in the United Kingdom" substitute—

"(i) he was neither resident nor ordinarily resident in the United Kingdom, or

(ii) he was resident or ordinarily resident in the United Kingdom but was Treaty non-resident;";

(b) in paragraph (d), after "152(1)(b)" insert ", 153(1)(b)".

(3) In subsection (8) (definitions) in the definition of "relevant disposal", after "United Kingdom" insert "and was not Treaty non-resident".

(4) For subsection (9) substitute—

"(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment—

(a) if, during any part of that year of assessment, he is resident in the United Kingdom and not Treaty non-resident, or

(b) if he is ordinarily resident in the United Kingdom during that year of assessment, unless he is Treaty non-resident during that year of assessment.

(9A) For the purposes of this section an individual is Treaty non-resident at any time if, at that time, he falls to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.

(9B) Where this section applies in the case of any individual in circumstances in which one or more intervening years would, but for his being Treaty non-

resident during some or all of that year or those years, not be an intervening year, this section shall have effect in the taxpayer's case—

(a) as if subsection (2)(a) above did not apply in the case of any amount treated by virtue of section 87 or 89(2) as an amount of chargeable gains accruing to the taxpayer in any such intervening year, and

(b) as if any such intervening year were not an intervening year for the purposes of subsections (2)(b) and (c) and (6) above.".

(5) After subsection (9B) (as inserted by subsection (4) above) insert—

"(9C) Nothing in any double taxation relief arrangements shall be read as preventing the taxpayer from being chargeable to capital gains tax in respect of any of the chargeable gains treated by virtue of subsection (2)(a) above as accruing to the taxpayer in the year of return (or as preventing a charge to that tax from arising as a result).".

(6) Omit subsection (10) (section to be without prejudice to right to claim relief under double taxation relief arrangements).

(7) The amendments in subsections (2)(a), (4), (5) and (6) have effect—

(a) in any case in which the year of departure is, or (on the assumption that the amendment in subsection (4) had always had effect) would be, the year 2005-06 or a subsequent year of assessment; and

(b) in any case in which—

(i) the year of departure is, or (on that assumption) would be, the year 2004-05, and

(ii) at a time in that year on or after 16th March 2005, the taxpayer was resident or ordinarily resident in the United Kingdom and was not Treaty non-resident (within the meaning given by section 10A(9A) of TCGA 1992, as inserted by subsection (4)).

(8) The amendment in subsection (2)(b) has effect in relation to relevant disposals made on or after 16th March 2005.

(9) The amendment in subsection (3) has effect for determining whether a disposal of an asset is a relevant disposal for the purposes of section 10A of TCGA 1992 in any case in which the person making the disposal acquired the asset on or after 16th March 2005.

33 Trustees both resident and non-resident in a year of assessment

(1) After section 83 of TCGA 1992 insert—

"**83A Trustees both resident and non-resident in a year of assessment**

(1) This section applies if a chargeable gain accrues to the trustees of a settlement on the disposal by them of an asset in a year of assessment and the trustees—

(a) are within the charge to capital gains tax in that year of assessment, but

(b) are non-UK resident at the time of the disposal.

(2) Where this section applies, nothing in any double taxation relief arrangements shall be read as preventing the trustees from being chargeable to capital gains

tax (or as preventing a charge to tax arising, whether or not on the trustees) by virtue of the accrual of that gain.

(3) For the purposes of this section the trustees of a settlement are within the charge to capital gains tax in a year of assessment—

(a) if, during any part of that year of assessment, they are resident in the United Kingdom and not Treaty non-resident, or

(b) if they are ordinarily resident in the United Kingdom during that year of assessment, unless they are Treaty non-resident during that year of assessment.

(4) For the purposes of this section the trustees of a settlement are non-UK resident at a particular time if, at that time,—

(a) they are neither resident nor ordinarily resident in the United Kingdom, or

(b) they are resident or ordinarily resident in the United Kingdom but are Treaty non-resident.

(5) For the purposes of this section the trustees of a settlement are Treaty non-resident at any time if, at that time, they fall to be regarded as resident in a territory outside the United Kingdom for the purposes of double taxation relief arrangements having effect at that time.".

(2) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.

34 Location of assets etc

Schedule 4 (which makes provision in relation to the situation of assets for the purposes of TCGA 1992 and which makes minor amendments in that Act in relation to non-resident companies with United Kingdom permanent establishments) has effect.

Miscellaneous

35 Exercise of options etc

Schedule 5 (which makes provision, for the purposes of the taxation of chargeable gains, in relation to options) has effect.

36 Notional transfers within a group

(1) Section 171A of TCGA 1992 (notional transfers within a group) is amended as follows.

(2) After subsection (3) insert—

"(3ZA) In a case where B—

(a) is not resident in the United Kingdom, but

(b) is carrying on a trade in the United Kingdom through a permanent establishment there,

the asset or part deemed to be transferred to B by A is to be treated for the purposes of subsections (2)(c) and (3) above as having been acquired by B for use by or for the purposes of the permanent establishment; but that shall not

be taken to affect the question whether or not the asset or part is situated in the United Kingdom at any time.".

(3) The amendment made by this section has effect in relation to disposals made on or after 16th March 2005.

CHAPTER 6

MISCELLANEOUS

Accounting practice and related matters

37 Accounting practice and related matters

Schedule 6 (accounting practice and related matters) has effect.

Financial avoidance etc

38 Charges on income for the purposes of corporation tax

(1) Section 338A of ICTA (meaning of "charges on income" for the purposes of corporation tax) is amended as follows.

(2) In subsection (2) (what are charges on income) paragraph (a) (annuities or other annual payments that meet the conditions in section 338B) shall cease to have effect.

(3) In section 125(1) of ICTA (annual payments for non-taxable consideration) for "income tax," substitute "income tax and".

(4) In section 434A(2)(a) of ICTA (loss resulting to insurance company from computation in accordance with Case I of Schedule D: reduction by specified amounts) omit sub-paragraph (i) (which relates to charges on income).

(5) The side-note to section 494 of ICTA (charges on income) becomes "Loan relationships etc.".

(6) The amendment made by subsection (4) has effect for accounting periods beginning on or after 1st April 2004.

(7) The other amendments made by this section have effect in relation to payments made on or after the commencement date in respect of annuities or other annual payments.

(8) Where—

(a) an accounting period of a company begins before, and ends on or after, the commencement date,

(b) a payment in respect of an annuity or other annual payment is made by the company in that period but before the commencement date, and

(c) the payment is deductible as a charge on income for the purposes of corporation tax,

subsection (9) applies.

(9) In any such case, so much of any amount as represents that payment—

(a) is not deductible under section 75 of ICTA (expenses of management), and

(b) is not to be brought into account under section 76 of that Act (expenses of insurance companies) as expenses payable,

for that or any subsequent accounting period.

