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## SCHEDULES

### SCHEDULE 1 **U.K.**

Section 8

#### REMOTE GAMING DUTY

#### PART 1 **U.K.**

##### IMPOSITION OF DUTY

- 1 The sections set out below are to be inserted in Part 2 of BGDA 1981 (gaming duties) before section 26A (which is renumbered 26N).
- 2 Those sections are—

*“Remote gaming duty*

#### **Interpretation**

- 26A(1) For the purposes of remote gaming duty “remote gaming” means gaming in which persons participate by the use of—
- (a) the internet,
  - (b) telephone,
  - (c) television,
  - (d) radio, or
  - (e) any other kind of electronic or other technology for facilitating communication.
- (2) For the purposes of remote gaming duty the expressions listed below shall be construed (for the whole of the United Kingdom) in accordance with the Gambling Act 2005.

<i>Expression</i>	<i>Defining provision of Gambling Act 2005</i>
Provision of facilities	Section 5(1) to (3)
Remote gambling equipment	Section 36(4) and (5)
Remote operating licence	Section 67

- (3) In relation to remote gaming duty “P” means a person who provides facilities for remote gaming.
- (4) The Treasury may by order amend the definition of “remote gaming” in subsection (1) (and an order may include incidental, consequential or transitional provision).

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### **The duty**

- 26B A duty of excise to be known as remote gaming duty shall be charged on the provision of facilities for remote gaming if—
- (a) the facilities are provided in reliance on a remote operating licence, or
  - (b) at least one piece of remote gambling equipment used in the provision of the facilities is situated in the United Kingdom (whether or not the facilities are provided for use wholly or partly in the United Kingdom).

### **The rate**

- 26C (1) Remote gaming duty is chargeable at the rate of 15% of P's remote gaming profits for an accounting period.
- (2) P's remote gaming profits for an accounting period are—
- (a) the amount of P's remote gaming receipts for the period (calculated in accordance with section 26E), minus
  - (b) the amount of P's expenditure for the period on remote gaming winnings (calculated in accordance with section 26F).

### **Accounting periods**

- 26D (1) The following are accounting periods for the purposes of remote gaming duty—
- (a) the period of three months beginning with 1st January,
  - (b) the period of three months beginning with 1st April,
  - (c) the period of three months beginning with 1st July, and
  - (d) the period of three months beginning with 1st October.
- (2) The Commissioners may agree with P for specified periods to be treated as accounting periods, instead of those described in subsection (1), for purposes of remote gaming duty relating to P.
- (3) The Commissioners may by direction make transitional arrangements for the periods to be treated as accounting periods where—
- (a) P becomes registered, or ceases to be registered, under section 26J, or
  - (b) an agreement under subsection (2) begins or ends.

### **Remote gaming receipts**

- 26E (1) The amount of P's remote gaming receipts for an accounting period is the aggregate of—
- (a) amounts falling due to P in that period in respect of entitlement to use facilities for remote gaming provided by P, and
  - (b) amounts staked, or falling due to be paid, in that period by a user of facilities for remote gaming provided by P, if or in so far as responsibility for paying any amount won by the user falls on P (or a person with whom P is connected or has made arrangements).

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- (2) Amounts in respect of VAT shall be ignored for the purposes of subsection (1).
- (3) The Treasury may by order provide that where a person who uses facilities (U) relies on an offer which waives payment or permits payment of less than the amount which would have been required to be paid without the offer, U is to be treated for the purposes of this section as having paid that amount.

### **Remote gaming winnings**

- 26F (1) The amount of P's expenditure on remote gaming winnings for an accounting period is the aggregate of the value of prizes provided by P in that period which have been won (at any time) by persons using facilities for remote gaming provided by P.
- (2) Prizes provided by P to one user on behalf of another are not to be treated as prizes provided by P.
  - (3) A reference to providing a prize to a user (U) includes a reference to crediting money in respect of gaming winnings by U to an account if U is notified that—
    - (a) the money is being held in the account, and
    - (b) U is entitled to withdraw it on demand.
  - (4) The return of a stake is to be treated as the provision of a prize.
  - (5) Where P participates in arrangements under which a number of persons who provide facilities for remote gaming contribute towards a fund which is wholly used to provide prizes in connection with the use of those facilities (sometimes described as arrangements for “linked progressive jackpot games”)—
    - (a) the making by P of a contribution which relates to the provision by P of facilities for remote gaming shall be treated as the provision of a prize, and
    - (b) the award of a prize from the fund shall not be treated as the provision of a prize by P.
  - (6) Where P credits the account of a user of facilities provided by P (otherwise than as described in subsection (3)), the credit shall be treated as the provision of a prize; but the Commissioners may direct that this subsection shall not apply in a specified case or class of cases.
  - (7) Subsections (2) to (6) of section 20 shall apply (with any necessary modifications) for the purpose of remote gaming duty as for the purpose of bingo duty.

### **Losses**

- 26G Where the calculation of P's remote gaming profits for an accounting period produces a negative amount, it may be carried forward in reduction of the profits of one or more later accounting periods.

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### **Exemptions**

- 26H(1) Remote gaming duty shall not be charged in respect of the provision of facilities for remote gaming if and in so far as—
- (a) the provision is charged with another gambling tax, or
  - (b) the use of the facilities is charged with another gambling tax.
- (2) Remote gaming duty shall not be charged in respect of the provision of facilities for remote gaming if and in so far as—
- (a) the provision would be charged with another gambling tax but for an express exception, or
  - (b) the use of the facilities would be charged with another gambling tax but for an express exception.
- (3) In this section “gambling tax” means—
- (a) amusement machine licence duty,
  - (b) bingo duty,
  - (c) gaming duty,
  - (d) general betting duty,
  - (e) lottery duty, and
  - (f) pool betting duty.
- (4) The Treasury may by order—
- (a) confer an exemption from remote gaming duty, or
  - (b) remove or vary (whether or not by textual amendment) an exemption under this section.
- (5) In calculating P's remote gaming profits for an accounting period, no account shall be taken of amounts or prizes if, or in so far as, they relate to the provision of facilities to which an exemption applies under or by virtue of this section.

### **Liability to pay**

- 26I (1) P is liable for any remote gaming duty charged on P's remote gaming profits for an accounting period.
- (2) If P is a body corporate, P and P's directors are jointly and severally liable for any remote gaming duty charged on P's remote gaming profits for an accounting period.
- (3) The Commissioners may make regulations about payment of remote gaming duty; and the regulations may, in particular, make provision about—
- (a) timing;
  - (b) instalments;
  - (c) methods of payment;
  - (d) when payment is to be treated as made;
  - (e) the process and effect of assessments by the Commissioners of amounts due.

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- (4) Subject to regulations under subsection (3), section 12 of the Finance Act 1994 (assessment) shall apply in relation to liability to pay remote gaming duty.

### **Registration**

- 26J (1) The Commissioners shall maintain a register of persons who provide facilities for remote gaming in respect of which remote gaming duty may be chargeable.
- (2) A person may not provide facilities for remote gaming in respect of which remote gaming duty may be chargeable without being registered.
- (3) The Commissioners may make regulations about registration; in particular, the regulations may include provision (which may include provision conferring a discretion on the Commissioners) about—
- (a) the procedure for applying for registration;
  - (b) the timing of applications;
  - (c) the information to be provided;
  - (d) notification of changes;
  - (e) de-registration;
  - (f) re-registration after a person ceases to be registered.
- (4) The regulations may require a registered person to give notice to the Commissioners before applying for a remote operating licence.
- (5) The regulations may permit the Commissioners to make registration, or continued registration, of a foreign person conditional; and the regulations may, in particular, permit the Commissioners to require—
- (a) the provision of security for payment of remote gaming duty;
  - (b) the appointment of a United Kingdom representative with responsibility for discharging liability to remote gaming duty.
- (6) In subsection (5) “foreign person” means a person who—
- (a) in the case of an individual, is not usually resident in the United Kingdom,
  - (b) in the case of a body corporate, does not have an established place of business in the United Kingdom, and
  - (c) in any other case, does not include an individual who is usually resident in the United Kingdom.
- (7) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part about remote gaming duty in their application to groups.
- (8) The regulations—
- (a) may make provision which applies generally or only for specified purposes, and
  - (b) may make different provision for different purposes.

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## Returns

- 26K(1) The Commissioners may make regulations requiring persons who provide facilities for remote gaming in respect of which remote gaming duty may be chargeable to make returns to the Commissioners in respect of their activities.
- (2) The regulations may, in particular, make provision about—
- (a) liability to make a return;
  - (b) timing;
  - (c) form;
  - (d) content;
  - (e) method of making;
  - (f) declarations;
  - (g) authentication;
  - (h) when a return is to be treated as made.
- (3) The regulations—
- (a) may make provision which applies generally or only for specified purposes, and
  - (b) may make different provision for different purposes.

## Enforcement

- 26L (1) Contravention of a provision made by or by virtue of sections 26I to 26K—
- (a) is conduct to which section 9 of the Finance Act 1994 applies (penalties), and
  - (b) attracts daily penalties under that section.
- (2) A person who is knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of remote gaming duty commits an offence.
- (3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to—
- (a) a penalty of—
    - (i) the statutory maximum, or
    - (ii) if greater, three times the duty which is unpaid or the payment of which is sought to be avoided,
  - (b) imprisonment for a term not exceeding six months, or
  - (c) both.
- (4) A person guilty of an offence under subsection (2) shall be liable on conviction on indictment to—
- (a) a penalty of any amount,
  - (b) imprisonment for a term not exceeding seven years, or
  - (c) both.

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## Review and appeal

- 26M(1) Sections 14 to 16 of the Finance Act 1994 (review and appeal) shall apply in relation to liability to pay remote gaming duty.
- (2) Sections 14 to 16 of that Act shall also apply to the decisions listed in subsection (3) below.
- (3) Those decisions are—
- (a) a decision to refuse a request for an agreement under section 26D(2),
  - (b) a decision to give a direction under section 26D(3),
  - (c) a decision not to give a direction under section 26D(3),
  - (d) a decision to direct that section 26F(6) shall not apply in a specified case,
  - (e) a decision under regulations by virtue of section 26J(3), and
  - (f) a decision about security by virtue of section 26J(5)(a).
- (4) A decision of a kind specified in subsection (3) shall be treated as an ancillary matter for the purposes of sections 14 to 16 of the Finance Act 1994.”

## PART 2 U.K.

### CONSEQUENTIAL AMENDMENTS

- 3 In BGDA 1981, before section 26N (non-sterling amounts) (as renumbered by paragraph 1 above) insert the italic cross-heading “General”.
- 4 In section 31 of that Act (protection of officers), after “bingo duty” insert “ , remote gaming duty ”.
- 5 In section 32 of that Act (subordinate legislation), after subsection (2) insert—
- “ (3) But in the case of an order under section 26H(4) which has the effect of adding to the class of activities in respect of which remote gaming duty is chargeable—
- (a) subsection (2) above shall not apply, and
  - (b) the order may not be made unless a draft has been laid before and approved by resolution of the House of Commons.”
- 6 In section 33(2) of that Act (no legalising effect), after “bingo duty” insert “ , remote gaming duty ”.

## SCHEDULE 2 U.K.

Section 23

### CLIMATE CHANGE LEVY: REDUCED-RATE SUPPLIES ETC

#### Introductory

- 1 Schedule 6 to FA 2000 (climate change levy) is amended as follows.

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*Reduced-rate supplies*

- 2 In paragraph 4(2)(b) (taxable supplies: introduction), after “paragraph 24” insert “ or 45A ”.

**Commencement Information**

**I1** Sch. 2 para. 2 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1)

- 3 In paragraph 5(3) (supplies of electricity), for “or 24” substitute “ , 24 or 45A ”.

**Commencement Information**

**I2** Sch. 2 para. 3 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1)

- 4 In paragraph 6(2A) (supplies of gas), after “24” insert “ or 45A ”.

**Commencement Information**

**I3** Sch. 2 para. 4 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1)

- 5 (1) Paragraph 34 (other commodities: deemed supplies) is amended as follows.

(2) In sub-paragraph (1)(b), for “or 24” substitute “ , 24 or 45A ”.

(3) After sub-paragraph (3) insert—

“(4) A supply that is deemed to be made under paragraph 45A is treated as taking place upon the later determination.”

**Commencement Information**

**I4** Sch. 2 para. 5 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1)

- 6 In paragraph 39(1)(c) (regulations as to time of supply), for “or 24” substitute “ , 24 or 45A ”.

**Commencement Information**

**I5** Sch. 2 para. 6 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1)

- 7 For paragraph 44 substitute—

“44 (1) For the purposes of this Schedule, a taxable supply is a reduced-rate supply if—

- (a) the taxable commodity is supplied to a facility specified in a certificate given by the Secretary of State to the Commissioners as a facility which is to be taken as being covered by a climate change agreement for a period specified in the certificate, and
- (b) the supply is made at a time falling in that period.

(2) Sub-paragraph (1) has effect subject to paragraph 45.



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- (3) The Commissioners may by regulations make provision for giving effect to sub-paragraph (1).
- (4) Regulations under this paragraph may, in particular, include provision for determining whether any taxable commodity is supplied to a facility.
- (5) The provision that may be made by virtue of sub-paragraph (4) includes, in particular, provision for a taxable commodity of any description specified in the regulations to be taken as supplied to a facility only if the commodity is delivered to the facility.”

#### Commencement Information

**I6** Sch. 2 para. 7 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1) (with art. 2(2)(4))

- 8 (1) Paragraph 45 (reduced-rate supplies: variation of notices under paragraph 44) is amended as follows.
  - (2) Omit sub-paragraphs (2) to (4).
  - (3) In sub-paragraph (5)—
    - (a) in paragraph (b), for “the variation notice is published” substitute “ the variation certificate is given ”, and
    - (b) for the words following that paragraph substitute “ the original certificate has effect as if the facility had never been specified in it ”.
  - (4) In sub-paragraph (6)—
    - (a) in paragraph (b), for “the variation notice is published” substitute “ the variation certificate is given ”, and
    - (b) for the words following that paragraph substitute “ the original certificate has effect as if the last day of the period specified for the facility in the original certificate were the day on which the variation certificate is given ”.
  - (5) In sub-paragraph (7), for the words from “the original notice” to the end substitute “the original certificate has effect as if the last day of the period specified for the facility in the original certificate were the later of—
    - (a) the day on which the variation certificate is given, and
    - (b) the day specified in the variation certificate.”
  - (6) The italic heading before that paragraph accordingly becomes “ *Reduced-rate supplies: variation of certificates under paragraph 44* ”.

#### Commencement Information

**I7** Sch. 2 para. 8 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1)

- 9 After that paragraph insert—

*“Reduced-rate supplies: deemed supply*

- 45A(1) This paragraph applies where—

- (a) a taxable supply has been made to any person (“the recipient”),

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- (b) the supply was made on the basis that it was a reduced-rate supply, and
  - (c) it is later determined that the supply was not a reduced-rate supply.
- (2) For the purposes of this Schedule—
- (a) the recipient is deemed to make a taxable supply to itself of the taxable commodity, and
  - (b) the amount payable by way of levy on that deemed supply is 80 per cent. of the amount that would be payable if the supply were not a reduced-rate supply.”

#### Commencement Information

**18** Sch. 2 para. 9 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1) (with art. 2(3)(4))

- 10 In paragraph 147 (interpretation), in the definition of “reduced-rate supply”—
- (a) for “44(3)” substitute “ 44(1) ”, and
  - (b) for “44(4)” substitute “ 44(2) ”.

#### Commencement Information

**19** Sch. 2 para. 10 in force at 1.11.2007 by S.I. 2007/2902, art. 2(1) (with art. 2(2)(4))

#### *Notifications and certificates*

- 11 (1) Paragraph 11 (exemption: supply not for burning in UK) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) omit “has, before the supply is made, notified the supplier”, and
  - (b) omit “that he” (in both places).
- (3) In sub-paragraph (3)—
- (a) omit “has, before the supply is made, notified the supplier that”, and
  - (b) omit “he”.
- 12 (1) Paragraph 101 (civil penalties: incorrect notifications etc) is amended as follows.
- (2) Omit sub-paragraph (1).
- (3) In sub-paragraph (2)—
- (a) after “paragraphs” insert “ 11, ” and
  - (b) after “the certificate is” insert “ (or becomes) ”.
- (4) In sub-paragraph (3)—
- (a) for “sub-paragraph (1) or (2)” substitute “ this paragraph ”, and
  - (b) omit “notification or”.
- (5) In sub-paragraph (4)—
- (a) for “notification or certificate” substitute “ certificate (or not revoking or varying it) ”,
  - (b) for “the person who gave it” substitute “ the person concerned ”, and

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- (c) for the words from “there is” to the end substitute “ the person has a reasonable excuse ”.
- (6) In sub-paragraph (5)—
  - (a) for “notification or certificate” substitute “ certificate (or not revoking or varying it) ”, and
  - (b) for “the giving of the notification or certificate” substitute “ that ”.
- (7) The italic heading before paragraph 101 accordingly becomes “ *Civil penalties: incorrect certificates* ”.