(10) Subsection (12) applies in any case where—

(a) a payment in respect of an annuity or other annual payment is made by a company on or after the commencement date, and

(b) the condition in subsection (11) is satisfied.

(11) The condition is that the payment represents an amount which (apart from subsection (12))—

(a) would not be deductible under section 75 of ICTA, or

(b) would not fall to be brought into account under section 76 of that Act,

by reason only of section 337A(1)(b) of that Act (company's income from any source to be computed without any deduction in respect of charges on income) as it applies by virtue of section 338A(2)(a) of that Act.

(12) In any such case, the amount represented by the payment—

(a) is deductible under section 75 of ICTA, or

(b) falls to be brought into account under section 76 of that Act as expenses payable,

for the accounting period in which the payment is made.

(13) In this section "the commencement date" means 16th March 2005.

39 Avoidance involving financial arrangements

Schedule 7 (which makes provision in relation to tax avoidance involving financial arrangements) has effect.

Financing of companies etc

40 Transfer pricing and loan relationships

Schedule 8 (which amends Schedule 28AA to ICTA and Schedule 9 to FA 1996) has effect.

Intangible fixed assets

41 Intangible fixed assets

(1) Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as set out in subsections (2) to (4).

(2) In paragraph 92 (transfer between company and related party treated as being at market value)—

(a) in sub-paragraph (1), for "the following two exceptions" substitute "the following four exceptions";

(b) after sub-paragraph (4) insert—

"(4A) The third exception is where—

(a) the asset is transferred from the company at less than its market value, or to the company at more than its market value,

(b) the related party—

(i) is not a company, or

(ii) is a company in relation to which the asset is not a chargeable intangible asset immediately after the transfer to it or (as the case may be) immediately before the transfer from it,

and

(c) by virtue of any provision of—

(i) section 209 of the Taxes Act 1988 (meaning of "distribution"), or

(ii) Part 3 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: earnings and benefits etc treated as earnings),

the transfer gives rise (or would give rise but for sub-paragraph (1)) to an amount to be taken into account in computing any person's income, profits or losses for tax purposes.

(4B) Where the third exception applies, sub-paragraph (1) does not apply, in relation to the computation mentioned in sub-paragraph (4A)(c), for the purposes of any such provision as is mentioned there.

(4C) The fourth exception is where—

(a) the asset is transferred to the company, and

(b) on a claim for relief under section 165 of the Taxation of Chargeable Gains Act 1992 (relief for gifts of business assets) in respect of the transfer, a reduction is made under subsection (4)(a) of that section.

(4D) Where the fourth exception applies—

(a) the transfer is treated for the purposes of this Schedule as being at market value less the amount of the reduction;

(b) all such adjustments as may be required, by way of assessment, amendment of returns or otherwise, may be made (notwithstanding any time limit on the making of an assessment or the amendment of a return).".

(3) In paragraph 95 (meaning of "related party") for Case Three substitute—

"Case Three

C is a close company and P is, or is an associate of—

(a) a participator in C, or

(b) a participator in a company that has control of, or holds a major interest in, C.".

(4) In paragraph 132 (roll-over relief: transitory interaction with relief on replacement of business asset), in sub-paragraph (5) (disapplication for certain corporation tax purposes of Classes 4 to 7 in section 155 of TCGA 1992)—

(a) for "4 to 7" substitute "4 to 7A";
(b) for "(goodwill and various types of quota)" substitute "(goodwill and certain other intangible assets)".

(5) In section 86(2) of FA 1993 (roll-over relief: power to amend section 155 of TCGA 1992 by order) for the words after "may make such consequential amendments" substitute

"of—
(a) Schedule 7AB to the Taxation of Chargeable Gains Act 1992, or
(b) paragraph 132 of Schedule 29 to the Finance Act 2002,

as appear to the Treasury to be appropriate.".

(6) The amendments made by subsection (2) have effect in relation to any transfer of an asset made on or after 16th March 2005.

(7) The amendment made by subsection (3) has effect, for the purposes of paragraph 92 of Schedule 29 to FA 2002 as it applies otherwise than for determining the debits or credits to be brought into account under that Schedule, in relation to any transfer of an asset made on or after 16th March 2005.

(8) That amendment has effect, for all other purposes of that Schedule, in relation to the debits or credits to be brought into account for accounting periods beginning on or after 16th March 2005 (and, in relation to the debits or credits to be brought into account for any such period, shall be deemed always to have had effect).

(9) An accounting period beginning before, and ending on or after, that date is treated for the purposes of subsection (8) 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.

(10) The amendments made by subsection (4) have effect in relation to any such acquisition as is referred to in paragraph 132(5) of Schedule 29 to FA 2002 made on or after 22nd March 2005.

Insurance companies etc

42 Insurance companies etc

Schedule 9 (which makes provision about insurance companies etc) has effect.

International matters

43 Implementation of the amended Parent/Subsidiary Directive

(1) Section 801 of ICTA (dividends paid between related companies: relief for UK and third country taxes) is amended as follows.

(2) After subsection (5) (meaning of one company being related to another) insert—

"(5A) For the purposes of subsections (2) and (3) above (including any determination of the extent to which underlying tax paid by the third, fourth or subsequent company in question would be taken into account under this Part if

the conditions specified for the purpose in subsection (2) above were satisfied) a company is also related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10% of the ordinary share capital of the first-mentioned company.".

(3) The amendment made by this section has effect where the dividend mentioned in section 799(1) of ICTA is paid on or after 1st January 2005.

44 Territories with a lower level of taxation: reduction of amount of local tax

(1) Section 750 of ICTA (controlled foreign companies: territories with a lower level of taxation) is amended as follows.

(2) In subsection (1), after "if" insert ", after giving effect to subsections (1A) and (1B) below,".

(3) After subsection (1) insert—

"(1A) If in the case of that accounting period there is any income, or any income and any expenditure, of the company—

(a) which is brought into account in determining the profits of the company in respect of which tax is paid under the law of that territory, but

(b) which does not also fall to be brought into account in determining the chargeable profits of the company,

the local tax shall be treated for the purposes of this Chapter as reduced to what it would have been had that income and any such expenditure not been so brought into account.

(1B) If—

(a) under the law of that territory any tax ("the company's tax") falls to be paid by the company in respect of profits of the company arising in that accounting period,

(b) under that law, any repayment of tax, or any payment in respect of a credit for tax, is made to a person other than the company, and

(c) that payment or repayment is directly or indirectly in respect of the company's tax,

the local tax shall be treated for the purposes of this Chapter as reduced (or further reduced) by the amount of that payment or repayment.".

(4) The amendments made by this section have effect in relation to accounting periods of companies resident outside the United Kingdom beginning on or after 2nd December 2004.

(5) Where an accounting period of a company resident outside the United Kingdom—

(a) would, without amendment, have ended on or after 2nd December 2004, but

(b) is amended on or after that date so as to end before that date,

an accounting period of the company shall be deemed for the purposes of Chapter 4 of Part 17 of ICTA to have ended with 1st December 2004.

(6) In this section "accounting period" has the same meaning as in Chapter 4 of Part 17 of ICTA (see section 751).

Miscellaneous

45 Lloyd's underwriters: assessment and collection of tax

(1) Omit section 173 of, and Schedule 19 to, FA 1993 (Lloyd's underwriters: assessment and collection of tax).

(2) In section 182 of that Act (regulations) in subsection (1)(a) (power of Commissioners for Her Majesty's Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 171 of FA 1993, so far as not provided for by Schedule 19 to that Act) omit "(so far as not provided for by Schedule 19 to this Act)".

(3) In that section, at the end insert—

"(6) Any power to make regulations conferred by this section includes power to make—

(a) different provision for different cases or different purposes, and

(b) incidental, supplemental or transitional provision and savings.".

(4) Omit section 221 of FA 1994 (Lloyd's underwriters: corporations etc: assessment and collection of tax).

(5) Renumber section 229 of that Act (regulations) as subsection (1) of that section.

(6) In subsection (1) of that section (as amended by subsection (5) above), in paragraph (a) (power of Commissioners for Her Majesty's Revenue and Customs to make regulations providing for assessment and collection of tax charged in accordance with section 219 of FA 1994, so far as not provided for by Schedule 19 to FA 1993 as applied by section 221 of FA 1994) omit "(so far as not provided for by Schedule 19 to the 1993 Act as applied by section 221 above)".

(7) In that section, at the end insert—

"(2) Any power to make regulations conferred by this section includes power to make—

(a) different provision for different cases or different purposes, and

(b) incidental, supplemental or transitional provision and savings.".

(8) For the purpose of enabling the making of any regulations under—

(a) section 182(1)(a) of FA 1993 (as amended by subsection (2)), or

(b) section 229(1)(a) of FA 1994 (as amended by subsection (6)),

subsections (1) to (7) come into force on the day on which this Act is passed.

(9) Subject to that, those subsections come into force in accordance with provision made by the Treasury by order.

(10) Section 828(3) of ICTA shall not apply in relation to an order under subsection (9).

(11) The Commissioners for Her Majesty's Revenue and Customs may by regulations make such amendments, repeals or revocations in any enactment (including an enactment

amended by this section) as appear to them to be appropriate in consequence of any one or more of the following—

(a) any amendment made by this section;

(b) the exercise by them of the power in section 182(1)(a) of FA 1993 (as amended by subsection (2));

(c) the exercise by them of the power in section 229(1)(a) of FA 1994 (as amended by subsection (6)).

(12) Any power conferred by this section to make an order or regulations includes power to make—

(a) different provision for different cases or different purposes, and

(b) incidental, supplemental or transitional provision and savings.

(13) In this section—

"enactment" includes an enactment comprised in subordinate legislation;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30) (see section 21 of that Act).

46 Energy Act 2004 and Health Protection Agency Act 2004

(1) This section provides for certain enactments to cease to have effect which relate to—

(a) the United Kingdom Atomic Energy Authority ("UKAEA"),

(b) the National Radiological Protection Board ("NRPB"), or

(c) pension schemes run by UKAEA.

(2) In ICTA the following provisions shall cease to have effect—

(a) section 349B(3)(g) (no deduction of tax from certain payments to UKAEA);

(b) section 349B(3)(h) (no deduction of tax from certain payments to NRPB);

(c) section 512(1) and (3) (certain exemptions from income tax and corporation tax for UKAEA and NRPB);

(d) section 512(2) (treatment of certain income of pension schemes run by UKAEA).

(3) In section 271(7) of TCGA 1992 (miscellaneous exemptions from tax in respect of chargeable gains)—

(a) for "Memorial Fund, the" substitute "Memorial Fund and the";

(b) omit ", the United Kingdom Atomic Energy Authority";

(c) omit "and the National Radiological Protection Board";

(d) omit from "; and for the purposes" to the end of the subsection (treatment of gains accruing to pension schemes run by UKAEA).

(4) In subsection (2)—

(a) paragraph (a) has effect in relation to payments made on or after 1st April 2005;

(b) paragraph (b) has effect in relation to payments made after 1st April 2005;

(c) paragraph (c), so far as relating to UKAEA, has effect on and after 1st April 2005;

(d) paragraph (c), so far as relating to NRPB, has effect after 1st April 2005;

(e) paragraph (d) has effect in relation to income arising on or after 1st April 2005.

(5) In subsection (3)—

(a) paragraphs (a) and (c) have effect in relation to gains accruing after 1st April 2005;

(b) paragraphs (b) and (d) have effect in relation to gains accruing on or after 1st April 2005.

(6) The repeal of subsection (3)(g) of section 349B of ICTA does not affect the application of any other provision of that section in relation to UKAEA.

(7) Nothing in this section affects—

(a) any accounting period of UKAEA ending before 1st April 2005, or

(b) any accounting period of NRPB ending on or before 1st April 2005.

PART 3

STAMP TAXES

Stamp duty land tax

47 E-conveyancing

(1) In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (Keeper of the Registers of Scotland: financial arrangements) after "Sums" insert "(other than payments of stamp duty land tax)".

(2) In section 79(1) of FA 2003 (registration of land transactions) after "in relation to the transaction" insert "or such information about compliance as the Commissioners for Her Majesty's Revenue and Customs may specify in regulations."

(3) In section 119(1) of FA 2003 (land transactions: effective date) for "the date of completion" substitute—

"(a) the date of completion, or

(b) such alternative date as the Commissioners for Her Majesty's Revenue and Customs may prescribe by regulations."

(4) After paragraph 7(1) of Schedule 10 to FA 2003 (land transaction returns: correction of errors) insert—

"(1A) The power under sub-paragraph (1) may, in such circumstances as the Commissioners for Her Majesty's Revenue and Customs may specify in regulations, be exercised—

(a) in relation to England and Wales, by the Chief Land Registrar;

(b) in relation to Scotland, by the Keeper of the Registers of Scotland;

(c) in relation to Northern Ireland, by the Registrar of Titles or the registrar of deeds;

(d) in any case, by such other persons with functions relating to the registration of land as the regulations may specify."

(5) The Commissioners for Her Majesty's Revenue and Customs—

(a) may make regulations conferring administrative functions on a land registrar in connection with stamp duty land tax, and

(b) may make payments to land registrars in respect of the exercise of those functions.