#### Commencement

- 13
- (1) Paragraphs 2 to 10 come into force on such day as the Treasury may by order made by statutory instrument appoint.
  - (2) But any power to make regulations under any provision inserted or amended by any of those paragraphs may be exercised at any time after this Act is passed.
  - (3) The power to make an order under sub-paragraph (1)—
    - (a) may be exercised so as to bring a provision into force only in such cases as may be described in the order,
    - (b) may be exercised so as to make different provision for different cases or descriptions of case,
    - (c) includes power to make incidental, consequential, supplemental or transitional provision or savings.

## SCHEDULE 3 **U.K.**

Section 25

### MANAGED SERVICE COMPANIES

#### PART 1 **U.K.**

##### AMENDMENTS OF ITEPA 2003

- 1 ITEPA 2003 is amended as follows.
- 2 In section 7(5) (meaning of “employment income” etc), for paragraph (a) substitute—
  - “(a) Chapters 7 to 9 of this Part (agency workers, workers under arrangements made by intermediaries, and workers providing services through managed service companies),”.
- 3 In section 48(2) (workers under arrangements made by intermediaries: scope of Chapter) for “or” at the end of paragraph (a) substitute—
  - “(aa) applies to services provided by a managed service company (within the meaning of Chapter 9 of this Part), or”.
- 4 After section 61 insert—

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## “CHAPTER 9 U.K.

### MANAGED SERVICE COMPANIES

#### *Application of this Chapter*

#### **61A Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services by a managed service company.
- (2) Nothing in this Chapter—
  - (a) affects the operation of Chapter 7 of this Part (agency workers), or
  - (b) applies to payments or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax).

#### **61B Meaning of “managed service company”**

- (1) A company is a “managed service company” if—
  - (a) its business consists wholly or mainly of providing (directly or indirectly) the services of an individual to other persons,
  - (b) payments are made (directly or indirectly) to the individual (or associates of the individual) of an amount equal to the greater part or all of the consideration for the provision of the services,
  - (c) the way in which those payments are made would result in the individual (or associates) receiving payments of an amount (net of tax and national insurance) exceeding that which would be received (net of tax and national insurance) if every payment in respect of the services were employment income of the individual, and
  - (d) a person who carries on a business of promoting or facilitating the use of companies to provide the services of individuals (“an MSC provider”) is involved with the company.
- (2) An MSC provider is “involved with the company” if the MSC provider or an associate of the MSC provider—
  - (a) benefits financially on an ongoing basis from the provision of the services of the individual,
  - (b) influences or controls the provision of those services,
  - (c) influences or controls the way in which payments to the individual (or associates of the individual) are made,
  - (d) influences or controls the company's finances or any of its activities, or
  - (e) gives or promotes an undertaking to make good any tax loss.
- (3) A person does not fall within subsection (1)(d) merely by virtue of providing legal or accountancy services in a professional capacity.
- (4) A person does not fall within subsection (1)(d) merely by virtue of carrying on a business consisting only of placing individuals with persons who wish

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to obtain their services (including by contracting with companies which provide their services).

- (5) Subsection (4) does not apply if the person or an associate of the person—
- (a) does anything within subsection (2)(c) or (e), or
  - (b) does anything within subsection (2)(d) other than influencing the company's finances or activities by doing anything within subsection (2)(b).

### **61C Section 61B: supplementary**

- (1) The Treasury may by order provide that persons of a prescribed description do not fall within section 61B(1)(d).
- (2) An order under subsection (1) may be made so as to have effect in relation to the whole of the tax year in which it is made.
- (3) In section 61B and this section, “company” means a body corporate or partnership.
- (4) References in section 61B to an associate of a person (“P”) include a person who, for the purpose of securing that the individual's services are provided by a company, acts in concert with P (or with P and other persons).
- (5) In section 61B(2)(e), “undertaking to make good any tax loss” means an undertaking (in any terms) to make good (in whole or in part, and by any means) any cost to the individual or an associate of the individual resulting from a relevant provision, or a particular kind of relevant provision, applying in relation to payments made to the individual or associate.
- (6) In subsection (5) “relevant provision” means—
  - (a) a provision of the Tax Acts,
  - (b) an enactment relating to national insurance, or
  - (c) a provision of subordinate legislation made under any such provision or enactment.

### *The deemed employment payment*

### **61D Worker treated as receiving earnings from employment**

- (1) This section applies if—
  - (a) the services of an individual (“the worker”) are provided (directly or indirectly) by a managed service company (“the MSC”),
  - (b) the worker, or an associate of the worker, receives (from any person) a payment or benefit which can reasonably be taken to be in respect of the services, and
  - (c) the payment or benefit is not earnings (within Chapter 1 of Part 3) received by the worker directly from the MSC.
- (2) The MSC is treated as making to the worker, and the worker is treated as receiving, a payment which is to be treated as earnings from an employment (“the deemed employment payment”).

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- (3) The deemed employment payment is treated as made at the time the payment or benefit mentioned in subsection (1)(b) is received.
- (4) In this Chapter—
  - “the worker” has the meaning given by subsection (1),
  - “the relevant services” means the services mentioned in that subsection, and
  - “the client” means the person to whom the relevant services are provided.
- (5) Section 61F supplements this section.

### **61E Calculation of deemed employment payment**

- (1) The amount of the deemed employment payment is the amount resulting from the following steps—

*Step 1*

Find (applying section 61F) the amount of the payment or benefit mentioned in section 61D(1)(b).

*Step 2*

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met by the worker that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client to provide the relevant services, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this point is nil or a negative amount, there is no deemed employment payment.

*Step 3*

Assume that the result of step 2 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) In step 2 of subsection (1), the reference to expenses met by the worker includes, where the MSC is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (3) In step 2 of subsection (1), the expenses deductible include the amount of any mileage allowance relief which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (4) if—
  - (a) the worker had been employed by the client to provide the relevant services, and
  - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (4) A vehicle falls within this subsection if—

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- (a) it is provided by the MSC for the worker, or
  - (b) where the MSC is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (5) For the purposes of subsection (1) any necessary apportionment of payments or benefits that are referable partly to the provision of the relevant services and partly to other matters is to be made on a just and reasonable basis.

### **61F Sections 61D and 61E: application of rules relating to earnings from employment**

- (1) The following provisions apply for the purposes of sections 61D and 61E.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be general earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
- (a) in the case of a payment or cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
- (a) the amount that would be general earnings if the benefit were general earnings from an employment, or
  - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
- (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
  - (b) in the case of a non-cash benefit, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
    - (i) the worker had been an employee, and
    - (ii) the benefit had been provided by reason of the employment.

### **61G Application of Income Tax Acts in relation to deemed employment**

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—
- (a) the worker were employed by the MSC to provide the relevant services, and
  - (b) the deemed employment payment were a payment by the MSC of earnings from that employment;
- but this is subject to subsection (3).
- (3) No deduction under Part 5 (deductions allowed from employment income) or section 232 (mileage allowance relief) may be made from the deemed employment payment.

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- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
- (a) the worker were employed by the client to perform the relevant services, and
  - (b) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
- (a) the worker being resident, ordinarily resident or domiciled outside the United Kingdom,
  - (b) the client being resident or ordinarily resident outside the United Kingdom, and
  - (c) the relevant services being provided outside the United Kingdom.
- (6) Where the MSC is a partnership and the worker is a member of the partnership, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership.
- (7) Where—
- (a) the worker is resident in the United Kingdom, and
  - (b) the relevant services are provided in the United Kingdom,
- the MSC is treated as having a place of business in the United Kingdom, whether or not it in fact does so.

#### *Supplementary provisions*

#### **61H Relief in case of distributions by managed service company**

- (1) A claim for relief may be made under this section where the MSC—
- (a) is a body corporate,
  - (b) is treated as making a deemed employment payment in any tax year, and
  - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
- (a) by the MSC by notice to an officer of Revenue and Customs, and
  - (b) within 5 years after 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made an officer of Revenue and Customs is satisfied that relief should be given in order to avoid a double charge to tax, the officer must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to the officer appropriate.



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- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, an officer of Revenue and Customs must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
  - (a) against relevant distributions of the same tax year before those of other years,
  - (b) against relevant distributions received by the worker before those received by another person, and
  - (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

#### **61I Meaning of “associate”**

- (1) Subsections (2) to (4) apply for the purposes of this Chapter.
- (2) “Associate”, in relation to an individual, means—
  - (a) a member of the individual's family or household,
  - (b) a relative of the individual,
  - (c) a partner of the individual, or
  - (d) the trustee of any settlement in relation to which the individual, or a relative of the individual or member of the individual's family (living or dead), is or was a settlor.
- (3) “Associate”, in relation to a company, means a person connected with the company.
- (4) “Associate”, in relation to a partnership, means any associate of a member of the partnership.
- (5) If—
  - (a) a managed service company (“the MSC”) is a partnership, and
  - (b) a person is an associate of another person by virtue only of being a member of the partnership,the person is to be treated, for the purposes of this Chapter as it applies in relation to the MSC, as if the person were not an associate of that other person.
- (6) In subsection (2), “relative” means ancestor, lineal descendant, brother or sister.
- (7) For the purposes of subsection (2)—
  - (a) a man and woman living together as husband and wife are treated as if they were married to each other, and
  - (b) two persons of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

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## 61J Interpretation of Chapter

(1) In this Chapter—

- “associate” has the meaning given by section 61I,
- “business” means any trade, profession or vocation,
- “the client” has the meaning given by section 61D(4),
- “employer's national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions,
- “managed service company” has the meaning given by section 61B,
- “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992,
- “PAYE provisions” means the provisions of Part 11 or PAYE regulations,
- “the relevant services” has the meaning given by section 61D(4),
- and
- “the worker” has the meaning given by section 61D(4).

(2) Nothing in section 995 of ITA 2007 (meaning of control) applies for the purposes of this Chapter.”

5 In section 218(1) (exclusion of lower-paid employments from parts of benefits code: calculation of earnings rate), in Step 1, at the end of paragraph (d) insert “and

- (e) in the case of an employment within section 61G(2) (deemed employment payment by managed service company), the total amount of deemed employment payments for the year.”

6 After section 688 insert—

### “688A Managed service companies: recovery from other persons

(1) PAYE regulations may make provision authorising the recovery from a person within subsection (2) of any amount that an officer of Revenue and Customs considers should have been deducted by a managed service company (“the MSC”) from a payment of, or on account of, PAYE income of an individual.

(2) The persons are—

- (a) a director or other office-holder, or an associate, of the MSC,
- (b) an MSC provider,
- (c) a person who (directly or indirectly) has encouraged or been actively involved in the provision by the MSC of the services of the individual, and
- (d) a director or other office-holder, or an associate, of a person (other than an individual) who is within paragraph (b) or (c).

(3) A person does not fall within subsection (2)(c) merely by virtue of—

- (a) providing legal or accountancy advice in a professional capacity, or
- (b) placing the individual with persons who wish to obtain the services of the individual (including by contracting with the MSC for the provision of those services).

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- (4) The supplementary provision that may be made by the regulations includes provision as to the liability of one person within subsection (2) to another such person.
- (5) In this section—  
“associate” has the meaning given by section 61I,  
“director” has the meaning given by section 67,  
“managed service company” has the meaning given by section 61B, and  
“MSC provider” means an MSC provider who is involved with the MSC (within the meaning of section 61B).
- (6) Section 61C(4) (extended meaning of “associate”) applies for the purposes of subsection (2)(d).
- (7) The Treasury may by order amend this section (but not this subsection or subsection (8)).
- (8) The Treasury must not make an order under subsection (7) unless a draft of it has been laid before and approved by a resolution of the House of Commons.”
- 7 In section 717(4) (orders and regulations not subject to negative procedure), insert at the end “ or section 688A(7) (PAYE regulations: managed service companies) ”.
- 8 In Part 2 of Schedule 1 (index of defined expressions), insert at the appropriate places—

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“associate (in Chapter 9 of Part 2)	section 61I (but see section 61C(4))”
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“business (in Chapter 9 of Part 2)	section 61J”
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“the client (in Chapter 9 of Part 2)	section 61D(4)”
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“employer's national insurance contributions (in Chapter 9 of Part 2)	section 61J”
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“managed service company (in Chapter 9 of Part 2)	section 61B”
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“national insurance contributions (in Chapter 9 of Part 2)	section 61J”
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“PAYE provisions (in Chapter 9 of Part 2)	section 61J”
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“the relevant services (in Chapter 9 of Part 2)	section 61D(4)”
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“the worker (in Chapter 9 of Part 2) section 61D(4)”.

## PART 2 **U.K.**

### CALCULATION OF PROFITS OF MSCS: DEDUCTION FOR DEEMED EMPLOYMENT PAYMENTS

#### *Deduction for deemed employment payments for income tax purposes*

9 In ITTOIA 2005, after section 164 insert—

#### *“Managed service companies*

#### **164A Deduction for deemed employment payments**

- (1) This section applies for the purpose of calculating the profits of a trade, profession or vocation carried on by a managed service company (“the MSC”) which is treated as making a deemed employment payment in connection with the trade, profession or vocation.
- (2) A deduction is allowed for—
  - (a) the amount of the deemed employment payment, and
  - (b) the amount of any employer's national insurance contributions paid by the MSC in respect of it.
- (3) The deduction is allowed for the period of account in which the deemed employment payment is treated as made.
- (4) The amount of the deduction allowed under subsection (2) is limited to the amount that reduces the profits of the firm for the tax year to nil.
- (5) No deduction in respect of—
  - (a) the deemed employment payment, or
  - (b) any employer's national insurance contributions paid by the MSC in respect of it,
 may be made except in accordance with this section.
- (6) In this section “deemed employment payment”, “employer's national insurance contributions” and “managed service company” have the same meaning as in Chapter 9 of Part 2 of ITEPA 2003.”

#### *Deduction for deemed employment payments for corporation tax purposes*

<sup>F1</sup>10 .....

#### **Textual Amendments**

- F1** Sch. 3 para. 10 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), Sch. 1 para. 724, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

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## SCHEDULE 4 **U.K.**

Section 26

### RESTRICTIONS ON TRADE LOSS RELIEF FOR PARTNERS

*Limit on amount of sideways relief and capital gains relief available in any tax year*

- 1 (1) In ITA 2007, before section 104 (and the italic cross-heading before it) insert—

*“Limit on amount of sideways relief and capital gains relief*

#### **Limit on reliefs in any tax year not to exceed cap for tax year**

- 103(1) This section applies if an individual carries on one or more trades—
- (a) as a non-active partner in a firm during a tax year, or
  - (b) as a limited partner in a firm at a time in that tax year,
- and the individual makes a loss in any of those trades (an “affected loss”) in that tax year.
- (2) There is a restriction on the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of this Chapter) may be given to the individual for any affected loss (but see subsections (6) and (7)).
  - (3) The restriction is that the total amount of the sideways relief and capital gains relief given to the individual for all the affected losses must not exceed the cap for that tax year.
  - (4) The cap for any tax year is £25,000.
  - (5) The Treasury may by order amend the sum for the time being specified in subsection (4).
  - (6) The restriction under this section does not apply to so much of any affected loss as derives from qualifying film expenditure (see section 103D).
  - (7) The restriction under this section does not affect the giving of sideways relief for a loss made in a trade against the profits of that trade.
  - (8) In this section “trade” does not include a trade which consists of the underwriting business of a member of Lloyd's (within the meaning of section 184 of FA 1993).”
- (2) The amendment made by sub-paragraph (1) has effect in relation to any loss made by an individual in a trade in the tax year 2007-08 or any subsequent tax year.
- (3) But, in the case of a loss made by an individual in a trade in a tax year the basis period for which begins before 2nd March 2007 (a “straddling basis period”), the amount of that loss for the purposes of section 103C of ITA 2007 is—
- (a) the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of Chapter 3 of Part 4 of that Act) may be given to the individual for that loss, less
  - (b) the amount (if any) of the pre-announcement loss.
- (4) “The pre-announcement loss” is determined as follows.

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- (5) Calculate the profits or losses of the straddling basis period, but without regard to capital allowances and qualifying film expenditure (within the meaning of section 103D of ITA 2007).
- (6) If that calculation produces a loss and the individual has made a contribution of an amount as capital to the firm or LLP in question—
  - (a) on or before the start of the straddling basis period, or
  - (b) after the start of that period but before 2nd March 2007,
 apportion the loss produced by that calculation to the part of the straddling basis period which begins with the relevant date and falls before 2nd March 2007 in proportion to the number of days in that part.
- (7) Calculate so much of the loss of the straddling basis period as derives from relevant pre-announcement capital expenditure.
- (8) The pre-announcement loss is the sum of—
  - (a) the amount of the loss apportioned under sub-paragraph (6) (if any), and
  - (b) so much of the loss of the straddling basis period (if any) as derives from relevant pre-announcement capital expenditure.
- (9) In sub-paragraph (6) “the relevant date” means—
  - (a) in any case where a contribution was made on or before the start of the straddling basis period, the start of that period, and
  - (b) in any other case, the date on which the contribution was made or, if more than one contribution was made, the date on which the first contribution was made.
- (10) For the purposes of this paragraph the amount of the loss of the straddling basis period that derives from relevant pre-announcement capital expenditure is determined on a just and reasonable basis.
- (11) In this paragraph “relevant pre-announcement capital expenditure” means—
  - (a) any capital allowance in respect of expenditure paid before 2nd March 2007, and
  - (b) any capital allowance in respect of expenditure paid on or after that date pursuant to an unconditional obligation in a contract made before that date, and for this purpose “an unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of any right conferred on the firm or LLP in question (whether or not under the contract).
- (12) For the purposes of this paragraph—
  - (a) an amount of money is not to be taken as contributed as capital to a firm or LLP until the money is paid to the firm or LLP, and
  - (b) a right or other asset is not to be taken as contributed as capital to a firm or LLP until it is transferred to the firm or LLP.
- (13) Section 62 of ITA 2007 (partners: losses of a tax year etc) applies for the purposes of this paragraph as it applies for the purposes of Chapter 3 of Part 4 of that Act.