(6) In subsection (5) "land registrar" means—

(a) in relation to England and Wales, the Chief Land Registrar,

(b) in relation to Scotland, the Keeper of the Registers of Scotland,

(c) in relation to Northern Ireland, the Registrar of Titles or the registrar of deeds, and

(d) in any case, such other persons with functions relating to the registration of land as regulations under subsection (5) may specify.

(7) Regulations under subsection (5)—

(a) shall be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of the House of Commons.

48 Disclosure of information contained in land transaction returns

(1) After section 78 of FA 2003 insert—

"**78A Disclosure of information contained in land transaction returns**

(1) Relevant information contained in land transaction returns delivered under section 76 (whether before or after the commencement of this section) is to be available for use—

(a) by listing officers appointed under section 20 of the Local Government Finance Act 1992, for the purpose of facilitating the compilation and maintenance by them of valuation lists in accordance with Chapter 2 of Part 1 of that Act,

(b) as evidence in an appeal by virtue of section 24(6) of that Act to a valuation tribunal established under Schedule 11 to the Local Government Finance Act 1988,

(c) by the Commissioner of Valuation for Northern Ireland, for the purpose of maintaining a valuation list prepared, and from time to time altered, by him in accordance with Part 3 of the Rates (Northern Ireland) Order 1977, and

(d) by such other persons or for such other purposes as the Treasury may by regulations prescribe.

(2) In this section, "relevant information" means any information of the kind mentioned in paragraph 1(4) of Schedule 10 (information corresponding to particulars required under previous legislation).

(3) The Treasury may by regulations amend the definition of relevant information in subsection (2)."

(2) In section 245 of FA 1994 (production of documents: supplementary) for subsection (2) substitute—

"(2) The information contained in any document produced to the Commissioners under section 244(2) above shall be available for use by the Commissioner of Valuation for Northern Ireland."

(3) For the heading to Part 6 of FA 1994 substitute "Stamp duty".

(4) Regulation 3 of the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2005 (S. I. 2005/82) is hereby revoked.

(5) Subsections (1) to (4) come into force on such day as the Treasury may by order appoint.

(6) Section 114(3) of FA 2003 (negative resolution procedure) does not apply to an order made under subsection (5).

49 Miscellaneous amendments

Schedule 10 (which makes miscellaneous amendments of Part 4 of FA 2003) has effect.

Stamp duty and stamp duty reserve tax

50 Power to extend exceptions relating to recognised exchanges

(1) The Treasury may by regulations extend the application of the provisions mentioned in subsection (2) to any market (specified by name or by description) which—

(a) is not a recognised exchange, but

(b) is a multilateral trading facility (or, assuming compliance with the provisions of Title II of the Directive (authorisation and operating conditions), would be such a facility).

(2) The provisions referred to in subsection (1) are—

(a) sections 80A and 80C of FA 1986 (stamp duty: exceptions for sales to intermediaries and for repurchases and stock lending), and

(b) sections 88A and 89AA of that Act (stamp duty reserve tax: exceptions for intermediaries and for repurchases and stock lending).

(3) In this section—

"the Directive" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

"multilateral trading facility" has the same meaning as in the Directive (see Article 4(15));

"recognised exchange" means any of the following—

(a) an EEA exchange,

(b) a recognised foreign exchange,

(c) a recognised foreign options exchange,

within the meaning of the provisions mentioned in subsection (2).

(4) Regulations under this section may provide for the application of the provisions mentioned in subsection (2) subject to any adaptations appearing to the Treasury to be necessary or expedient.

(5) In subsection (1)(b) the words "(or, assuming compliance with the provisions of Title II of the Directive (authorisation and operating conditions), would be such a facility)" shall cease to have effect on such day as the Treasury may by order appoint.

(6) Section 117 of FA 2002 (power to extend the exceptions in subsection (2) to any market prescribed by order under section 118(3) of the Financial Services and Markets Act 2000) shall cease to have effect on such day as the Treasury may by order appoint.

(7) The power to make regulations or an order under this section is exercisable by statutory instrument.

(8) A statutory instrument containing—

(a) regulations under this section, or

(b) an order under subsection (5),

shall be subject to annulment in pursuance of a resolution of the House of Commons.

PART 4

EUROPEAN COMPANY STATUTE

51 Chargeable gains

(1) After section 140D of TCGA 1992 (transfer of non-UK trade) insert—

"Formation of SE by merger

140E Merger leaving assets within UK tax charge

(1) This section applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) section 139 does not apply to any qualifying transferred assets.

(2) Where this section applies, qualifying transferred assets shall be treated for the purposes of corporation tax on chargeable gains as if acquired by the SE for a consideration resulting in neither gain nor loss for the transferor.

(3) For the purposes of subsections (1) and (2) an asset is a qualifying transferred asset if—

(a) it is transferred to the SE as part of the process of the merger forming it, and

(b) subsections (4) and (5) are satisfied in respect of it.

(4) This subsection is satisfied in respect of a transferred asset if—

(a) the transferor is resident in the United Kingdom at the time of the transfer, or

(b) any gain that would have accrued to the transferor, had it disposed of the asset immediately before the time of the transfer, would have been a chargeable gain forming part of the transferor's chargeable profits in accordance with section 10B.

(5) This subsection is satisfied in respect of a transferred asset if—

(a) the transferee SE is resident in the United Kingdom on formation, or

(b) any gain that would accrue to the transferee SE were it to dispose of the asset immediately after the transfer would be a chargeable gain forming part of the SE's chargeable profits in accordance with section 10B.

(6) For the purposes of this section a company is resident in a member State if—

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

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(7) This section does not apply to the formation of an SE by merger if—

(a) it is not effected for bona fide commercial reasons, or

(b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax;

and section 138 (clearance in advance) shall apply to this subsection as it applies to section 137 (with any necessary modifications).

140F Merger not leaving assets within UK tax charge

(1) This section applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) in the course of the merger a company resident in the United Kingdom ("company A") transfers to a company resident in another member State ("company B") all assets and liabilities relating to a business which company A carried on in a member State other than the United Kingdom through a permanent establishment, and

(e) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of any allowable losses so accruing.

(2) Where this section applies, for the purposes of this Act—

(a) the allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing, and

(b) the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.

(3) Where this section applies, section 815A of the Taxes Act shall also apply.

(4) Subsections (6) and (7) of section 140E apply for the purposes of this section as they apply for the purposes of that section.

140G Treatment of securities issued on merger

(1) This section applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) the merger does not constitute or form part of a scheme of reconstruction within the meaning of section 136.

(2) Where this section applies, the merger shall be treated for the purposes of section 136 as if it were a scheme of reconstruction.

(3) Where section 136 applies by virtue of subsection (2) above section 136(6) (and section 137) shall not apply.

(4) Subsections (6) and (7) of section 140E apply for the purposes of this section as they apply for the purposes of that section."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

52 Intangible fixed assets

(1) After paragraph 85 of Schedule 29 to FA 2002 (intangible fixed assets: gains and losses: transfer of trade) insert—

"Formation of SE by merger

85A (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) paragraph 84 above does not apply to any qualifying transferred assets.

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

(3) For the purposes of sub-paragraphs (1) and (2) an asset is a qualifying transferred asset if—

(a) it is transferred as part of the process of the merger,

(b) it is a chargeable intangible asset in relation to the transferor immediately before the transfer, and

(c) it is a chargeable intangible asset in relation to the transferee immediately after the transfer.

(4) Sub-paragraph (2) shall apply in relation to the formation of an SE by merger only if—

(a) it is effected for bona fide commercial reasons, and

(b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(5) Paragraph 84(6) (and therefore paragraph 88) shall apply, with any necessary modifications, in relation to sub-paragraph (4) above as in relation to paragraph 84(5).

(6) For the purposes of this paragraph a company is resident in a member State if—

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

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

53 Intangible fixed assets: permanent establishment in another member State

(1) After paragraph 87 of Schedule 29 to FA 2002 (intangible fixed assets: gains and losses: transfer of non-UK trade) insert—

"Formation of SE by merger: transfer of non-UK trade

87A (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) in the course of the merger a company resident in the United Kingdom ("the transferor") transfers to a company resident in another member State ("the transferee") the whole or part of a trade that, immediately before the transfer, the transferor carried on in a member State other than the United Kingdom through a permanent establishment,

(e) the transfer includes the whole of the assets of the transferor used for the purposes of the trade or part,

(f) the transfer includes intangible fixed assets—

(i) that are chargeable intangible assets in relation to the transferor immediately before the transfer, and

(ii) in the case of one or more of which the proceeds of realisation exceed the cost recognised for tax purposes, and

(g) no claim is made under paragraph 86 above in relation to those assets.

(2) Where tax would, but for the Mergers Directive, have been chargeable in the member State in which the permanent establishment is located, Part 18 of the Taxes Act 1988 (double taxation relief), including any arrangements having effect by virtue of section 788 (double taxation agreements), shall have effect as if the amount of tax that would, but for the Mergers Directive, have been charged in respect of the transfer of the chargeable intangible assets, had actually been charged.

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

(4) For the purposes of this paragraph a company is resident in a member State if—

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

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State.

(5) This paragraph does not apply to the formation of an SE by merger if—

(a) it is not effected for bona fide commercial reasons, or

(b) it forms part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(6) Sub-paragraph (5) shall not affect the operation of this paragraph in any case where, before the transfer, Her Majesty's Revenue and Customs have, on the application of the transferor, notified the transferor that they are satisfied that the merger will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in sub-paragraph (5)(b).

(7) An application under sub-paragraph (6) must be made in accordance with paragraph 88."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

54 Loan relationships

(1) After paragraph 12A of Schedule 9 to FA 1996 (loan relationships: gains and losses: continuity of treatment for groups) insert—

"Formation of SE by merger

12B (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) either—

(i) immediately after formation the SE is resident in the United Kingdom and within the charge to corporation tax in accordance with section 6 of the Taxes Act 1988, or

(ii) immediately after formation the SE is not resident in the United Kingdom but is within the charge to corporation tax in accordance with section 11 of the Taxes Act 1988.

(2) Where this paragraph applies, the transfer in the course of the merger of an asset or liability which represents a loan relationship shall be disregarded except—

(a) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, and

(b) for the purpose of identifying the company in whose case a debit or credit which does not relate to the transfer is to be brought into account.

(3) Where this paragraph applies, the transferor and the transferee companies of an asset or liability which represents a loan relationship shall be deemed, except for the purposes specified in sub-paragraph (2)(a) and (b), to be the same company.

(4) Paragraph 12(2A) shall have effect (with any necessary modifications) in relation to this paragraph as in relation to paragraph 12.

(5) Sub-paragraphs (2) and (3) shall apply in relation to the formation of an SE by merger only if—

(a) it is effected for bona fide commercial reasons, and

(b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(6) But sub-paragraph (5) shall not have the effect of preventing sub-paragraphs (2) and (3) from applying if before the merger Her Majesty's Revenue and Customs have on the application of the merging companies notified them that Her Majesty's Revenue and Customs are satisfied that sub-paragraph (5) will not have that effect.

(7) For the purposes of this paragraph a company is resident in a member State if—

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

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

55 Derivative contracts

(1) After paragraph 30A of Schedule 26 to FA 2002 (derivative contracts: profits: groups) insert—

"Formation of SE by merger

30B (1) This paragraph applies where—

(a) an SE is formed by the merger of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

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

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

(d) either—

(i) immediately after formation the SE is resident in the United Kingdom and within the charge to corporation tax in accordance with section 6 of the Taxes Act 1988, or

(ii) immediately after formation the SE is not resident in the United Kingdom but is within the charge to corporation tax in accordance with section 11 of the Taxes Act 1988.

(2) Where this paragraph applies, the transfer in the course of the merger of rights or liabilities under a derivative contract shall be disregarded except—

(a) for the purpose of determining the debits or credits to be brought into account in respect of exchange gains or losses and identifying the company which is to bring them into account, and

(b) for the purpose of identifying the company in whose case a debit or credit which does not relate to the transfer is to be brought into account.

(3) Where this paragraph applies, the transferor and the transferee companies of a right or liability under a derivative contract shall be deemed, except for the purposes specified in sub-paragraph (2)(a) and (b), to be the same company.

(4) Paragraph 30 shall apply, with any necessary modifications, in relation to this paragraph as in relation to paragraph 28.

(5) Sub-paragraphs (2) and (3) shall apply in relation to a merger only if—

(a) it is effected for bona fide commercial reasons, and

(b) it does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoiding liability to corporation tax, capital gains tax or income tax.

(6) But sub-paragraph (5) shall not have the effect of preventing sub-paragraphs (2) and (3) from applying if before the merger Her Majesty's Revenue and Customs have on the application of the merging companies notified them that Her Majesty's Revenue and Customs are satisfied that sub-paragraph (5) will not have that effect.

(7) For the purposes of this paragraph a company is resident in a member State if—

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

(b) it is not regarded, for the purposes of any double taxation relief arrangements to which the State is a party, as resident in a territory not within a member State."

(2) Subsection (1) shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

56 Capital allowances

(1) After section 561 of CAA 2001 (transfer of UK trade to company in another member State) insert—

"**561A Transfer during formation of SE by merger**

(1) This section applies to the transfer of a qualifying asset as part of the process of a merger to which section 140E of TCGA 1992 (formation of SE by merger) applies (or would apply but for section 140E(1)(d)).