*Disregard of contributions made for purpose of  
 accessing sideways relief and capital gains relief*

- 2 (1) In ITA 2007, before section 114 insert—

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*“Exclusion of amounts in calculating contribution to the firm or LLP*

**Exclusion of amounts contributed to access relief**

113A) An amount which an individual contributes to a firm as capital is to be excluded in calculating the individual's contribution to the firm for the purposes of section 104 or 110 if the contribution was made for a prohibited purpose (but see subsection (4)).

(2) If—

- (a) an individual carries on a trade as a member of an LLP at a time in a tax year,
- (b) the individual does not devote a significant amount of time to the trade in the relevant period for that year, and
- (c) the individual contributes an amount to the LLP as capital at any time in that year,

that amount is to be excluded in calculating the individual's contribution to the LLP for the purposes of section 107 if the contribution was made for a prohibited purpose (but see subsection (4)).

(3) For the purposes of this section a contribution is made for a prohibited purpose if the main purpose, or one of the main purposes, of making the contribution is the obtaining of a reduction in tax liability by means of sideways relief or capital gains relief.

(4) This section has no effect in relation to the application of any restriction under section 104, 107 or 110 to any loss that derives wholly from qualifying film expenditure.”

(2) The amendment made by sub-paragraph (1) has effect in relation to any amount contributed to a firm or LLP as capital on or after 2nd March 2007 (but see sub-paragraph (4)).

(3) For this purpose—

- (a) an amount of money is not to be taken as contributed as capital to a firm or LLP until the money is paid to the firm or LLP, and
- (b) a right or other asset is not to be taken as contributed as capital to a firm or LLP until it is transferred to the firm or LLP.

(4) The amendment made by sub-paragraph (1) has no effect in relation to any amount contributed by an individual on or after 2nd March 2007 if—

- (a) the amount is contributed pursuant to an obligation in a contract made before that date, and
- (b) the obligation may not be varied or extinguished by the exercise of any right conferred on the individual (whether or not under the contract).

*Provision corresponding to paragraphs 1 and 2 for tax year 2006-07*

- 3 (1) ICTA has effect, in relation to any loss made by an individual in a trade in the tax year 2006-07 the basis period for which ends on or after 2nd March 2007, as if provision corresponding to section 103C of ITA 2007 were included in Chapter 7 of Part 4 of ICTA.

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- (2) Sub-paragraphs (3) to (13) of paragraph 1 apply for the purposes of sub-paragraph (1) above.
- (3) ICTA has effect for the tax year 2006-07 as if provision corresponding to section 113A of ITA 2007 were included in that Chapter.
- (4) Sub-paragraphs (2) to (4) of paragraph 2 apply for the purposes of sub-paragraph (3) above.
- (5) The provisions which are treated by this paragraph as included in Chapter 7 of Part 4 of ICTA have effect as if—
  - (a) any reference in section 103C of ITA 2007 to sideways relief were to relief under section 380 or 381 of ICTA,
  - (b) any reference in section 103C of ITA 2007 to capital gains relief in relation to a loss were to the treatment of the loss as an allowable loss by virtue of section 72 of FA 1991,
  - (c) any reference in section 103C or 113A of ITA 2007 to any provision of Chapter 3 of Part 4 of ITA 2007 were to the corresponding provision of Chapter 7 of Part 4 of ICTA, and
  - (d) any reference in section 113A of ITA 2007 to a contribution to a firm or an LLP were to a contribution to a trade carried on by the firm or LLP,
 and references in paragraphs 1(3) to (13) and 2(2) to (4) to any of those expressions are to be read accordingly.

#### *Consequential amendments*

- 4 ITA 2007 is amended as follows.
- 5 In section 32 (liability not dealt with in the calculation), for “section 112(5)” substitute “ section 103B(5) ”.
- 6 In section 82(a) (exploitation of films), for “sections 115 and 116” substitute “ section 115 ”.
- 7 (1) Section 102 (overview of Chapter 3 of Part 4) is amended as follows.
  - (2) In subsection (1)—
    - (a) in paragraph (a), for “104 to 106 and section 114)” substitute “ 103A, 103C to 105, 113A and 114) ”,
    - (b) in paragraph (b), for “107 to 109 and section 114)” substitute “ 103C, 103D, 107 to 109, 113A and 114) ”, and
    - (c) in paragraph (c), for “in an early tax year (see sections 110 to 114)” substitute “ (see sections 103B to 103D and 110 to 114) ”.
  - (3) In subsection (2), for “sections 115 and 116” substitute “ section 115 ”.
- 8 After section 103 insert—

#### **“103A Meaning of “limited partner”**

- (1) In this Chapter “limited partner” means an individual who carries on a trade—
  - (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,



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- (b) as a partner in a firm who in substance acts as a limited partner in relation to the trade (see subsection (2)), or
  - (c) while the condition mentioned in subsection (3) is met in relation to the individual.
- (2) An individual in substance acts as a limited partner in relation to a trade if the individual—
  - (a) is not entitled to take part in the management of the trade, and
  - (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.
- (3) The condition referred to in subsection (1)(c) is that—
  - (a) the individual carries on the trade jointly with other persons,
  - (b) under the law of a territory outside the United Kingdom, the individual is not entitled to take part in the management of the trade, and
  - (c) under that law, the individual is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.
- (4) In the case of an individual who is a limited partner as a result of subsection (1)(c), references in this Chapter to the individual's firm are to be read as references to the relationship between the individual and the other persons mentioned in subsection (3)(a).

### **103B Meaning of “non-active partner” etc**

- (1) For the purposes of this Chapter an individual carries on a trade as a non-active partner during a tax year if the individual—
  - (a) carries on the trade as a partner in a firm at a time during the year,
  - (b) does not carry on the trade as a limited partner at any time during the year, and
  - (c) does not devote a significant amount of time to the trade in the relevant period for the year.
- (2) For the purposes of this Chapter an individual devotes a significant amount of time to a trade in the relevant period for a tax year if, in that period, the individual spends an average of at least 10 hours a week personally engaged in activities carried on for the purposes of the trade.
- (3) For this purpose “the relevant period” means the basis period for the tax year (unless the basis period is shorter than 6 months).
- (4) If the basis period for the tax year is shorter than 6 months, “the relevant period” means—
  - (a) the period of 6 months beginning with the date on which the individual first started to carry on the trade (if the basis period begins with that date), or
  - (b) the period of 6 months ending with the date on which the individual permanently ceased to carry on the trade (if the basis period ends with that date).
- (5) If—

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- (a) any relief is given on the assumption that the individual devoted or will devote a significant amount of time to the trade in the relevant period for a tax year, but
  - (b) the individual in fact failed or fails to do so,
- the relief is withdrawn by the making of an assessment to income tax under this section.”

9 After section 103C (as inserted by paragraph 1(1) above) insert—

**“103D Meaning of “qualifying film expenditure”**

- (1) For the purposes of this Chapter expenditure is qualifying film expenditure if—
  - (a) it is deducted under a relevant film provision for the purposes of the calculation required by section 849 of ITTOIA 2005 (calculation of firm's profits or losses), or
  - (b) it is incidental expenditure which (although not deducted under a relevant film provision) is incurred in connection with the production of a film, or the acquisition of the original master version of a film, in relation to which expenditure is so deducted.
- (2) Expenditure is incidental if it is on management, administration or obtaining finance.
- (3) The extent to which expenditure is within subsection (1)(b) is determined on a just and reasonable basis.
- (4) For the purposes of this Chapter the amount of any loss that derives from qualifying film expenditure is determined on a just and reasonable basis.
- (5) In this section—
  - “the acquisition of the original master version of a film” has the same meaning as in Chapter 9 of Part 2 of ITTOIA 2005 (see sections 130 and 132 of that Act),
  - “film” is to be read in accordance with paragraph 1 of Schedule 1 to the Films Act 1985, and
  - “a relevant film provision” means any one of sections 137 to 140 of ITTOIA 2005 (relief for certified master versions of films).”

10 In—

- (a) section 104(5) (restriction on reliefs for limited partners),
- (b) section 107(2) (restriction on reliefs for members of LLPs),
- (c) section 110(1)(a) (restriction on reliefs for non-active partners in early tax years), and
- (d) section 115(1)(d) (restrictions on relief for firms exploiting films),

omit “(see section 112)”.

11 In—

- (a) section 105(11) (meaning of “contribution to the firm” for purposes of section 104),
- (b) section 108(9) (meaning of “contribution to the LLP” for purposes of section 107), and

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- (c) section 111(12) (meaning of “contribution to the firm” for purposes of section 110),  
for the words from “any regulations” to “excluded” substitute “ section 113A and any regulations made under section 114 (exclusion of amounts ”.
- 12 Omit section 106 (meaning of “limited partner”).
- 13 In section 112 (meaning of “non-active partner” and “early tax year” etc)—  
(a) omit subsections (1) to (5), and  
(b) the heading accordingly becomes “ Meaning of “early tax year” ”.
- 14 Omit the italic-cross heading before section 114 (regulations: exclusion of amounts in calculating contribution to the firm or LLP) and for the heading of that section substitute “ Power to exclude other amounts ”.
- 15 In section 115 (restrictions on reliefs for firms exploiting films), for subsection (4) substitute—  
“(4) The restrictions under this section do not apply to so much of the loss (if any) as derives from qualifying film expenditure.”
- 16 Omit section 116 (exclusion from restrictions under section 115: certain film expenditure).
- 17 In section 792 (partners claiming excess sideways or capital gains relief)—  
(a) in subsection (7), for “106” substitute “ 103A ”, and  
(b) in subsection (8), for “106(3)(a)” substitute “ 103A(3)(a) ”.
- 18 In section 809 (individuals in partnership claiming relief for licence-related trading losses: other definitions)—  
(a) in subsection (1), for “112” substitute “ 103B ”, and  
(b) in subsection (2), for “112(1)(b)” substitute “ 103B(1)(b) ”.
- 19 In paragraph 148(3)(b) of Schedule 2 (transitionals and savings: tax avoidance)—  
(a) for “106” substitute “ 103A ”, and  
(b) for “112” substitute “ 103B ”.
- 20 In Schedule 4 (index of defined expressions)—  
(a) in the definition of “limited partner”, for “106” substitute “ 103A ”,  
(b) in the definition of “non-active partner”, for “112” substitute “ 103B ”, and  
(c) after the definition of “qualifying donation (in Chapter 2 of Part 8)” insert—  
“qualifying film expenditure (in section 103D”.  
Chapter 3 of Part 4)
- 21 The amendments made by paragraphs 5 to 20 are deemed always to have had effect.

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**SCHEDULE 5** U.K.

Section 30

AVOIDANCE INVOLVING FINANCIAL ARRANGEMENTS

*Amounts not forming part of a company's income*

- 1 (1) ICTA is amended as follows.
  - (2) In section 347A(1) (annual payments: general rule), as it had effect before ITA 2007, omit paragraph (b) together with the “and” before it (payment to which section applies not income of any company for corporation tax purposes).
  - (3) The amendment made by sub-paragraph (2) has effect in relation to payments made on or after 6th December 2006 but before 6th April 2007.
  - (4) Omit section 347A (as amended by ITA 2007).
  - (5) The amendment made by sub-paragraph (4) has effect in relation to payments made on or after 6th April 2007.
- 2 (1) In section 660C of ICTA, omit subsection (4) (income which is income of settlor alone for income tax purposes by virtue of section 624 or 629 of ITTOIA 2005 not income of any company for corporation tax purposes).
  - (2) The amendment made by sub-paragraph (1) has effect in relation to accounting periods ending on or after 6th March 2007.
  - (3) But income which arises in an accounting period beginning before that date is to be chargeable to corporation tax as a result of that amendment only if it arises on or after that date.

*Structured finance arrangements*

F2F3<sub>3</sub> .....

**Textual Amendments**

**F2** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 10](#) (with Sch. 9 paras. 1-9, 22)

**F3** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 3 Pt. 2](#) (with Sch. 2)

F2F3<sub>4</sub> .....

**Textual Amendments**

**F2** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 10](#) (with Sch. 9 paras. 1-9, 22)

**F3** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 3 Pt. 2](#) (with Sch. 2)

F2F3<sub>5</sub> .....

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**Textual Amendments**

- F2** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 10](#) (with Sch. 9 paras. 1-9, 22)
- F3** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 3 Pt. 2](#) (with Sch. 2)

F2F3<sup>6</sup> .....

**Textual Amendments**

- F2** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 10](#) (with Sch. 9 paras. 1-9, 22)
- F3** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 3 Pt. 2](#) (with Sch. 2)

F2F3<sup>7</sup> .....

**Textual Amendments**

- F2** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 10](#) (with Sch. 9 paras. 1-9, 22)
- F3** Sch. 5 paras. 3-7 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 3 Pt. 2](#) (with Sch. 2)

8 (1) Section 263E of TCGA 1992 (structured finance arrangements) is amended as follows.

(2) In subsection (2) (condition A: person making disposal of asset subsequently acquires it), for the words from “subsequently” to the end substitute “ (and no-one else) has the right or obligation under the arrangement to acquire the asset disposed of by that disposal at any subsequent time (whether or not the right or obligation is subject to any conditions). ”

(3) In subsection (3) (condition B: asset ceases to exist)—  
(a) in paragraph (a), for “subsequently ceases” substitute “ will subsequently cease ”, and  
(b) in paragraph (b), for “that asset was held” substitute “ it is intended that that asset will be held ”.

(4) After subsection (4) insert—  
“(4A) If, at any time after that disposal, it becomes apparent that—  
(a) the person making the disposal will not subsequently acquire under the arrangement the asset disposed of by that disposal, or  
(b) that asset will not be held as mentioned in subsection (3)(b),  
that person is to be treated for the purposes of this Act as disposing of that asset at that time for a consideration equal to its market value at that time.”

(5) In subsection (5) (disregard of subsequent acquisitions), for “Any” substitute “ Except in a case falling within subsection (4A), any ”.

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- (6) The amendments made by this paragraph have effect in relation to disposals made on or after 6th March 2007.
- (7) The amendments made by this paragraph also have effect in relation to any disposal made by a person before that date if the person makes a claim to that effect under this sub-paragraph.

*Manufactured payments under arrangements having an unallowable purpose*

F49 .....

**Textual Amendments**

F4 Sch. 5 para. 9 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 1 (with Sch. 2)

*Options and groups of companies*

- 10 (1) In section 171(2) of TCGA 1992 (exceptions to rule that disposals within the same group of companies produce neither a gain nor a loss), after paragraph (da) insert “or (db) a disposal by company A in fulfilment of its obligations under an option granted to company B at a time when those companies were not members of the same group;”.
- (2) The amendment made by sub-paragraph (1) has effect in relation to cases where the option is exercised on or after 6th March 2007 (whenever the option was granted).

*Loan relationships: amounts not fully recognised for accounting purposes*

F511 .....

**Textual Amendments**

F5 Sch. 5 paras. 11-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Shares treated as loan relationships*

F512 .....

**Textual Amendments**

F5 Sch. 5 paras. 11-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

F513 .....

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**Textual Amendments**

**F5** Sch. 5 paras. 11-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

<sup>F5</sup>14 .....

**Textual Amendments**

**F5** Sch. 5 paras. 11-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Exchange gains and losses where loan not on arm's length terms*

<sup>F5</sup>15 .....

**Textual Amendments**

**F5** Sch. 5 paras. 11-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Loan relationships and collective investment schemes*

<sup>F5</sup>16 .....

**Textual Amendments**

**F5** Sch. 5 paras. 11-16 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Plant or machinery subject to a lease and finance leaseback*

- 17 (1) Chapter 17 of Part 2 of CAA 2001 (plant and machinery allowances: anti-avoidance) is amended as follows.
- (2) In section 228A(2) (application of sections 228B to 228D in case of a lease and finance leaseback), for “Sections 228B to 228D” substitute “ Sections 228B and 228C ”.
- (3) In section 228F (lease and finance leaseback)—
- (a) in subsection (1), for “Sections 228B, 228C and 228D” substitute “ Sections 228B and 228C ”,
  - (b) omit subsection (4), and
  - (c) in subsection (8), for “sections 228B to 228D” substitute “ sections 228B and 228C ” and omit paragraph (b) (together with the “and” before it).