(2) Where this section applies to a transfer—

(a) the transfer does not give rise to any allowance or charge under this Act,

(b) anything done to or by the transferor in relation to assets transferred is to be treated after the transfer as having been done to or by the transferee (with any necessary apportionment of expenditure being made in a reasonable manner), and

(c) section 343 of ICTA (company reconstruction without change of ownership) shall not apply.

(3) For the purposes of subsection (1) an asset is a "qualifying asset" if—

(a) it is transferred to the SE as part of the merger forming it, and

(b) subsections (4) and (5) are satisfied in respect of it.

(4) This subsection is satisfied in respect of an asset if—

(a) the transferor is resident in the United Kingdom at the time of the transfer, or

(b) the asset is an asset of a permanent establishment in the United Kingdom of the transferor.

(5) This subsection is satisfied in respect of an asset if—

(a) the transferee SE is resident in the United Kingdom on formation, or

(b) the asset is an asset of a permanent establishment in the United Kingdom of the transferee SE on its formation."

(2) Subsection (1) shall have effect in relation to a transfer made on or after 1st April 2005.

57 Stamp duty reserve tax

(1) At the end of section 99(4) of FA 1986 (stamp duty reserve tax: interpretation: chargeable securities) add—

", or

(d) they are issued or raised by an SE (whether or not in the course of its formation in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)) and, at the time when it falls to be determined whether the securities are chargeable securities, the SE has its registered office in the United Kingdom.

(4A) "Chargeable securities" does not include securities falling within paragraph (a), (b) or (c) of subsection (3) above if—

(a) they are securities issued or raised by an SE (whether or not in the course of its formation in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)), and

(b) at the time when it falls to be determined whether the securities are chargeable securities, the SE has its registered office outside the United Kingdom."

(2) Subsection (1) shall have effect for the purposes of determining, in relation to anything occurring on or after 1st April 2005, whether securities (whenever issued or raised) are chargeable securities for the purposes of Part 4 of FA 1986.

58 Bearer instruments: stamp duty and stamp duty reserve tax

(1) In section 90(3C)(a) of FA 1986 (stamp duty reserve tax: bearer instruments) after "United Kingdom" insert "(other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea))".

(2) In section 90(3E)(a) of FA 1986 (stamp duty reserve tax: bearer instruments) after "United Kingdom" insert "(other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea))".

(3) In paragraph 11 of Schedule 15 to FA 1999 (bearer instruments) for the definition of "UK company" substitute—

""UK company" means—

(a) a company that is formed or established in the United Kingdom (other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)), or

(b) an SE which has its registered office in the United Kingdom following a transfer in accordance with Article 8 of that Regulation;".

(4) This section shall have effect for the purposes of determining whether or not stamp duty or stamp duty reserve tax is chargeable in respect of anything done on or after 1st April 2005.

59 Consequential amendments

(1) In section 815A(1) of ICTA (transfer of a non-UK trade) after "section 140C" insert "or 140F".

(2) In section 35(3)(d)(i) of TCGA 1992 (re-basing to 1982, etc) after "140A," insert "140E,".

(3) In section 140A of TCGA 1992 (transfer of UK trade)—

(a) in subsection (1)(b) for "securities" substitute "shares or debentures", and

(b) in subsection (7) omit the definition of "securities".

(4) In section 140C of TCGA 1992 (transfer of non-UK trade)—

(a) in subsection (1)(c) for "securities" substitute "shares or debentures", and

(b) in subsection (9) omit the definition of "securities".

(5) In paragraph 88(1) and (5) of Schedule 29 to FA 2002 (intangible fixed assets: gains and losses: transferred assets: application for clearance) after "85(5)," insert "85A(5), 87A(6),".

(6) In paragraph 127 of that Schedule (acquired assets to be treated as existing assets) after sub-paragraph (1)(b)(ii) insert—

", or

(iii) section 140E of that Act (transfer on formation of SE by merger),".

(7) Subsections (3) and (4) shall have effect in relation to an issue effected on or after 1st April 2005.

60 Residence

(1) After section 66 of FA 1988 (company residence) insert—

"**66A Residence of SE**

(1) This section applies to an SE which transfers its registered office to the United Kingdom (in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)).

(2) Upon registration in the United Kingdom the SE shall be regarded for the purposes of the Taxes Acts as resident in the United Kingdom; and accordingly, if a different place of residence is given by any rule of law, that place shall not be taken into account for those purposes.

(3) The SE shall not cease to be regarded as resident in the United Kingdom by reason only of the subsequent transfer from the United Kingdom of its registered office.

(4) In this section "the Taxes Acts" has the same meaning as in the Taxes Management Act 1970."

(2) In section 249(3) of FA 1994 (certain companies to be treated as non-resident) after "resident there)" insert ", by virtue of section 66A of that Act (residence of SE)".

(3) Subsection (1) shall have effect in relation to the transfer of a registered office which occurs on or after 1st April 2005.

61 Continuity for transitional purposes

(1) If at any time a company ceases to be resident in the United Kingdom in the course of the formation of an SE by merger (whether or not the company continues to exist after the formation of the SE) the provision specified in subsection (3) shall apply after that time, but in relation to liabilities accruing and matters arising before that time—

(a) as if the company were still resident in the United Kingdom, and

(b) where the company has ceased to exist, as if the SE were the company.

(2) If at any time an SE transfers its registered office from the United Kingdom and ceases to be resident in the United Kingdom, the provision specified in subsection (3) shall apply after that time, but in relation to liabilities accruing and matters arising before that time, as if the SE were still resident in the United Kingdom.

(3) The provision mentioned in subsections (1) and (2) is Schedule 18 to FA 1998 (tax returns, assessments, etc).

62 Groups

(1) After section 170(10) of TCGA 1992 (groups: merger, etc) insert—

"(10A) Where the principal company of a group (Group 1)—

(a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),

(b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or

(c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),

Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly."

(2) Subsection (1) shall have effect in relation to the formation of an SE (including its formation by transformation) which occurs on or after 1st April 2005.

63 Groups: intangible fixed assets

(1) After paragraph 51 of Schedule 29 to FA 2002 (groups: continuity) insert—

"51A For the purposes of this Schedule where the principal company of a group (Group 1)—

(a) becomes an SE by reason of being the acquiring company in the formation of an SE by merger by acquisition (in accordance with Articles 2(1), 17(2)(a) and 29(1) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)),

(b) becomes a subsidiary of a holding SE (formed in accordance with Article 2(2) of that Regulation), or

(c) is transformed into an SE (in accordance with Article 2(4) of that Regulation),

Group 1 and any group of which the SE is a member on formation shall be regarded as the same; and the question whether or not a company has ceased to be a member of a group shall be determined accordingly."

(2) Subsection (1) shall have effect in relation to the formation of an SE (including its formation by transformation) which occurs on or after 1st April 2005.

64 Held-over gains

(1) In section 116(11) of TCGA 1992 (shares: reorganisation, etc) after "140A," insert "140E,".

(2) After section 140(6A) of that Act (postponement of charge on transfer of assets to foreign company) insert—

"(6B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, securities are transferred to the SE by a transferor company—

(a) the transfer to the SE shall be disregarded for the purposes of subsection (4), and

(b) the SE shall be treated as if it were the transferor company in relation to—

(i) any subsequent disposal of the securities, and

(ii) any subsequent disposal by the transferee company of assets to which subsection (5) applies."

(3) After section 154(2) of that Act (held over gains: depreciating assets) insert—

"(2A) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, asset No 2 or shares in a company which holds asset No 2 are transferred to the SE, the transfer to the SE shall be disregarded for the purposes of subsection (2), and—

(a) if the SE holds asset No 2, it shall be treated for the purposes of subsection (2), in relation to asset No 2, as if it were the claimant, or

(b) if the SE holds shares in the company which holds asset No 2, section 175 shall apply in relation to the group of which the SE is a member as if it were the same group as any group of which the claimant was a member before the formation of the SE.

(2B) If, as part of the process of a merger forming an SE in circumstances in which section 140E applies, the SE becomes a member (whether or not as the principal company) of a group of which the claimant is also a member, for the purposes of subsection (2) section 175 shall apply in relation to the trade

carried on by the claimant as if the group of which the SE is a member were the same group as the group of which the claimant was a member before the formation of the SE."

(4) After section 179(1A) of that Act (company ceasing to be member of group) insert—

"(1B) Where, as part of the process of a merger to form an SE in circumstances in which section 140E applies, a company which is a member of a group ("Group 1") ceases to exist and in consequence of that cessation—

(a) assets are transferred to the SE, or

(b) shares in one or more companies which were also members of the group are transferred to the SE,

a company which has ceased to exist, or the shares in which have been transferred to the SE, shall not be treated for the purposes of this section as having left Group 1.

(1C) If subsection (1B) applies in relation to a company then for the purposes of this section—

(a) the SE and a company which has ceased to exist in consequence of the merger to form the SE shall be treated as the same entity, and

(b) if the SE is a member of a group ("Group 2") following its formation (whether or not as the principal company of the group) a company which was a member of Group 1 and became a member of Group 2 in consequence of the formation of the SE shall be treated, for the purposes of this section, as if Group 1 and Group 2 were the same."

(5) This section shall have effect in relation to the formation of an SE in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea) which occurs on or after 1st April 2005.

65 Restrictions on set-off of pre-entry losses

(1) Schedule 7A to TCGA 1992 (restrictions on set-off of pre-entry losses) shall be amended as follows.

(2) After paragraph 1(3A)(a) insert—

"(aa) in a case in which (whether or not paragraph (a)(i) also applies)—

(i) the company is an SE resident in the United Kingdom, and

(ii) the asset was transferred to the SE as part of the process of its formation by the merger by acquisition of two or more companies in accordance with Articles 2(1) and 17(2)(a) or (b) of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea),

are references to the asset becoming a chargeable asset in relation to the SE or, if at the time of the formation of the SE the asset was a chargeable asset in relation to a company which ceased to exist as part of the process of the formation of the SE, to the asset becoming a chargeable asset in relation to that company;".

(3) In the definition of "chargeable asset" in paragraph 1(3A) after "section 10B" insert "(or, if the company is an SE, by reason of the asset having been transferred to the SE on its formation)".

(4) In paragraph 1(6)(a) after "subsection (10)" insert "or (10A)".

(5) In paragraph 9(6) after "subsection (10)" insert "or (10A)".

(6) This section shall have effect in relation to the formation of an SE which occurs on or after 1st April 2005.

PART 5

MISCELLANEOUS MATTERS

66 Vehicle excise duty: late renewal supplements

(1) VERA 1994 is amended as follows.

(2) Section 7A (supplement payable on late renewal of vehicle licence) is amended as follows.

(3) In subsection (1) (cases in which regulations may provide for supplement to be payable), for the words from "in prescribed cases" to the end substitute "where—

(a) a vehicle has ceased to be appropriately covered,

(b) the vehicle is not, before the end of the relevant prescribed period, appropriately covered as mentioned in paragraph (a) or (b) of subsection (1A) below with effect from the time immediately after it so ceased or appropriately covered as mentioned in paragraph (d) of that subsection, and

(c) the circumstances are not such as may be prescribed."

(4) After that subsection insert—

"(1A) For the purposes of this section and section 7B a vehicle is appropriately covered if (and only if)—

(a) a vehicle licence or trade licence is in force for or in respect of the vehicle,

(b) the vehicle is an exempt vehicle in respect of which regulations under this Act require a nil licence to be in force and a nil licence is in force in respect of it,

(c) the vehicle is an exempt vehicle that is not one in respect of which regulations under this Act require a nil licence to be in force, or

(d) the vehicle is neither kept nor used on a public road and the declarations and particulars required to be delivered by regulations under section 22(1D) have been delivered in relation to it in accordance with the regulations within the immediately preceding period of 12 months.

(1B) Where a vehicle for or in respect of which a vehicle licence is in force is transferred by the holder of the vehicle licence to another person, the vehicle licence is to be treated for the purposes of subsection (1A) as no longer in force unless it is delivered to the other person with the vehicle.

(1C) Where—

(a) an application is made for a vehicle licence for any period, and

(b) a temporary licence is issued pursuant to the application,

subsection (1B) does not apply to the licence applied for if, on a transfer of the vehicle during the currency of the temporary licence, the temporary licence is delivered with the vehicle to the transferee.

(1D) In subsection (1)(b) "the relevant prescribed period" means such period beginning with the date on which the vehicle ceased to be appropriately covered as is prescribed."

(5) In subsection (2)(c) (amount of supplement variable according to length of period between expiry of licence and payment of supplement or renewal of licence), for sub-paragraphs (i) and (ii) substitute—

"(i) the time of a notification (in accordance with regulations under section 7B(1)) to, or in relation to, a person by whom it is payable, and

(ii) the time at which it is paid."

(6) In subsection (3)(b) (supplement not to cease to be payable by reason of taking out of vehicle licence), for "a vehicle licence being taken out for the vehicle" substitute "the vehicle being again appropriately covered".

(7) Omit subsection (4)(a) (definition of "expiry of a vehicle licence").

(8) In the heading, for "late renewal of vehicle licence" substitute "vehicle ceasing to be appropriately covered".