<sup>F6F7</sup>(4) .....

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- (5) The amendments made by this paragraph have effect in relation to post-commencement rentals that fall to be taken into account in calculating for tax purposes the income or profits for any post-commencement period of account.
- (6) In this paragraph—
  - “post-commencement period of account” means any period of account ending on or after 6th December 2006, and
  - “post-commencement rental” means—
    - (a) any amount receivable on or after 6th December 2006 in respect of any period beginning on or after that date, or
    - (b) the appropriate fraction of any amount receivable on or after that date in respect of any period beginning before, and ending on or after, that date,

but does not include any amount received before that date.
- (7) For this purpose the “appropriate fraction”, in relation to any amount received in respect of any period, means the fraction—

$$\frac{\text{PCP}}{\text{WP}}$$

where—

“PCP” means the number of days in the part of the period falling on or after 6th December 2006, and

“WP” means the number of days in the whole of the period.

- (8) Sub-paragraph (9) applies if the amounts that, in accordance with section 228D of CAA 2001 as applied by section 228F of that Act, fall to be taken into account in calculating for tax purposes the income or profits for any post-commencement period of account comprise both post-commencement rentals and other amounts.
- (9) For the purposes of section 228D of CAA 2001 as applied by section 228F of that Act, the amount of the gross earnings is taken to be so much of the gross earnings as, on a just and reasonable basis, relates to those other amounts.

“Gross earnings” has the meaning given by section 228D(5) of CAA 2001.

**Textual Amendments**

**F6** Sch. 5 para. 17(4) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 2 (with Sch. 2)

**F7** Sch. 5 para. 17(4) repealed (with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 10 Pt. 10 (with Sch. 9 paras. 1-9, 22)

*Derivative contracts: contracts treated for accounting purposes as financial asset or liability*



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**Textual Amendments**

- F8** Sch. 5 para. 18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Derivative contracts: transfers of value to connected companies*

**F9**<sup>19</sup> .....

**Textual Amendments**

- F9** Sch. 5 para. 19 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

SCHEDULE 6 **U.K.**

Section 31

COMPANIES CARRYING ON BUSINESS OF LEASING PLANT OR MACHINERY

*Company reconstructions without change of ownership*

**F10**<sup>1</sup> .....

**Textual Amendments**

- F10** Sch. 6 paras. 1, 2 repealed (1.4.2010) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

*Sale etc of lessor companies etc*

**F10**<sup>2</sup> .....

**Textual Amendments**

- F10** Sch. 6 paras. 1, 2 repealed (1.4.2010) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

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## SCHEDULE 7 **U.K.**

Section 38

### INSURANCE BUSINESS: GROSS ROLL-UP BUSINESS ETC

#### PART 1 **U.K.**

##### AMENDMENTS

###### *Taxes Management Act 1970 (c. 9)*

- 1 In section 98 of TMA 1970 (special returns etc), in the Table, omit the entries relating to section 333B of ICTA.

###### *Income and Corporation Taxes Act 1988 (c. 1)*

- 2 ICTA is amended as follows.
- 3 (1) Section 76 (expenses of insurance companies) is amended as follows.
- (2) In subsection (1), omit the second sentence.
- (3) In subsection (7), in Step 5—
- (a) for “sum (“amount S”) of the amounts” substitute “ amount (“amount S”)”, and
- (b) for “436 or 439B” substitute “ 436A ”.
- (4) Omit subsection (14).
- (5) In subsection (15), omit the definition of “capital redemption business”.
- 4 Omit section 333B (involvement of insurance companies with plans and accounts).
- 5 In section 403E (relief for overseas losses of UK resident companies), omit subsection (3).
- 6 (1) Section 431 (interpretative provisions relating to insurance companies) is amended as follows.
- (2) In subsection (2), insert at the appropriate places—
- ““child trust fund business” has the meaning given by section 431BA;”,
- ““foreign currency assets”, in relation to an insurance company and any time during a period of account, means assets, other than assets linked to gross roll-up business, which—
- (a) are at that time managed under the control of a person whose normal place of work is at a permanent establishment outside the United Kingdom at or through which the company carries on gross roll-up business; or
- (b) are denominated in a foreign currency and specified in a certificate given by a director of the company no later than three months after the end of the period of account as being all of the assets of the company's long-term insurance fund which are held at that time during the period of account to enable the

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company to meet liabilities of its gross roll-up business which are denominated in that currency;”,

““gross roll-up business” has the meaning given by section 431EA;”,

““immediate needs annuities business” means business which consists of the effecting or carrying out of immediate needs annuities (within the meaning of section 725 of ITTOIA 2005);”,

““individual savings account business” has the meaning given by section 431BB;”, and

““PHI business” means long-term business other than life assurance business (including the reinsurance of such long-term business);”.

(3) In subsection (2), omit the definitions of—

- (a) “annuity business”, and
- (b) “overseas life assurance fund”.

(4) In subsection (2), for the definition of “life assurance business” substitute—

““life assurance business” means business which—

- (a) consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII(b) of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
- (b) is capital redemption business, other than immediate needs annuities business;”.

(5) In subsection (2), for the definition of “reinsurance business” substitute—

““reinsurance” includes retrocession;”.

(6) After subsection (2ZE) insert—

“(2ZF) In this Chapter “capital redemption business” means any business of a company carrying on insurance business in so far as it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum or series of sums of a specified amount become payable at a future time or over a period.”

7 In section 431A(3)(a) (power to amend), omit “and Schedule 19AA”.

8 After section 431B insert—

#### “431BA Meaning of “child trust fund business”

- (1) In this Chapter “child trust fund business” means so much of a company's life assurance business as is referable to child trust fund policies (but not including the reinsurance of such business).
- (2) In this section “child trust fund policy” means a policy of life insurance which is an investment under a child trust fund (within the meaning of the Child Trust Funds Act 2004).

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### **431BB Meaning of “individual savings account business”**

(1) In this Chapter “individual savings account business” means so much of a company's life assurance business as is referable to individual savings account policies (but not including the reinsurance of such business).

(2) In this section “individual savings account policy” means a policy of life insurance which is an investment of a kind specified in regulations made by virtue of section 695(1) of ITTOIA 2005.”

9 (1) Section 431D (meaning of “overseas life assurance business”) is amended as follows.

(2) For subsection (1) substitute—

“(1) In this Chapter “overseas life assurance business” means so much of a company's relevant life assurance business as is with a policy holder or annuitant not residing in the United Kingdom (but not including the reinsurance of such business).

(1A) In subsection (1) above “relevant life assurance business” means life assurance business other than—

- (a) pension business
- (b) individual savings account business,
- (c) child trust fund business, and
- (d) business of any description prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.”

(3) In subsections (2) and (4), for “(1)” substitute “ (1A) ”.

(4) In subsection (4), insert at the end “ (including provision amending any enactment or any instrument made under an enactment) ”.

10 After section 431E insert—

### **“431EA Meaning of “gross roll-up business”**

In this Chapter “gross roll-up business” means business of any of the following kinds—

- (a) pension business;
- (b) child trust fund business;
- (c) individual savings account business;
- (d) life reinsurance business; and
- (e) overseas life assurance business.”

11 In section 431F (meaning of “basic life assurance and general annuity business”), for the words from “(including” to the end substitute “ other than gross roll-up business ”.

12 In section 432ZA(7) (linked assets), for “long-term business other than life assurance” (in both places) substitute “ PHI ”.

13 (1) Section 432A (apportionment of income and gains) is amended as follows.

<sup>F11</sup>(2) .....

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- (3) In subsection (2), for paragraphs (a) to (f) substitute—
- “(a) basic life assurance and general annuity business,
  - (b) gross roll-up business, and
  - (c) PHI business.”
- (4) In subsection (3), for “(apart from overseas life assurance business) shall be” substitute “is”.
- (5) Omit subsection (4).
- (6) Before subsection (5) insert—
- “(4A) Income arising from, and gains or losses accruing on the disposal of, foreign currency assets is referable to gross roll-up business.”
- (7) In subsection (5)—
- (a) for “shall be” substitute “is”, and
  - (b) omit “(apart from overseas life assurance business)”.
- (8) For subsections (6) to (6AA) substitute—
- “(6) For the purposes of subsection (5) above “the relevant fraction”, in relation to basic life assurance and general annuity business, is—

$$\frac{A}{A+B+C}$$

where—

A is the aggregate of—

- (a) the mean of the opening and closing liabilities of the basic life assurance and general annuity business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business,
- (b) if there has been a relevant reattribution, the mean of the opening and closing amounts of the shareholders' excess assets, and
- (c) the mean of the appropriate parts (that is, the parts relating to that category) of the opening and closing amounts of the free assets amounts;

B is the aggregate of—

- (a) the mean of the opening and closing liabilities of the gross roll-up business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business, and
- (b) the mean of the appropriate parts (that is, the parts relating to that category) of the opening and closing amounts of the free assets amounts; and

C is the aggregate of—

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- (a) the mean of the opening and closing liabilities of the PHI business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business, and
- (b) the mean of the appropriate parts (that is, the parts relating to that category) of the opening and closing amounts of the free assets amounts.

- (6A) For the purposes of subsection (5) above “the relevant fraction”, in relation to gross roll-up business, is—

$$\frac{B}{A + B + C}$$

where A, B and C have the same meaning as in subsection (6) above.

- (6B) For the purposes of subsection (5) above “the relevant fraction”, in relation to PHI business, is—

$$\frac{C}{A + B + C}$$

where A, B and C have the same meaning as in subsection (6) above.

- (6C) But if the denominator found in accordance with subsection (6), (6A) or (6B) above is nil, the relevant fraction for the purposes of subsection (5) above in relation to the category of business in question is such fraction as is just and reasonable.”

- (9) In subsection (7)—

- (a) for “and (6A)” substitute “, (6A) and (6B)”,
- (b) in paragraph (a), for “(4)” substitute “(4A)”,
- (c) in paragraph (b), after “(3)” insert “ or (4A)”, and
- (d) in paragraph (c), omit “438B.”.

- (10) In subsection (8), for “subsections (6) and (6A)” substitute “ subsection (6) ”.

- (11) In subsection (8ZA), for “subsections (6) and (6A)” substitute “ paragraph (c) of the definition of A and paragraph (b) of the definitions of B and C in subsection (6) ”.

- (12) Omit subsection (9).

#### Textual Amendments

**F11** Sch. 7 para. 13(2) omitted (with effect in accordance with Sch. 17 para. 17(12) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 17 para. 17(11)(g)

- 14 (1) Section 432AA (Schedule A business or overseas property business) is amended as follows.

- (2) Omit subsection (3).

*Status: Point in time view as at 16/12/2010.*

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- (3) In subsection (4), for paragraphs (a) to (d) substitute—
- “(a) basic life assurance and general annuity business;
  - (b) gross roll-up business; and
  - (c) PHI business.”
- (4) In subsection (5), omit “(3) or”.
- 15 In section 432AB (losses from Schedule A business or overseas property business), omit subsection (6).
- 16 (1) Section 432B (apportionment of receipts brought into account) is amended as follows.
- (2) In subsection (1)—
- (a) for “432F” substitute “ 432G ”, and
  - (b) for “any category of life assurance business” substitute “ gross roll-up business ”.
- (3) In subsection (2), for “432F” substitute “ 432G ”.
- (4) In subsection (3)—
- (a) for “Sections 432C and 432D apply” substitute “ Section 432C applies ”, and
  - (b) insert at the end “ (and section 432G applies in either case) ”.
- (5) In subsection (4)—
- (a) for “sections 432C and 432D” substitute “ section 432C ”,
  - (b) in paragraph (a), for “apply” substitute “ applies ”, and
  - (c) omit paragraph (b) and the word “and” before it.
- (6) In subsection (5)—
- (a) for the words from “any category” to the end of paragraph (b) substitute “ gross roll-up business ”, and
  - (b) omit “the relevant fraction of”.
- (7) In subsection (6), for the words from “432D” to “annuity business” substitute “ 432C to gross roll-up business ”.
- (8) In subsection (7), omit “the relevant fraction of” (in both places).
- (9) In subsection (8A), omit “the relevant fraction of”.
- (10) In subsection (8C), omit “the relevant fraction of”.
- (11) In subsection (9), omit the definitions of—
- (a) “the relevant fraction”, and
  - (b) “the section 83 net amount”.
- (12) In subsection (10)—
- (a) in paragraphs (a) and (b), for “paragraph (a)(ii)” substitute “ the definition of A, in paragraph (b) ”, and
  - (b) for paragraph (c) substitute—
    - “(c) the substitution for the definitions of B and C of— “ B is the amount that would be given by A if A applied in relation to

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gross roll-up business; and C is the amount that would be given by A if A applied in relation to PHI business. ”.”

17 For section 432C substitute—

**“432C Section 432B apportionment: non-participating funds**

- (1) This section specifies the extent to which the net amount is referable to life assurance business or to gross roll-up business.
- (2) In this section “the net amount” means the aggregate of the amounts brought into account—
  - (a) as investment income,
  - (b) as an increase in the value of assets, or
  - (c) as other income,
 less the aggregate of the amounts brought into account as a decrease in the value of assets.
- (3) To the extent that the net amount is attributable to—
  - (a) assets linked to life assurance business, or
  - (b) foreign currency assets,
 it is referable to life assurance business.
- (4) There is also referable to life assurance business the appropriate fraction of so much of the net amount as is not attributable to linked assets or foreign currency assets.
- (5) For the purposes of subsection (4) above “the appropriate fraction” is—

$$\frac{A}{A + B}$$

where—

A is the mean of the opening and closing liabilities of the relevant business so far as referable to life assurance business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the aggregate of the mean of the opening and closing net values of assets linked to the relevant business so far as so referable and foreign currency assets; and

B is the mean of the opening and closing liabilities of the relevant business so far as referable to PHI business, reduced (but not below nil) by the mean of the opening and closing net values of any assets linked to PHI business.

- (6) But if the denominator found in accordance with subsection (5) above is nil, the appropriate fraction for the purposes of subsection (4) above is such fraction as is just and reasonable.
- (7) To the extent that the net amount is attributable to—
  - (a) assets linked to gross roll-up business, or
  - (b) foreign currency assets,
 it is referable to gross roll-up business.



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(8) There is also referable to gross roll-up business the relevant fraction of so much of the net amount as is not attributable to linked assets or foreign currency assets.

(9) For the purposes of subsection (8) above “the relevant fraction” is—

$$\frac{C}{C+D}$$

where—

C is the mean of the opening and closing liabilities of the relevant business so far as referable to gross roll-up business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the aggregate of the mean of the opening and closing net values of any assets linked to gross roll-up business and foreign currency assets; and

D is the mean of the opening and closing liabilities of the relevant business so far as referable to basic life assurance and general annuity business or PHI business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets linked to either of those categories of business.

(10) But if the denominator found in accordance with subsection (9) above is nil, the relevant fraction for the purposes of subsection (8) above is such fraction as is just and reasonable.

(11) For the purposes of this section, so much of the net amount—

- (a) as is brought into account as other income in an internal linked fund of the company, and
- (b) as is not attributable to assets of that fund,

is to be treated as linked to a category of business to the same extent as income attributable to an asset of the fund would, by virtue of section 432ZA, be referable to that category of business.”

18 Omit section 432D (section 432B apportionment: value of non-participating funds).

19 (1) Section 432E (section 432B apportionment: participating funds) is amended as follows.

(2) For subsection (1) substitute—

“(1) The part of the net amount which is referable to life assurance business or to gross roll-up business is—

- (a) the amount determined in accordance with subsections (2) and (2A) below, or
- (b) if greater, the amount determined in accordance with subsection (3) below.

(1A) In this section “the net amount” means the aggregate of the amounts brought into account—

- (a) as investment income,
- (b) as an increase in the value of assets, or

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(c) as other income,  
 less the aggregate of the amounts brought into account as a decrease in the value of assets.”

- (3) In subsection (2)—
- (a) in the definition of CAS, for “the category of business concerned” substitute “life assurance business or of gross roll-up business”, and
  - (b) in the definition of CS, for “business of the category concerned” substitute “life assurance business or to gross roll-up business”.

- (4) In subsection (3)—
- <sup>F12</sup>(a) .....
  - (b) in paragraph (b)—
    - (i) omit “mentioned in subsection (1) above”, <sup>F13</sup> ...
    - <sup>F13</sup>(ii) .....

(5) In subsection (4), for the words following “case,” substitute “is—

$$\frac{A}{B} \times 100$$

where—

A is so much of the net amount as is brought into account in respect of the relevant business less such part of it as is attributable to linked assets and foreign currency assets; and

B is the mean of the opening and closing liabilities of the relevant business reduced by the mean of the opening and closing values of any assets of the relevant business which are linked assets and foreign currency assets.”

<sup>F14</sup>(6) .....

(7) Omit subsections (5) and (6).