(9) Section 7B (late-renewal supplements: further provisions) is amended as follows.

(10) In subsection (1) (notification of person in whose name vehicle is registered)—

(a) for "on non-renewal of a vehicle licence for" substitute "in relation to", and

(b) for "failure to renew a vehicle licence" substitute "the vehicle ceasing to be appropriately covered".

(11) In the heading, for "Late-renewal" substitute "Section 7A".

67 Reorganisation of water and sewerage services in Northern Ireland

(1) In this section "relevant transfer" means a transfer of property, rights or liabilities where—

(a) the transfer is of property, rights or liabilities which—

(i) are specified or described in or determined in accordance with a scheme, and

(ii) consist of or include relevant property, rights or liabilities,

(b) the transfer is from a Northern Ireland department or persons which include a Northern Ireland department to a company or companies specified in the scheme ("transferee company"), and

(c) the transfer is effected by or under an enactment which—

(i) is made after the coming into force of this section, and

(ii) relates to the provision of water or sewerage services in Northern Ireland.

(2) In this section "relevant property, rights or liabilities" means property, rights or liabilities connected with the provision of any water or sewerage services.

(3) The Treasury may by regulations make provision for or in connection with varying the way in which a relevant tax or duty would, apart from the regulations, have effect in relation to, or in connection with, any of the following—

(a) anything done for the purpose of, or under or in consequence of, a relevant transfer of relevant property, rights or liabilities from a Northern Ireland department to a transferee company;

(b) any relevant property, rights or liabilities which are the subject of a relevant transfer from a Northern Ireland department to a transferee company;

(c) any relevant property, rights or liabilities of a transferee company.

(4) The provision that may be made by the regulations includes provision for or in connection with any of the following—

(a) a tax provision not to apply or to apply with modifications in prescribed cases or circumstances;

(b) anything done to have or not to have a specified consequence for the purposes of a tax provision in prescribed cases or circumstances;

(c) any relevant property, rights or liabilities which are the subject of a relevant transfer from a Northern Ireland department to a transferee company to be treated in a specified way for the purposes of a tax provision in prescribed cases or circumstances;

(d) the withdrawal of relief (whether or not granted by virtue of the regulations), and the charging of tax, in prescribed cases or circumstances;

(e) requiring or enabling the Secretary of State, with the consent of the Treasury, to determine or to specify the method to be used for determining anything (including amounts or values, or times or periods of time) which needs to be determined for the purposes of any tax provision (whether or not modified by the regulations) as it applies in relation to, or in connection with,—

(i) anything done for the purpose of, or under or in consequence of, a relevant transfer of relevant property, rights or liabilities from a Northern Ireland department to a transferee company, or

(ii) any relevant property, rights or liabilities which are the subject of a relevant transfer from a Northern Ireland department to a transferee company.

(5) A provision of regulations made by virtue only of subsection (3)(c) ("a subsection (3)(c) provision") (whether or not also by virtue of subsection (4)) shall not have effect for an accounting period of a transferee company unless the company is wholly owned by the Crown during the whole of that accounting period.

(6) Regulations under this section may provide that, for the purposes of a subsection (3)(c) provision, an accounting period of a transferee company shall be taken to have ended on the company ceasing to be wholly owned by the Crown.

(7) For the purposes of this section, a company shall be regarded as wholly owned by the Crown at any time when each of the issued shares in the company is held by, or by a nominee of,—

(a) the Treasury,

(b) the Secretary of State,

(c) a Northern Ireland department, or

(d) another company which is wholly owned by the Crown.

(8) In this section—

"enactment" includes a provision comprised in—

(a) Northern Ireland legislation, or

(b) an instrument made under an enactment;

"prescribed" means prescribed by or determined in accordance with regulations under this section;

"relevant tax or duty" means income tax, corporation tax, capital gains tax, stamp duty or stamp duty reserve tax;

"tax provision" means a provision of an enactment about a relevant tax or duty.

(9) Any power to make regulations under this section is exercisable by statutory instrument.

(10) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.

(11) Any power to make regulations under this section includes power—

(a) to make different provision for different cases or circumstances;

(b) to make incidental, supplemental, consequential or transitional provision or savings.

68 EU Mutual Assistance Directive: notifications

(1) This section applies where, in accordance with Article 8a of the Mutual Assistance Directive, the competent authority of another member State ("the applicant authority") requests the Commissioners for Her Majesty's Revenue and Customs to notify an instrument to the person to whom the instrument is addressed.

(2) The Commissioners must take the necessary measures to notify the instrument to that person.

(3) The notification shall be given in accordance with the law applicable to notification of similar instruments in the part of the United Kingdom in which it is given.

(4) The Commissioners must—

(a) inform the applicant authority immediately of their response to the request, and

(b) confirm to the applicant authority, as soon as is reasonably practicable, the date on which the instrument was notified to the person concerned.

(5) The Commissioners may request additional information from the applicant authority for the purpose of giving the notification.

(6) In this section "the Mutual Assistance Directive" means Council Directive 77/799/EEC as amended (in particular by Council Directive 2004/56/EC).

(7) In this section references to the Commissioners for Her Majesty's Revenue and Customs include, in relation to any time before 18th April 2005,—

(a) the Commissioners of Customs and Excise;

(b) the Commissioners of Inland Revenue.

(8) In this section "instrument" means any instrument or decision which—

(a) emanates from the administrative authorities of the member State in which the applicant authority is situated, and

(b) concerns the application in that member State of legislation on taxes covered by the Mutual Assistance Directive.

(9) This section has effect in relation to requests received by the Commissioners for Her Majesty's Revenue and Customs on or after 1st January 2005.

69 Abolition of statutory adjudicator for National Savings and Investments

(1) After the coming into force of this section, no further disputes shall be referred to a person appointed under section 84 of the Friendly Societies Act 1992 (c. 40) (adjudicator for disputes under the National Savings Bank Act 1971 and the National Debt Act 1972).

(2) This section comes into force on 1st September 2005.

PART 6

SUPPLEMENTARY PROVISIONS

70 Repeals

(1) The enactments mentioned in Schedule 11 (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.

71 Interpretation

In this Act—

"CAA 2001" means the Capital Allowances Act 2001 (c. 2);

"FA", followed by a year, means the Finance Act of that year;

"ICTA" means the Income and Corporation Taxes Act 1988 (c. 1);

"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003 (c. 1);

"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005 (c. 5);

"TCGA 1992" means the Taxation of Chargeable Gains Act 1992 (c. 12);

"VATA 1994" means the Value Added Tax Act 1994 (c. 23);

"VERA 1994" means the Vehicle Excise and Registration Act 1994 (c. 22).

72 Short title

This Act may be cited as the Finance (No. 2) Act 2005.