**Textual Amendments**

- F12** Sch. 7 para. 19(4)(a) omitted (with effect in accordance with Sch. 23 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 23 para. 6\(a\)](#)
- F13** Sch. 7 para. 19(4)(b)(ii) and word omitted (with effect in accordance with [Sch. 17 para. 10\(6\)\(7\)](#) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 10\(5\)](#)
- F14** Sch. 7 para. 19(6) omitted (with effect in accordance with Sch. 23 para. 7 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 23 para. 6\(a\)](#)

- 20 In section 432F(2) (section 432B apportionment: supplementary provisions)—
- (a) omit “For each category of business in relation to which section 432E falls to be applied”, and
  - (b) omit “, after making any reduction required by section 432E(5),”.

21 For section 432G substitute—

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**“432G Section 432B apportionment: business transfers-in**

- (1) There is referable to the life assurance business of the transferee the appropriate fraction of the amount brought into account as a business transfer-in and of any amount taken into account as profits under section 444ABD(1).
- (2) For the purposes of subsection (1) above “the appropriate fraction” is—

$$\frac{\text{LABL}}{\text{TL}}$$

where—

LABL is the amount of the liabilities transferred that are referable to the life assurance business (but is nil if it would otherwise be below nil); and

TL is the whole of the liabilities transferred.

- (3) But if the amount of the liabilities transferred is nil, the appropriate fraction for the purposes of subsection (1) above is such fraction as is just and reasonable.
- (4) There is referable to the gross roll-up business of the transferee the relevant fraction of the amount brought into account as a business transfer-in and of any amount taken into account as profits under section 444ABD(1).
- (5) For the purposes of subsection (4) above “the relevant fraction” is—

$$\frac{\text{GRBL}}{\text{TL}}$$

where—

GRBL is the amount of the liabilities transferred that are referable to the gross roll-up business (but is nil if it would otherwise be below nil); and

TL has the same meaning as in subsection (2) above.

- (6) But if the amount of the liabilities transferred is nil, the relevant fraction for the purposes of subsection (4) above is such fraction as is just and reasonable.”

22 (1) Section 434 (franked investment income etc) is amended as follows.

(2) For subsections (1) and (1B) substitute—

“(1) Where an insurance company makes a payment representative of a distribution made by a company resident in the United Kingdom in respect of an asset of its long-term insurance fund, the payment is to be taken into account in computing its profits in accordance with the provisions applicable to Case I of Schedule D unless the amount taken into account in accordance

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with section 83(2)(a) of the Finance Act 1989 includes the amount of the payment.”

- (3) Omit subsection (6A)(b).
- 23 (1) Section 434A (computation of losses and limitation on relief) is amended as follows.
- (2) In subsection (2)(a)—
- (a) omit “the aggregate of”, and
- (b) omit sub-paragraph (iii).
- (3) In subsection (2)(b), for the words following sub-paragraph (ii) substitute— “ any loss for that period under section 436A shall be reduced (but not below nil) by the total of the amounts set off as mentioned in sub-paragraphs (i) and (ii) above. ”
- 24 Omit section 436 (pension business: separate charge on profits).
- 25 Before section 437 insert—

**Gross roll-up business: separate charge on profits**

- “436A) Profits arising to an insurance company from gross roll-up business—
- (a) are to be treated as income within Schedule D, and
- (b) are chargeable under Case VI of that Schedule.
- (2) For that purpose—
- (a) the gross roll-up business is to be treated separately, and
- (b) the profits from it are to be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.
- (3) In making that computation, sections 82 and 82B to 83AB of the Finance Act 1989 apply with the necessary modifications.
- (4) If in any accounting period an insurance company incurs a loss, to be computed on the same basis as the profits, arising from its gross roll-up business—
- (a) the loss must be set off against the amount of any profits chargeable under this section for any subsequent accounting period, and
- (b) accordingly, the amount of the company's profits so charged in any such accounting period is to be treated as reduced by the amount of the loss or so much of that amount as cannot be relieved under this section against profits of an earlier accounting period.
- (5) Section 396 does not apply to a loss incurred by an insurance company on its gross roll-up business.
- (6) No loss to which section 396 applies may be set off under subsection (4) above against the amount of any profits chargeable under this section.
- (7) This section does not apply in relation to an insurance company for an accounting period if the profits of its long-term business for the accounting period are charged to tax under Case I of Schedule D.

**Gains referable to gross roll-up business not to be chargeable gains**

- 436B) Gains referable to gross roll-up business are not chargeable gains.

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- (2) For the purposes of this section “gains referable to gross roll-up business” means gains which—
- (a) accrue to an insurance company on the disposal by it of assets of its long-term insurance fund, and
  - (b) are referable (in accordance with section 432A) to gross roll-up business.”
- 26 (1) Section 438 (pension business: exemption from tax) is amended as follows.
- (2) In subsection (1), for the words after “income” substitute “ from assets solely linked to pension business. ”
- (3) Omit subsections (2) and (4).
- 27 Omit section 438B (income or gains arising from property investment LLP).
- 28 Omit section 438C (determination of policy holders' share for purposes of s.438B).
- 29 Omit section 439 (restricted government securities).
- 30 Omit section 439B (life reinsurance business: separate charge on profits).
- 31 (1) Section 440 (transfers of assets etc) is amended as follows.
- (2) In subsection (3), for “(a) to (e)” substitute “ (a), (d) and (e) ”.
- (3) In subsection (4), for paragraphs (a) to (c) substitute—
- “ (a) assets which are linked solely to gross roll-up business or are foreign currency assets;”,
- and, in paragraph (e), for “any” substitute “ either ”.
- 32 In section 440A(2) (securities)—
- (a) in paragraph (a), for sub-paragraphs (i) to (iii) substitute—
    - “(i) basic life assurance and general annuity business,  
or
    - (ii) gross roll-up business,”,
  - (b) omit paragraph (c), and
  - (c) in paragraph (d)—
    - (i) for “any of the preceding paragraphs” substitute “ paragraph (a)”, and
    - (ii) for “any of the descriptions mentioned in those paragraphs” substitute “ the description mentioned in that paragraph ”.
- 33 In section 440B(4) (modifications where tax charged under Case I of Schedule D)—
- (a) for “(a) to (e)” substitute “ (a), (d) and (e) ”, and
  - (b) for the notionally substituted paragraph (a) substitute—
    - “(a) so many of the securities as are included in the company's long-term insurance fund shall be treated for the purposes of corporation tax as a separate holding which is an asset of that fund, and”.
- 34 Omit section 441 (overseas life assurance business).
- 35 In section 444A(3) (transfers of business)—
- (a) for “436(3)(c) or 439B(3)(c)” substitute “ 436A(4) ”,

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- (b) omit paragraph (b) and the word “or” before it, and  
(c) for “the same category of business as that in which it arose)” substitute “gross roll-up business) ”.
- 36 (1) Section 444AC (transfers of business: excess of assets or liabilities) is amended as follows.
- (2) In subsection (2B)—
- (a) for “each category of its life assurance business” substitute “ its gross roll-up business ”,  
(b) for “a category of the transferee's life assurance business” substitute “ the transferee's gross roll-up business ”, and  
(c) for “that category” substitute “ gross roll-up business ”.
- (3) In subsection (2D), for “a category of its life assurance business” substitute “ its gross roll-up business ”.
- (4) In subsection (10), in the definition of “the transferor's business”, for paragraph (b) substitute—
- “(b) its gross roll-up business.”
- 37 (1) Section 444AF (demutualisation surplus: life assurance business) is amended as follows.
- (2) In subsection (4)(b), for “sections 432C and 432D apply” substitute “ section 432C applies ”.
- (3) In subsection (5)(b), for “the profits of any category of the company's life assurance business chargeable to tax under Case VI of Schedule D” substitute “ profits of the company chargeable under Case VI of Schedule D under section 436A (gross roll-up business) ”.
- 38 (1) Section 444AK (mutual surplus: Case VI categories of life assurance business) is amended as follows.
- (2) In subsection (1), for paragraph (b) substitute—
- “(b) the company carries on gross roll-up business.”
- (3) In subsection (3), for “any category of the company's life assurance business chargeable to tax under Case VI of Schedule D” substitute “ the company's gross roll-up business ”.
- (4) In subsection (5)(b), for “sections 432C and 432D apply” substitute “ section 432C applies ”.
- (5) The heading accordingly becomes “ Mutual surplus: gross roll-up business ”.
- 39 Omit sections 458 and 458A (capital redemption business).
- 40 In section 460(2) (registered friendly societies: exemption from tax in respect of life or endowment business)—
- (a) for “pension business” substitute “ gross roll-up business ”,  
(b) at the end of paragraph (ca), insert “ and ”, and  
(c) omit paragraph (cb).
- 41 In section 461 (registered friendly societies: other business), omit subsection (3A).
- 42 In section 461B (incorporated friendly societies), omit subsection (2A).

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- 43 (1) Section 466 (interpretation of Chapter 2 of Part 12) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) In this Chapter “life or endowment business” means, subject to subsections (1A) and (1B) below—
- (a) any life assurance business, and
  - (b) any PHI business.”
- (3) In subsection (2)—
- (a) omit the definition of “life assurance business”, and
  - (b) insert the following definition at the appropriate place—  
““gross roll-up business” shall be construed in accordance with section 431;”.
- (4) Omit subsections (2ZA), (2A) and (2B).

F15<sup>44</sup> .....

**Textual Amendments**

**F15** Sch. 7 para. 44 omitted (with effect in accordance with Sch. 17 para. 17(12) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 17 para. 17(11)(g)

F16<sup>45</sup> .....

**Textual Amendments**

**F16** Sch. 7 para. 45 omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 14 para. 17(p)

F17<sup>46</sup> .....

**Textual Amendments**

**F17** Sch. 7 para. 46 omitted (with effect in accordance with Sch. 14 para. 18 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 14 para. 17(p)

- 47 (1) Section 755A (treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business) is amended as follows.
- (2) In subsection (4), for the words after “referable to” substitute “ gross roll-up business carried on by the UK company. ”
- (3) In subsection (6)(c), for “a category of business specified in paragraphs (a) to (c) of subsection (4) above” substitute “ gross roll-up business ”.
- (4) In subsection (13), for paragraphs (a) to (d) substitute—
- “(a) basic life assurance and general annuity business, or
  - (ba) gross roll-up business,”.

F18<sup>48</sup> .....

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**Textual Amendments**

**F18** Sch. 7 paras. 48-53 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

**F18**49 .....

**Textual Amendments**

**F18** Sch. 7 paras. 48-53 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

**F18**50 .....

**Textual Amendments**

**F18** Sch. 7 paras. 48-53 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

**F18**51 .....

**Textual Amendments**

**F18** Sch. 7 paras. 48-53 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

**F18**52 .....

**Textual Amendments**

**F18** Sch. 7 paras. 48-53 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

**F18**53 .....

**Textual Amendments**

**F18** Sch. 7 paras. 48-53 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), **Sch. 10 Pt. 1** (with Sch. 9 paras. 1-9, 22)

**F19**54 .....

**Textual Amendments**

**F19** Sch. 7 para. 54 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

55 Omit Schedule 19AA (overseas life assurance fund).



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F20F21 56 .....

**Textual Amendments**

- F20** Sch. 7 para. 56 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#))
- F21** Sch. 7 para. 56 omitted (with effect in accordance with Sch. 16 para. 6 of the amending Act) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 16 para. 5\(i\)](#) (with [Sch. 16 paras. 78](#))

*Finance Act 1989 (c. 26)*

57 FA 1989 is amended as follows.

F22 58 .....

**Textual Amendments**

- F22** [Sch. 7 para. 58](#) omitted (with effect in accordance with Sch. 17 para. 18(6) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 17 para. 18\(5\)\(g\)](#)

59 In section 89(1A) (policy holders' share of profits), for paragraph (a) substitute—  
“(a) deducting from any profits of the company for the period chargeable under Case VI of Schedule D under section 436A of the Taxes Act 1988 so much of the Case I profits of the company for the period in respect of its life assurance business as does not exceed the amount of any profits of the company for the period so chargeable, and”.

*Taxation of Chargeable Gains Act 1992 (c. 12)*

60 TCGA 1992 is amended as follows.

61 In section 204(10) (policies of insurance and non-deferred annuities)—  
(a) for “as defined in section 458(3)” substitute “ within the meaning of Chapter 1 of Part 12 ”, and  
(b) omit “other”.

62 In section 210B—  
(a) omit paragraph (b) of subsection (6) and the word “or” before it, and  
(b) in subsection (8) (disposal and acquisition of section 440A securities), in the definition of “chargeable section 440A holding”, for “(2)(a)(iii)” substitute “ (2)(a)(i) ”.

63 In section 212(2) (annual deemed disposal of holdings of certain assets), for the words from “pension business” to the end substitute “ gross roll-up business ”.

64 In section 213(1A) (spreading of gains and losses under section 212), omit the words following “general annuity business”.

*Finance Act 1996 (c. 8)*

F23 65 .....

*Status: Point in time view as at 16/12/2010.*

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**Textual Amendments**

**F23** Sch. 7 paras. 65-67 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F23** 66 . . . . .

**Textual Amendments**

**F23** Sch. 7 paras. 65-67 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F23** 67 . . . . .

**Textual Amendments**

**F23** Sch. 7 paras. 65-67 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Capital Allowances Act 2001 (c. 2)*

68 CAA 2001 is amended as follows.

69 (1) Section 255 (apportionment of allowances and charges) is amended as follows.

(2) For subsections (1) and (1A) substitute—

“(1) Except where subsection (3) applies, any allowance to which the company is entitled, and any charge to which it is liable, for a chargeable period in respect of a management asset must be apportioned between basic life assurance and general annuity business, gross roll-up business and PHI business in accordance with subsections (1A) and (1B).

(1A) The allowance or charge is to be apportioned to a category of business using the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the allowance or charge,

B is the mean of the opening and closing liabilities of that category of business, and

C is the mean of the opening and closing liabilities of all the categories of business mentioned in subsection (1) which are carried on by the company.

(1B) If C is nil or below nil, the allowance or charge to be apportioned to a category of business is such as is just and reasonable.”

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- (3) Omit subsection (2).
  - (4) In subsection (3)—
    - (a) in paragraph (a), for “section 441 of ICTA in respect of its overseas life assurance business” substitute “ section 436A of ICTA (gross roll-up business) ”, and
    - (b) in paragraph (b), for “provided outside the United Kingdom for use for the management of that business” substitute “ held for the purposes of a permanent establishment outside the United Kingdom at or through which the company carries on gross roll-up business ”.
- 70 (1) Section 256 (different giving effect rules for different categories of business) is amended as follows.
- (2) In subsection (3), for paragraphs (a) to (c) substitute “ section 436A of ICTA (gross roll-up business) ”.
  - (3) In subsection (4)—
    - (a) for “profit” substitute “ profits ”,
    - (b) in paragraph (a), for “any particular category of business” substitute “ gross roll-up business ” and for “that category of business” substitute “ its gross roll-up business ”, and
    - (c) in paragraph (b), for “any particular category of business” substitute “ gross roll-up business ” and for “that category of business” substitute “ its gross roll-up business ”.
- 71 (1) Section 545 (investment assets) is amended as follows.
- (2) In subsection (3), in the second sentence, for “sections 432ZA to 432E, or section 438B,” substitute “ section 432A ”.
  - (3) In subsection (5)—
    - (a) for the words from “under—” to “no allowance” substitute “ under section 436A of ICTA (gross roll-up business), no allowance ”, and
    - (b) for “the category of life assurance business in question” substitute “ gross roll-up business ”.

*Finance Act 2001 (c. 9)*

F2472 .....

**Textual Amendments**

**F24** Sch. 7 para. 72 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Finance Act 2002 (c. 23)*

73 FA 2002 is amended as follows.

F2574 .....

*Status: Point in time view as at 16/12/2010.*

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**Textual Amendments**

**F25** Sch. 7 para. 74 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

<sup>F26</sup>75 .....

**Textual Amendments**

**F26** Sch. 7 para. 75 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Income Tax (Trading and Other Income) Act 2005 (c. 5)*

76 ITTOIA 2005 is amended as follows.

77 In section 473(2) (policies and contracts to which Chapter 9 applies), in the definition of “capital redemption policy”, for “as defined in section 458(3)” substitute “ within the meaning of Chapter 1 of Part 12 ”.

<sup>F27</sup>78 .....

**Textual Amendments**

**F27** Sch. 7 para. 78 omitted (with effect in accordance with Sch. 17 para. 27(3) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), **Sch. 17 para. 27(2)**

79 In Schedule 2 (transitionals and savings etc), in paragraph 118(2), for “from “other than” onwards in the definition of “annuity business”” substitute “ following paragraph (b) in the definition of “life assurance business” ”.

**PART 2 U.K.**

TRANSITIONAL PROVISIONS

*Introduction*

80 (1) A loss incurred by an insurance company in a pre-commencement period may not be set off against profits of the company chargeable under section 436A of ICTA in a post-commencement period, except in accordance with this Part of this Schedule.

(2) In this Part of this Schedule—  
“the commencement period”, in relation to an insurance company, means the first period of account of the company to begin on or after 1st January 2007,  
“pre-commencement period”, in relation to an insurance company, means a period of account of the company beginning before 1st January 2007, and  
“post-commencement period”, in relation to an insurance company, means a period of account of the company beginning on or after 1st January 2007.

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- (3) Expressions which are—
- (a) used in this Part of this Schedule in relation to a period of account, and
  - (b) used in Chapter 1 of Part 12 of ICTA,
- have the same meaning in this Part of this Schedule in relation to that accounting period as they have in that Chapter (as that Chapter has effect in relation to that period of account).

*Carry forward of unused pension business losses*

- 81 (1) An unused pension business loss of an insurance company (see sub-paragraph (4)) is to be treated as if it were a loss incurred by the company on its gross roll-up business in the period of account immediately preceding the commencement period.
- (2) Subsections (4) and (5) of section 436A of ICTA accordingly apply to the loss, but subject to sub-paragraph (3) (and to subsection (7) of that section).
- (3) The amount by which the company's profits charged under that section in a period of account is to be treated as reduced under subsection (4)(b) of that section by virtue of this paragraph must not exceed—

$$CP \times \frac{PBL}{GRBL}$$

where—

“CP” is the amount of the company's profits chargeable under that section in the period of account,

“PBL” is the mean of the opening and closing liabilities of the company's pension business for the period of account, and

“GRBL” is the mean of the opening and closing liabilities of the company's gross roll-up business for the period of account.

- (4) In this paragraph “unused pension business loss”, in relation to an insurance company, means so much of any losses incurred by the company on its pension business in any pre-commencement period as were not set off under section 436(3) (c) of ICTA against profits in any such period.

*Carry forward of unused non-pension business losses*

- 82 (1) An unused non-pension business loss of an insurance company (see paragraph 83) is to be treated as if it were a loss incurred by the company on its gross roll-up business in the period of account immediately preceding the commencement period.
- (2) Subsections (4) and (5) of section 436A of ICTA accordingly apply to the loss, but subject to sub-paragraph (3) (and to subsection (7) of that section).
- (3) The amount by which an insurance company's profits charged under that section in a period of account are to be treated as reduced under subsection (4)(b) of that section is to be determined—

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- (a) first by giving effect to subsection (4)(b) in respect of a loss treated as incurred by the company on its gross roll-up business by virtue of paragraph 81, and
- (b) then by giving effect to subsection (4)(b) in respect of a loss treated as incurred by the company on its gross roll-up business by virtue of this paragraph,
- (before giving effect to subsection (4)(b) in respect of losses incurred by the company on its gross roll-up business in post-commencement periods).
- 83 (1) In paragraph 82 “unused non-pension business loss”, in relation to an insurance company, means the aggregate of the following amounts—
- (a) any unexhausted individual savings account business loss (see sub-paragraph (2)),
  - (b) any unexhausted child trust fund business loss (see sub-paragraph (3)),
  - (c) any unexhausted life reinsurance business loss (see sub-paragraph (4)), and
  - (d) any unexhausted overseas life assurance business loss (see sub-paragraph (5)).
- (2) In this paragraph “unexhausted individual savings account business loss”, in relation to an insurance company, means so much of any losses incurred by the company on its individual savings account business in any pre-commencement period as were not set off by virtue of a relevant provision (see sub-paragraph (6)) against profits in any such period.
- (3) In this paragraph “unexhausted child trust fund business loss”, in relation to an insurance company, means so much of any losses incurred by the company on its child trust fund business in any pre-commencement period as were not set off by virtue of a relevant provision against profits in any such period.
- (4) In this paragraph “unexhausted life reinsurance business loss”, in relation to an insurance company, means so much of any losses incurred by the company on its life reinsurance business in any pre-commencement period as were not set off under section 439B(3)(c) of ICTA against profits in any such period.
- (5) In this paragraph “unexhausted overseas life assurance business loss”, in relation to an insurance company, means so much of any losses incurred by the company on its overseas life assurance business in any pre-commencement period as were not set off under section 441(4)(b) of ICTA against profits in any such period.
- (6) In this paragraph “relevant provision” means—
- (a) regulation 13 of the Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), or
  - (b) regulation 11 of the Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680).

*“Section 432F(2) excesses”*

- 84 Where there is a subsection (2) excess (within the meaning of section 432F of ICTA) for any category of business of an insurance company in the period of account immediately preceding the commencement period it shall be taken to be, or form part of, the subsection (2) excess falling to be carried forward under subsection (3) of that section (as amended by this Schedule) and used in a post-commencement period.

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*[<sup>F28</sup> [<sup>F29</sup> Losses transferred under section 444AZA]*

**Textual Amendments**

- F28** Sch. 7 paras 85, 86 and cross-headings added (with effect in accordance with art. 1(5) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), arts. 1(1), **30**
- F29** Sch. 7 para. 85 cross-heading substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 725(3)** (with [Sch. 2 Pts. 1, 2](#))

85. (1) This paragraph applies where a loss <sup>F30</sup>... is treated by virtue of section 444AZA of ICTA as a loss of the transferee <sup>F30</sup>....
- (2) Where any [<sup>F31</sup> losses so treated] would (assuming the transferor had continued to carry on the business transferred after the transfer) have been losses to which paragraph 81(1) would have applied, the amount of such losses to be treated as [<sup>F32</sup> losses of the transferee] in any period of account must not exceed—

GRBP×PBTLGRBTL

where—

“GRBP” has the same meaning as in section 444AZA(2) of ICTA,  
“PBTL” is the mean of the opening and closing liabilities of the transferred pension business for the period of account, and  
“GRBTL” is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account.

**Textual Amendments**

- F30** Words in Sch. 7 para. 85(1) repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 725(2)(a)**, **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))
- F31** Words in Sch. 7 para. 85(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 725(2)(b)(i)** (with [Sch. 2 Pts. 1, 2](#))
- F32** Words in Sch. 7 para. 85(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 725(2)(b)(ii)** (with [Sch. 2 Pts. 1, 2](#))

*[<sup>F33</sup> Losses transferred under section 444AZB]*

**Textual Amendments**

- F33** Sch. 7 para. 86 cross-heading substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 725(5)** (with [Sch. 2 Pts. 1, 2](#))

- 86 (1) This paragraph applies where section 444AZB of ICTA has effect in relation to a transferee and the circumstances specified in sub-paragraph (2) or (3) below apply.
- (2) The circumstances are that—
- (a) the profits of the life assurance business of the transferee for the period of account immediately preceding the first period of account beginning on or after 1st January 2007 were chargeable to tax in accordance with Case I of Schedule D by virtue of section 439A of ICTA, and

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- (b) in that period, the transferee carried on pension business.
- (3) The circumstances are that—
- (a) paragraph 29 of Schedule 8 applies in relation to the transferee, and
  - (b) the transferee has an unused pension business loss within the meaning given by paragraph 81(4).
- (4) The appropriate fraction of any amount treated by virtue of section 444AZB(2) of ICTA as a loss of the transferee (a “[<sup>F34</sup>gross roll-up business] loss”) available to be set off against profits chargeable under section 436A of ICTA is to be treated for the purposes of paragraph 81 as an unused pension business loss.
- (5) The relevant fraction of any [<sup>F35</sup>gross roll-up business] loss is to be treated for the purposes of paragraph 82 as an unused non-pension business loss.
- (6) In this paragraph “the appropriate fraction”, in relation to a period of account, is—

PBTLTL

where—

“*PBTL*” is the mean of the opening and closing liabilities of the transferred pension business for the period of account, and

“*TL*” is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

- (7) In this paragraph the “the relevant fraction”, in relation to a period of account, is—

NPBTLTL

where—

“*NPBTL*” is the mean of the opening and closing liabilities of the transferred gross roll-up business which is not pension business for the period of account, and

“*TL*” is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.]

#### Textual Amendments

- F34** Words in Sch. 7 para. 86(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 725\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F35** Words in Sch. 7 para. 86(5) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 725\(4\)](#) (with [Sch. 2 Pts. 1, 2](#))



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## SCHEDULE 8 **U.K.**

Section 39

### INSURANCE COMPANIES: BASIS OF TAXATION ETC

#### PART 1 **U.K.**

##### AMENDMENTS

###### *Income and Corporation Taxes Act 1988 (c. 1)*

- 1 ICTA is amended as follows.
- 2 (1) Section 76 (expenses of insurance companies) is amended as follows.
  - (2) In subsection (1)(b), for “not charged to tax in respect of that business under Case I of Schedule D” substitute “charged to tax in respect of that business under the I minus E basis”.
  - (3) In subsection (7)—
    - (a) in Step 8, for “basic” substitute “expenses”, and
    - (b) omit Steps 9 and 10.
  - (4) Omit subsections (10) and (11).
  - (5) In subsection (12)—
    - (a) for “Step 10” substitute “Step 8”, and
    - (b) after “next accounting period” insert “for which the company is charged to tax in respect of its life assurance business under the I minus E basis”.
  - (6) For subsection (13) substitute—

“(13) Where for any accounting period excess adjusted Case I profits are charged to tax under section 85A of the Finance Act 1989, an amount equal to the profits is to be carried forward to the next accounting period for which the company is charged to tax in respect of its life assurance business under the I minus E basis and brought into account for that period in accordance with Step 7.”
- 3 In section 431(2) (interpretative provisions relating to insurance companies), insert at the appropriate place—

““the I minus E basis” means the basis under which a company carrying on life assurance business is charged to tax on the relevant profits (within the meaning of section 88(3) of the Finance Act 1989) of that business otherwise than under Case I of Schedule D;”.
- 4 For section 432 (and the italic cross-heading before it) substitute—

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*“Basis of taxation etc*

**431G Company carrying on life assurance business**

- (1) This section applies in relation to an insurance company which carries on life assurance business (whether or not it also carries on insurance business of any other kind).
- (2) Subject as follows, the profits of the life assurance business for any accounting period shall be charged to tax under the I minus E basis.
- (3) Where in the case of an insurance company for an accounting period either—
  - (a) all of its life assurance business is reinsurance business and none of that business is of a type excluded from this subsection by regulations made by the Board, or
  - (b) all, or substantially all, of its life assurance business is gross roll-up business,
 the profits of that business for the accounting period shall be charged to tax in accordance with Case I of Schedule D and not otherwise.
- (4) Where—
  - (a) the profits of the life assurance business of an insurance company for any accounting period are charged to tax under the I minus E basis, and
  - (b) had those profits been charged to tax in accordance with Case I of Schedule D, a loss would have arisen to the company from that business for the period,
 the loss (after being reduced in accordance with section 434A(2)(a)) may be set-off under section 393A or section 403(1).
- (5) The application, in relation to the life assurance business of an insurance company, of any provision of Case I of Schedule D is not to be taken—
  - (a) to prevent the application of the I minus E basis in relation to that business of the company for any accounting period, or
  - (b) to affect the operation of the I minus E basis in relation to the that business of the company for any accounting period except as specifically provided by the Corporation Tax Acts.

**431H Company carrying on life assurance business and other insurance business**

- (1) This section applies in relation to an insurance company which carries on life assurance business and insurance business of any other kind.
- (2) For the purposes of the Corporation Tax Acts—
  - (a) the life assurance business, and
  - (b) the other insurance business,
 are to be treated as separate businesses.
- (3) The profits of the other insurance business shall be charged to tax under Case I of Schedule D as the profits of a separate trade.

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(4) But subsection (3) above does not apply where that business is mutual business.

(5) As to the profits of the life assurance business, see section 431G.”

F365

#### Textual Amendments

**F36** Sch. 8 para. 5 omitted (with effect in accordance with Sch. 17 para. 17(12) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 17 para. 17(11)(g)

6 In section 437(1A) (annuities), for “, otherwise than in accordance with the provisions applicable to Case I of Schedule D,” substitute “ under the I minus E basis ”.

7 Omit section 439A (taxation of pure reinsurance business).

8 (1) Section 440B (modifications where tax charged under Case I of Schedule D) is amended as follows.

(2) In subsection (1), insert at the end “ in accordance with section 431G(3) ”.

(3) In subsection (3), for “Section 440(1) and (2) apply” substitute “ Subsection (1) of section 440 applies ”.

(4) After subsection (4) insert—

“(4A) Section 440(2) does not apply if either the transferor or the company by which the asset is acquired is a company whose profits are charged to tax in accordance with Case I of Schedule D (or if they both are).

(4B) Section 211 of the 1992 Act does not apply if the transferor is a company whose profits are charged to tax in accordance with Case I of Schedule D.”

(5) Omit subsection (5).

9 After that section insert—

#### “440C Modifications for change of tax basis

(1) Subsection (2) makes provision for a case where—

- (a) subsection (4) of section 431G applies in relation to the profits of the life assurance business of an insurance company for any accounting period, but
- (b) the profits of that business for a succeeding accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of subsection (3) of that section.

(2) The loss referred to in section 431G(4)(b) (less any loss for the same accounting period set off under section 436A for any intervening accounting period and any amount deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989) may be set off under section 393 against profits of that succeeding accounting period (without being reduced in accordance with section 434A(2)(a)).

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- (3) In determining whether any loss has been set off under section 436A for any intervening accounting period, or whether any amount has been deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989, losses of earlier accounting periods are to be assumed to be set off before those of later accounting periods.
- (4) Subsection (5) makes provision for a case where—
- (a) a loss arises to an insurance company for an accounting period for which the profits of its life assurance business fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(b),
  - (b) the profits of that business for a subsequent accounting period are charged to tax under the I minus E basis, and
  - (c) had those profits (instead) been charged to tax in accordance with Case I of Schedule D, any of that loss would have been available to be set off against them under section 393.
- (5) The loss is to be treated for the purposes of the operation of section 436A in relation to the subsequent accounting period as if it were a loss arising from its gross roll-up business in the accounting period in which it arose.
- (6) Subsections (7) and (8) make provision for a case where—
- (a) the profits of the life assurance business of an insurance company for an accounting period are charged to tax under the I minus E basis,
  - (b) the profits of that business for its next accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3), and
  - (c) that prevents the giving of relief in accordance with section 86(8) of the Finance Act 1989 (acquisition expenses relieved in fractions under section 76).
- (7) Any relief which would have been so given in—
- (a) the next accounting period, or
  - (b) any subsequent accounting period for which the profits of the company's life assurance business continue to be charged to tax in accordance with Case I of Schedule D,
- may be given by set-off against any gains treated as accruing under section 213(1) of the 1992 Act at the end of the accounting period.
- (8) But if the profits of the company's life assurance business for a subsequent accounting period are charged to tax under the I minus E basis, any relief not previously given under subsection (7) is to be treated for the purposes of the operation of section 76 in relation to the first subsequent accounting period for which profits are so charged as if it were an amount which is to be relieved under that section by virtue of section 86(8) and (9) of the Finance Act 1989.”
- 10 In section 755A(2) and (6)(a) (controlled foreign companies: apportionments to companies carrying on life assurance business), for “not charged to tax under Case I of Schedule D in respect of its profits from” substitute “ charged to tax under the I minus E basis in respect of ”.

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*Finance Act 1989 (c. 26)*

- 11 FA 1989 is amended as follows.
- 12 In section 83(6)(c) (receipts to be taken into account), for the words from “the reinsurer” to the end substitute “ section 431G(3)(a) of the Taxes Act 1988 (pure reinsurance) applies to the reinsurer under the contract for the accounting period of the reinsurer during which the transfer of business occurs ”.
- 13 In subsection (1) of section 85 (charge of certain receipts of BLAGAB)—
- (a) for “the profits of an insurance company in respect of its life assurance business are not charged under Case I of Schedule D” substitute “ an insurance company is charged to tax under the I minus E basis in respect of its life assurance business ”, and
  - (b) for “those profits” substitute “ the profits of the life assurance business ”.
- 14 After that section insert—

**“85A Excess adjusted Case I profits**

- (1) Where for any accounting period an insurance company is charged to tax under the I minus E basis in respect of its life assurance business, the company shall be chargeable on any excess adjusted Case I profits under Case VI of that Schedule.
- (2) “Excess adjusted Case I profits” means any amount by which—
  - (a) the adjusted Case I profits (see subsection (3)), exceeds
  - (b) the relevant amount (see subsection (5)).
- (3) “The adjusted Case I profits” means the amount that would be the profits of the company's life assurance business for the accounting period if—
  - (a) computed in accordance with the provisions applicable to Case I of Schedule D, and
  - (b) adjusted in respect of losses (see subsection (4)).
- (4) The adjustment in respect of losses is a deduction of the amount which, disregarding section 434A(2)(a) of the Taxes Act 1988, would fall to be set off under section 393 of that Act against the company's income for the accounting period if the company had always been charged to tax under Case I of Schedule D.
- (5) The relevant amount (which may be a negative amount) is found by—
  - (a) taking the relevant income (see subsection (6)), and
  - (b) deducting from it the relevant aggregate (see subsection (8)).
- (6) “The relevant income” means—
  - (a) any income (including distributions received from companies resident in the United Kingdom) referable (in accordance with section 432A of the Taxes Act 1988) to the company's basic life assurance and general annuity business for the accounting period,
  - (b) any chargeable gains referable (in accordance with section 432A of that Act) to the company's basic life assurance and general annuity business for the accounting period (see subsection (7)), and
  - (c) any profits of the company chargeable for the accounting period under Case VI of Schedule D under section 436A of that Act.

*Status: Point in time view as at 16/12/2010.*

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- (7) “Chargeable gains referable (in accordance with section 432A of the Taxes Act 1988) to the company's basic life assurance and general annuity business” has the same meaning as in subsection (3A)(a) of section 88 below (see subsection (3B) of that section).
- (8) “The relevant aggregate” means the sum of—
- (a) the expenses deduction (see Step 8 in section 76(7) of the Taxes Act 1988) in the case of the company for the accounting period,
  - (b) any non-trading deficit on the company's loan relationships which is produced for the accounting period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2(1) of Schedule 11 to the Finance Act 1996, and
  - (c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the accounting period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for the accounting period.
- (9) The Treasury may by regulations provide—
- (a) that, in circumstances prescribed by the regulations, the charge imposed by this section for an accounting period may be reduced or eliminated, and
  - (b) that the amount by which the charge is reduced, or (where the charge is eliminated) the amount of the charge, is instead imposed for a subsequent accounting period (or part of the amount is instead imposed for more than one subsequent accounting period).
- (10) Regulations under subsection (9) may include provision having effect in relation to times before they are made.”

15 (1) Section 88 (policy holders' fraction of profits) is amended as follows.

(2) Omit subsection (2).

<sup>F37</sup>(3) .....

#### Textual Amendments

**F37** Sch. 8 para. 15(3) omitted (with effect in accordance with Sch. 17 para. 18(6) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 17 para. 18(5)(g)

16 (1) Section 89 (policy holders' share of profits) is amended as follows.

<sup>F38</sup>(2) .....

(3) In subsection (7), for the words after “Schedule D” substitute “; but for the purposes of subsections (1), (1A) and (2) they are to be adjusted in respect of losses in accordance with section 85A(4).”

#### Textual Amendments

**F38** Sch. 8 para. 16(2) omitted (with effect in accordance with Sch. 17 para. 18(6) of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 17 para. 18(5)(g)

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*Finance Act 1991 (c. 31)*

- 17 In paragraph 16(1) of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts), for “, otherwise than in accordance with the provisions applicable to Case I of Schedule D,” substitute “ under the I minus E basis ”.

*Taxation of Chargeable Gains Act 1992 (c. 12)*

- 18 In section 212 of TCGA 1992 (annual deemed disposal of holdings of unit trusts etc), omit subsection (7A) (which applies section 440B(5) of ICTA).

*Finance (No. 2) Act 1992 (c. 48)*

- 19 In F(No.2)A 1992, omit section 65 (life assurance business: I minus E basis).

*Finance Act 1996 (c. 8)*

F39 20 .....

**Textual Amendments**

**F39** Sch. 8 para. 20 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Finance Act 1998 (c. 36)*

- 21 In paragraph 84 of Schedule 18 to FA 1998 (company tax returns, assessments and related matters), for sub-paragraphs (1) to (3) substitute—

“(1) This paragraph applies where amounts may be brought into charge to tax either—

- (a) in computing profits chargeable to tax under Case I of Schedule D, or
- (b) as amounts within Case III or V of that Schedule.”; and the italic heading before that paragraph accordingly becomes “ *Choice between Case I and Case III or V of Schedule D* ”.

*Capital Allowances Act 2001 (c. 2)*

- 22 CAA 2001 is amended as follows.

- 23 In section 256(1) (different giving effect rules for different categories of business), for paragraph (b) substitute—

“(b) is charged to tax under the I minus E basis in respect of its life assurance business.”

- 24 In section 257(2) (life assurance: supplementary), for paragraphs (a) and (b) substitute—

- “(a) section 85A(3) of the Finance Act 1989 (excess adjusted Case I profits), or
- (b) section 89 of that Act (policy holders' share of profits).”

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*Finance Act 2002 (c. 23)*

F40 25 .....

**Textual Amendments**  
**F40** Sch. 8 paras. 25-27 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F40 26 .....

**Textual Amendments**  
**F40** Sch. 8 paras. 25-27 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

F40 27 .....

**Textual Amendments**  
**F40** Sch. 8 paras. 25-27 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**PART 2 U.K.**

TRANSITIONAL PROVISIONS

*Unused pre-commencement section 76(12) etc excesses*

28 Step 7 in subsection (7) of section 76 of ICTA applies in relation to an insurance company for the first accounting period beginning on or after 1st January 2007 for which the profits of the life assurance business are charged to tax under the I minus E basis as if the amounts carried forward to the accounting period under subsection (12) of that section included—

- (a) any excess such as is mentioned in that subsection relating to the company for an accounting period beginning on or after 1st April 2004 but not later than 1st January 2007 which was not brought into account for the next accounting period in accordance with Step 7 in subsection (7) of that section, and
- (b) any excess such as was mentioned in subsection (3) of section 75 of ICTA relating to the company for an accounting period beginning before 1st April 2004 which was not deducted for the succeeding accounting period in accordance with that section (as applied by section 76 of that Act).

*Shifts in basis of taxation at first post-commencement accounting period*

29 (1) This paragraph applies where—

- (a) the profits of the life assurance business of an insurance company for the first accounting period of the company beginning on or after 1st January 2007



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- (“the first accounting period”) are charged to tax in accordance with Case I of Schedule D by virtue of subsection (3)(b) of section 431G of ICTA, but
- (b) the profits of the life assurance business of the company for the preceding accounting period were charged to tax under the I minus E basis.
- (2) The amount of the losses available to be set off under section 393 of ICTA against the profits of the first accounting period is the amount of any loss under section 436, 439B or 441 of ICTA carried forward to that period by virtue of Part 2 of Schedule 7 to this Act.

SCHEDULE 9 **U.K.**

Section 40

INSURANCE COMPANIES: TRANSFERS ETC

*Definition of “insurance business transfer scheme”*

- 1 (1) In section 431(2) of ICTA (interpretative provisions for purposes of Corporation Tax Acts), for the definition of “insurance business transfer scheme” substitute—
- ““insurance business transfer scheme” means—
- (a) a scheme falling within section 105 of the Financial Services and Markets Act 2000, including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section, or
- (b) a scheme which would fall within that section but for subsection (1)(b) of that section;”.
- (2) In consequence of sub-paragraph (1), omit—
- (a) the definition of “insurance business transfer scheme” in section 12(7B) of ICTA,
- (b) section 444AB(11) of that Act (as originally enacted),
- (c) in section 444AC(11) of that Act (as originally enacted), the definition of “insurance business transfer scheme”,
- (d) section 460(10B) of that Act,
- (e) the definition of “insurance business transfer scheme” in paragraph 12(9) of Schedule 9 to FA 1996,
- (f) section 560(5)(b) of CAA 2001,
- <sup>F41</sup>(g) .....
- <sup>F41</sup>(h) .....
- (3) In section 431 of ICTA, insert at the end—
- “(2ZG) The Treasury may by order amend the definition of “insurance business transfer scheme” given by subsection (2) above where it is expedient to do so in consequence of any amendment of section 105 of the Financial Services and Markets Act 2000.
- (2ZH) The power conferred by subsection (2ZG) above includes power to make incidental, supplementary, consequential or transitional provisions and savings (including provision amending any provision of the Corporation Tax Acts relating to insurance companies).”

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- (4) In section 66 of FA 2002 (election to continue postponement of mark to market)—
  - (a) in subsection (4)(a), for “a transfer” substitute “ an insurance business transfer ”,
  - (b) in subsection (5), omit the definition of “transfer scheme”, and
  - (c) omit subsections (6) and (7).

F42(5) .....

**Textual Amendments**

- F41 Sch. 9 para. 1(2)(g)(h) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)
- F42 Sch. 9 para. 1(5) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Transfer schemes: expenses, losses etc*

- 2 (1) Section 444A of ICTA (transfers of business: expenses, losses and section 432F(2) excesses) is amended as follows.
  - (2) In subsection (1), omit “Subject to subsection (7) below,”.
  - (3) Omit—
    - (a) subsection (7) (section not to apply if transfer is not for bona fide commercial reasons or forms part of avoidance scheme), and
    - (b) subsection (8) (clearance procedure as to non-application of subsection (7)).

*Transfer schemes: deemed periodical returns*

- 3 (1) In ICTA, for section 444AA substitute—

**“444AA Transfers of business: deemed periodical return**

- (1) This section applies where the whole, or substantially the whole, of the long-term business of a person (“the transferor”) is transferred from that person—
  - (a) by one insurance business transfer scheme, or
  - (b) by two or more insurance business transfer schemes which are associated.
- (2) For the purposes of subsection (1) above two or more insurance business transfer schemes are associated if they form part of an arrangement for the transfer of the whole, or substantially the whole, of the transferor's long-term business.
- (3) Where (apart from this subsection) there would not be a periodical return of the transferor covering a period ending immediately before a relevant transfer date, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the period—
  - (a) beginning immediately after the last period ending before the relevant transfer date which is covered by a periodical return of the transferor, and

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- (b) ending immediately before the relevant transfer date, containing such entries as would be included in an actual periodical return of the transferor covering that period (and so making that period a period of account of the transferor).
- (4) There is to be deemed for the purposes of corporation tax to be a periodical return of the transferor—
  - (a) covering a relevant transfer date, and
  - (b) containing such entries as would be included in an actual periodical return covering the relevant transfer date,(and so making the relevant transfer date a period of account of the transferor).
- (5) Any actual periodical return covering a period which includes a relevant transfer date is to be ignored for the purposes of corporation tax.
- (6) Where the transferor continues to carry on long-term business after a relevant transfer date, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the immediate post-RTD period containing such entries as would be included in an actual periodical return covering that period (and so making that period a period of account of the transferor).
- (7) In this section “relevant transfer date” means—
  - (a) in relation to a case within paragraph (a) of subsection (1) above, the date that is the transfer date in relation to the insurance business transfer scheme, and
  - (b) in relation to a case within paragraph (b) of that subsection—
    - (i) the earliest date that is the transfer date in relation to any of the insurance business transfer schemes, other than one that is a preliminary non-EEA transfer scheme, and
    - (ii) (where there are two or more insurance business transfer schemes that are not preliminary non-EEA transfer schemes) the latest date that is the transfer date in relation to any of them.
- (8) In subsection (6) above “the immediate post-RTD period” means the period beginning immediately after the relevant transfer date mentioned in that subsection and (subject to subsection (9) below) ending with—
  - (a) the end of the period covered by the periodical return covering a period which includes a relevant transfer date (if there is one), or
  - (b) (if there is not) the period covered by the accounts of the company prepared in accordance with generally accepted accounting practice which includes the relevant transfer date.
- (9) If the case is within subsection (1)(b) above and two or more of the insurance business transfer schemes are not preliminary non-EEA transfer schemes, the period ends with the latest date that is the transfer date in relation to any of them if that is before the end of the period mentioned in paragraph (a) or (b) of subsection (8) above.

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- (10) In this section and sections 444AB to 444AEC “the transfer date”, in relation to an insurance business transfer scheme, means the date on which it takes effect.
- (11) For the purposes of this section an insurance business transfer scheme is a preliminary non-EEA transfer scheme if—
  - (a) it is an insurance business transfer scheme by virtue of paragraph (b) of the definition of “insurance business transfer scheme” in section 431(2), and
  - (b) the transfer date in relation to it is earlier than the transfer date in relation to an associated insurance business transfer scheme which is an insurance business transfer scheme by virtue of paragraph (a) of that definition.”

<sup>F43</sup>(2) .....

(3) In—

<sup>F44</sup>(a) .....

(b) section 82D(2A) of FA 1989,

for “444AA(3)” substitute “ 444AA(4) ”.

(4) In section 213(10) of TCGA 1992, for “before the transfer” substitute “ before the relevant transfer date (within the meaning of that section) ”.

**Textual Amendments**

**F43** Sch. 9 para. 3(2) repealed (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), art. 1(1), **Sch. Pt. 1**

**F44** Sch. 9 para. 3(3)(a) repealed (with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Business Transfer Schemes \(Amendment of the Corporation Tax Acts\) Order 2008 \(S.I. 2008/381\)](#), art. 1(1), **Sch. Pt. 1**

*Transfer schemes: taxing the transferor*

4 (1) In ICTA, for sections 444AB and 444ABA substitute—

**“444AB Transfer schemes transferring whole of business: transferor**

- (1) This section applies where an insurance business transfer scheme has effect to transfer the whole, or substantially the whole, of the long-term business of a person (“the transferor”) to another person (“the transferee”) and either or both of conditions A and B are met.
- (2) Condition A is met if any of the assets of the transferor's long-term insurance fund which are transferred from the transferor to the transferee by the insurance business transfer scheme are not, immediately after their transfer—
  - (a) if the transferee is an insurance company, assets of the transferee's long-term insurance fund, or

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- (b) if the transferee is not an insurance company, assets of a with-profits fund of the transferee,  
 (“relevant non-transferred assets”).
- (3) Condition B is met if, immediately after the transfer date, the transferor—
  - (a) does not carry on long-term business, but
  - (b) holds any assets which, immediately before the transfer date, were assets of its long-term insurance fund (“retained assets”).
- (4) If there are relevant non-transferred assets or retained assets (or both) the relevant amount in relation to them (see subsection (5) below) is to be taken into account under section 83(2) of the Finance Act 1989 as an increase in value of the assets of the long-term insurance fund of the transferor for the relevant period of account (see subsection (6) below).
- (5) Section 444ABA makes provision for the calculation of the relevant amount in relation to relevant non-transferred assets; and section 444ABB makes provision for its calculation in relation to retained assets.
- (6) In this section and sections 444ABA to 444AC “the relevant period of account” means the period of account of the transferor ending (or treated by section 444AA as ending) immediately before the transfer date.
- (7) See section 444AA for the meaning of “the transfer date” in this section.

#### **444ABA Relevant non-transferred assets**

- (1) For the purposes of section 444AB the relevant amount in relation to assets that are relevant non-transferred assets is—

### **FVA – RVA**

where—

FVA is the fair value of the assets on the transfer date, and

RVA is the recognised value of the assets.

- (2) For the purposes of this section and section 444ABB—
  - (a) the recognised value of any assets which, immediately before the transfer date, are held by the transferor in a non-profit fund which is not a Form 14 line 51 fund is the relevant Form 13 value of those assets, and
  - (b) the recognised value of any other assets is the appropriate fraction of the relevant Form 13 value of those assets.
- (3) For the purposes of subsection (2) above a non-profit fund is a Form 14 line 51 fund if an amount in respect of the fund is shown (or treated as shown) in line 51 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (4) For the purposes of subsection (2) above the relevant Form 13 value of any assets is the value which is shown (or treated as shown) in respect of

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the assets in Form 13 in the periodical return of the transferor covering the relevant period of account (ignoring lines 91 to 99 of that Form).

(5) For the purposes of subsection (2)(b) above the appropriate fraction is—

$$1 - \frac{A}{B}$$

where—

A is the amount shown (or treated as shown) in line 51 of Form 14 in the periodical return of the transferor covering the relevant period of account in respect of the fund in which, immediately before the transfer date, the assets are held by the transferor, increased or reduced as mentioned in subsection (6) below, and

B is the amount shown (or treated as shown) in line 89 of Form 13 in that periodical return in respect of that fund.

- (6) The increase or reduction referred to in the definition of A in subsection (5) above is any increase or decrease deemed to be brought into account by section 83YA(3) or (4) of the Finance Act 1989 in respect of the fund for the relevant period of account.
- (7) See section 444AA for the meaning of “the transfer date”, and section 444AB for the meaning of “the relevant period of account”, in this section.

#### **444ABB Retained assets**

- (1) For the purposes of section 444AB the relevant amount in relation to assets that are retained assets is the lesser of FVA and UTA, where—
- FVA is the fair value of the assets on the transfer date, and
  - UTA is the amount by which the fair value of the assets of the long-term insurance fund of the transferor immediately before the transfer date exceeds the amount shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor covering the transfer date.
- (2) See section 444AA for the meaning of “the transfer date” in this section.

#### **444ABC Transfer scheme transferring part of business: transferor**

- (1) This section applies where an insurance business transfer scheme has effect to transfer part (but not the whole or substantially the whole) of the long-term business of a person (“the transferor”) to another person (“the transferee”) and the condition in subsection (2) below is met.
- (2) That condition is that any of the assets of the transferor's long-term insurance fund which are transferred from the transferor to the transferee by the insurance business transfer scheme are not, immediately after their transfer—
- if the transferee is an insurance company, assets of the transferee's long-term insurance fund, or

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- (b) if the transferee is not an insurance company, assets of a with-profits fund of the transferee,  
 (“relevant non-transferred assets”).
- (3) The relevant amount in relation to the relevant non-transferred assets (see subsection (4) below) is to be taken into account under section 83(2) of the Finance Act 1989 as an increase in value of the assets of the long-term insurance fund of the transferor for the period of account covering the transfer date.
- (4) The relevant amount in relation to the relevant non-transferred assets is—

## FVA – BTO

where

FVA is the fair value of the assets on the transfer date, and

BTO is any amount brought into account in respect of the assets as a business transfer-out.

- (5) See section 444AA for the meaning of “the transfer date” in this section.”
- (2) In section 432E(2A) of ICTA (apportionments: participating funds)—
  - (a) before “444AF(2)” insert “ 444AB, 444ABC, ”, and
  - (b) after paragraph (a) insert—  
 “(aa) section 444AB or 444ABC of this Act”.

### Commencement Information

**I10** Sch. 9 para. 4 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), [art. 2](#)

### *Transferor's period of account including transfer*

5 In ICTA, after section 444ABC (inserted by paragraph 4) insert—

#### **“444ABD Transferor's period of account including transfer**

- (1) Any profits representing the amount by which—
  - (a) the value of the liabilities transferred by an insurance business transfer scheme, exceeds
  - (b) the value of the assets transferred by the insurance business transfer scheme shown (or treated as shown) in line 32 of the periodical return of the transferor for the period of account of the transferor including the transfer date,are to be taken into account as profits of that period of account.
- (2) See section 444AA for the meaning of “the transfer date” in this section.”

### *Transfer schemes: taxing the transferee*

6 (1) In ICTA, for section 444AC substitute—

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**“444AC Transfer schemes transferring whole of business: reduction in income of transferee**

- (1) This section applies where an insurance business transfer scheme has effect to transfer the whole, or substantially the whole, of the long-term business of a person (“the transferor”) to another person (“the transferee”) and conditions A and B are met.
- (2) Condition A is that the transferor did not carry on life assurance business that is mutual business during the relevant period of account.
- (3) Condition B is that an amount is shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (4) The amount which (apart from this section) would be regarded as other income of the transferee for the purposes of section 83(2)(e) of the Finance Act 1989 for the period of account of the transferee which includes the transfer date is to be reduced by an amount equal to the transferred surplus.
- (5) In subsection (4) above “the transferred surplus” means the amount shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (6) See section 444AA for the meaning of “the transfer date”, and section 444AB for the meaning of “the relevant period of account”, in this section.

**444ACZA Transfer schemes transferring part of business: reduction in income of transferee**

- (1) This section applies where an insurance business transfer scheme has effect to transfer part (but not the whole or substantially the whole) of the long-term business of a person (“the transferor”) to another person (“the transferee”) and the condition in subsection (2) below is met.
  - (2) The condition is that the transferor did not carry on life assurance business that is mutual business during the period of account of the transferor covering the transfer date.
  - (3) The amount which (apart from this section) would be regarded as other income of the transferee for the purposes of section 83(2)(e) of the Finance Act 1989 for the period of account of the transferee which includes the transfer date is to be reduced by an amount equal to the transferred surplus.
  - (4) In subsection (4) above “the transferred surplus” means such part of the amount shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the last period of account of the transferor ending before the transfer date as it is just and reasonable to regard as being attributable to the transfer.
  - (5) See section 444AA for the meaning of “the transfer date” in this section.”
- (2) In section 83(2A) of FA 1989 (receipts not to be taken into account), omit paragraph (b).



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#### Commencement Information

**I11** Sch. 9 para. 6 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), [art. 2](#)

#### *Repeal of section 444AD*

- 7 (1) In ICTA, omit section 444AD (transfers of business: modification of section 83(2B) of FA 1989).
- (2) In section 83YA(7) of FA 1989 (changes in value of assets brought into account: transfer-in amount), for the words after “if” substitute “a transfer takes place in the following period of account; and the amount of the transfer-in amount for the previous period of account is any amount by which—
- (a) the fair value of such of the assets of the long-term insurance fund of the company immediately after the transfer as were assets of the transferor's long-term insurance fund immediately before the transfer, exceeds
  - (b) the amount of any business transfer-in brought into account in accordance with section 83(2)(e) in relation to the transfer.”

#### Commencement Information

**I12** Sch. 9 para. 7 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), [art. 2](#)

#### *Transfer schemes: anti-avoidance*

- 8 (1) In ICTA, before section 444AF (and the italic cross-heading before it) insert—

#### **Transfer schemes: anti-avoidance rule**

“444AE(A) This section applies where—

- (a) as a result of the whole or any part of transfer scheme arrangements involving the transfer of long-term business from one person (“the transferor”) to another (“the transferee”) a Case I advantage is obtained by the transferor or the transferee (or by both), and
  - (b) the sole or main purpose, or one of the main purposes, of the whole or any part of the transfer scheme arrangements is the obtaining of that Case I advantage.
- (2) In subsection (1) above “transfer scheme arrangements” means an insurance business transfer scheme (“the relevant transfer scheme”) together with any relevant associated operations.
- (3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AEB), the amount of the transferor's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferor for the period of account of the transferor covering the transfer date.
- (4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AEC), the amount of the transferee's Case I advantage (see

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subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferee for the first period of account of the transferee ending after the transfer date.

(5) In this section and sections 444AEB and 444AEC “relevant associated operations”, in relation to the relevant transfer scheme, means—

- (a) any other insurance business transfer scheme,
- (b) any contract of reinsurance,
- (c) any reconstruction or amalgamation involving the transferor, a dependant of the transferor which is an insurance undertaking or the transferee, or
- (d) any surplus-increasing transfer of assets,

which is effected in connection with the relevant transfer scheme.

(6) In subsection (5) above—

“dependant” and “insurance undertaking” have the same meaning as in the Insurance Prudential Sourcebook, and

“surplus-increasing transfer of assets” means a transfer of assets of the transferor's long-term insurance fund to the transferee which is not brought into account for any period of account of the transferee but increases the amount of total surplus shown in line 39 of Form 58 in any periodical return of the transferee.

(7) See section 444AA for the meaning of “the transfer date” in this section.

#### **Case I advantage: transferor**

444AEB) A Case I advantage is obtained by the transferor if—

- (a) Case I profits of its life assurance business for a period of account to which this section applies are less than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements, or
- (b) Case I losses of its life assurance business for such a period of account are greater than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements.

(2) If a Case I advantage is obtained by the transferor, the amount of the Case I advantage is the aggregate of—

- (a) the amounts (if any) by which Case I profits for each period of account to which this section applies are less than they would be but for the transfer scheme arrangements or part, and
- (b) the amounts (if any) by which Case I losses for each such period of account are greater than they would be but for the transfer scheme arrangements or part.

(3) This section applies to a period of account if it is—

- (a) the period of account of the transferor covering the transfer date,
- (b) any earlier period of account of the transferor, or
- (c) where any relevant associated operations are effected in any later period of account, that period of account.

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- (4) In this section and section 444AEC “Case I profits” and “Case I losses” means profits and losses computed in accordance with the provisions of Case I of Schedule D.
- (5) See section 444AA for the meaning of “the transfer date”, and section 444AEA for the meaning of “relevant associated operations”, in this section.

#### **Case I advantage: transferee**

- 444AE(1) A Case I advantage is obtained by the transferee if—
- (a) Case I profits of its life assurance business for a period of account to which this section applies are less than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements, or
  - (b) Case I losses of its life assurance business for such a period of account are greater than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements.
- (2) If a Case I advantage is obtained by the transferee, the amount of the Case I advantage is—
- (a) the amount by which Case I profits for each period of account to which this section applies are less than they would be but for the transfer scheme arrangements or part, or
  - (b) the amount by which Case I losses for each such period of account are greater than they would be but for the transfer scheme arrangements or part.
- (3) This section applies to a period of account if it is—
- (a) the first period of account of the transferee ending after the transfer date or after the effecting of the first of any relevant associated operations (if that occurs before the transfer date),
  - (b) the second period of account of the transferee ending after the transfer date or after the effecting of the last of any relevant associated operations (if that occurs after the transfer date), or
  - (c) any intervening period of account.
- (4) See section 444AA for the meaning of “the transfer date”, section 444AEA for the meaning of “relevant associated operations” and section 444AEB for the meaning of “Case I profits” and “Case I losses”, in this section.

#### **Clearance: no avoidance or group advantage**

- 444AE(1) Section 444AEA does not apply in relation to the transferor or the transferee if, on an application under this section, the Commissioners for Her Majesty's Revenue and Customs (“the HMRC Commissioners”) have given a notice under subsection (2) below.
- (2) A notice under this subsection is a notice stating that the HMRC Commissioners are satisfied—

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- (a) that the obtaining of a Case I advantage by the applicant is not the sole or main purpose of the whole or any part of the transfer scheme arrangements, or
  - (b) that the transferor and the transferee are members of the same group of companies and that there is no advantage to the group arising from any Case I advantage obtained by the transferor or by the transferee.
- (3) For the purposes of this section there is no advantage to a group arising from any Case I advantage obtained by the transferor or by the transferee if—
- (a) as a result of transfer scheme arrangements, there is an increase in the liability to corporation tax of one or more companies which are members of the group of companies, and
  - (b) the amount (or aggregate amount) of that increase is not less than the reduction in the liability to corporation tax of the transferor or the transferee (or both) arising from the obtaining of the Case I advantage.
- (4) An application under this section must be in writing and contain particulars of the transfer scheme arrangements.
- (5) The HMRC Commissioners may by notice require the applicant to provide further particulars in order to enable them to determine the application.
- (6) A requirement may be imposed under subsection (5) above within 30 days of the receipt of the application or of any further particulars required under that subsection.
- (7) If a notice under subsection (5) above is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the application.
- (8) The HMRC Commissioners must give notice of their decision on an application under this section to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of that notice being complied with.
- (9) If the HMRC Commissioners—
- (a) give notice to the applicant under subsection (8) above that they are not satisfied as mentioned in subsection (2) above, or
  - (b) do not comply with subsection (8) above,
- the applicant may require them to transmit the application to the Special Commissioners.
- (10) A requirement under subsection (9) above must be imposed within 30 days of the giving of the notice or the failure to comply and must be accompanied by any notice given under subsection (5) above and further particulars provided pursuant to any such notice.
- (11) Any notice given by the Special Commissioners has effect for the purposes of subsection (1) above as if it were given by the HMRC Commissioners.
- (12) If any particulars provided under this section do not fully and accurately disclose all facts and considerations material for the decision of the HMRC Commissioners or the Special Commissioners, any resulting notice that they are satisfied as mentioned in subsection (2) above is void.

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(13) For the purposes of this section two companies are members of the same group of companies if they are for the purposes of Chapter 4 of Part 10.”

- (2) In section 432E(2A) of ICTA (as amended by paragraph 4(2)), after “444ABC,” insert “ 444AEA, ” and after paragraph (aa) insert—  
“(ab) section 444AEA of this Act;”.

**Commencement Information**

**I13** Sch. 9 para. 8 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), **art. 2**

*Repeal of FA s.82C*

- 9 In FA 1989, omit section 82C (relevant financial reinsurance contracts).

**Commencement Information**

**I14** Sch. 9 para. 9 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), **art. 2**

*Transfers: receipts to be taken into account*

- 10 (1) Section 83 of FA 1989 (receipts to be taken into account) is amended as follows.
- (2) In the first sentence of subsection (2B), for the words from “but the transfer” to “the time of the transfer” substitute “ the fair value of the assets at the time of the transfer, reduced by any amount brought into account in respect of them (for the period of account in which the transfer takes place or any earlier period of account) as part of total expenditure or as a business transfer-out, ”.
- (3) In that sentence (as amended by sub-paragraph (2))—
- (a) for “as a business transfer out” substitute “ by being netted off against incomings in lines 11 to 15 of a revenue account ”, and
- (b) for the words after “value of the assets of that fund” substitute “ except to the extent that any of the exclusions in subsections (2C) to (2E) below apply. ”
- (4) Omit the second sentence of subsection (2B).
- (5) For subsection (2E) substitute—  
“(2E) Assets transferred by an insurance business transfer scheme are excluded from subsection (2B) above.”

**Commencement Information**

**I15** Sch. 9 para. 10(3)-(5) has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), **art. 2**

*Transfers and demutualisations: losses where assets added to long-term insurance fund*

- 11 (1) FA 1989 is amended as follows.

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- (2) Omit—
- (a) in section 83, subsections (3) to (7) and, in subsection (8), the definitions of “add”, “demutualisation” and “total reinsurance” (which relate to losses where assets added to long-term insurance fund),
  - (b) section 83AA (amounts added to long-term insurance fund in excess of loss), and
  - (c) section 83AB (treatment of surplus where there is subsequent transfer from company etc).
- (3) In section 83B(3) (changes in recognised accounts: attribution of amounts carried forward), for “83AB” substitute “ 83ZA ”.

**Commencement Information**

**I16** Sch. 9 para. 11 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), [art. 2](#)

- 12 In section 436A(3) of ICTA (gross roll-up business), for “83AB” substitute “ 83ZA ”.

**Commencement Information**

**I17** Sch. 9 para. 12 has effect as specified by [Finance Act 2007 \(Schedule 9\) Order 2008 \(S.I. 2008/379\)](#), [art. 2](#)

*Transfer schemes: old annuity contracts*

- 13 (1) Paragraph 16 of Schedule 7 to FA 1991 (transitional relief for old general annuity contracts) is amended as follows.
- (2) In sub-paragraph (7), in the definition of “old annuity contract”, insert at the end “ (including one forming part of the business transferred to another insurance company by an insurance business transfer scheme) ”.
- (3) After that sub-paragraph insert—
- “(8) Where—
- (a) business is transferred to an insurance company by an insurance business transfer scheme during an accounting period of the company, and
  - (b) the business transferred consists of or includes old annuity contracts (“the transferred contracts”),
- the reference in the definition of R1 in sub-paragraph (2) above to the company's opening liabilities for the accounting period is, in relation to the transferred contracts, a reference to the company's liabilities in respect of the transferred contracts immediately after the transfer.”

*Transfer schemes: no gain/no loss*

- 14 (1) TCGA 1992 is amended as follows.
- (2) In section 211 (application of section 139), for subsections (2) and (2A) substitute—

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“(2) Where this section applies the transferor and the transferee are treated for the purposes of corporation tax on chargeable gains as if any assets included in the transfer which—

- (a) immediately before they are acquired by the transferee, were assets of the transferor's long-term insurance fund, and
- (b) immediately after they are so acquired are assets of the transferee's long-term insurance fund,

were acquired for a consideration of such amount as would secure that neither a gain nor a loss would accrue to the transferor on the disposal.

(3) Subsection (2) above is subject to section 212.”

<sup>F45</sup>(3) .....

**Textual Amendments**

**F45** Sch. 9 para. 14(3) omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 2 para. 70\(i\)](#)

*Transfer schemes: old reinsurance business*

15 In paragraph 57 of Schedule 8 to FA 1995 (application of provisions made by that Schedule), after sub-paragraph (2) (which disapplies section 442A of ICTA in relation to the reinsurance of policies and contracts made and reinsured before 29th November 1994) insert—

“(3) Where business consisting of or including an arrangement for the reinsurance of a policy or contract made before 29th November 1994 which was effected before that date has been transferred by an insurance business transfer scheme sub-paragraph (2) has effect in relation to the transferee.”

*Power to amend transfer provisions*

- 16 (1) The Treasury may by order make provision in relation to insurance business transfer schemes.
- (2) The power conferred by sub-paragraph (1) includes power to amend or repeal any provision of the Corporation Tax Acts relating to insurance business transfer schemes and otherwise to amend the Corporation Tax Acts.
- (3) The power conferred by sub-paragraph (1) includes power to make—
- (a) different provision for different cases or otherwise for different purposes, and
  - (b) incidental, supplementary, consequential or transitional provisions and savings.
- (4) Provision made by an order under this paragraph may be made so as to have effect in relation to periods of account current when it is made.
- (5) No order may be made under this paragraph unless a draft of the statutory instrument containing it has been laid before the House of Commons before 1st April 2008 and has been approved by a resolution of that House.

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*Commencement*

- 17 (1) The amendments made by paragraphs 1 to 3 and 13 to 15 have effect in relation to periods of account beginning on or after 1st January 2007.
- (2) The amendments made by paragraphs 4, 6 to <sup>[F46]</sup>10(5),] 11 and 12 have effect in accordance with provision made by an order made by the Treasury.
- (3) But the amendments made by paragraphs 11 and 12 also have effect
  - <sup>[F47]</sup>(a) in relation to periods of account beginning on or after 1st January 2007 where the transfer of business or demutualisation concerned took place before 21st March 2007 <sup>[F48]</sup>and
  - (b) in relation to periods of account ending after 30 June 2008 where the transfer of business or demutualisation concerned took place on or after 21 March 2007 and before 1 July 2008.]
- (4) The amendment made by paragraph 5 has effect in relation to transfers of business with a transfer date after 21st March 2007.
- <sup>[F49]</sup>(4A) The amendment made by paragraph 9 has effect in relation to contracts entered into in a period of account beginning on or after 1 January 2008.]
- (5) The amendment made by paragraph 10(2) has effect in relation to transfers taking place on or after 6th December 2006.
- <sup>[F50]</sup>(6) The amendments made by paragraph 10(3) and (4) have effect in relation to assets transferred on or after 1 January 2008.]

**Textual Amendments**

**F46** Word in Sch. 9 para. 17(2) substituted (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 17 para. 38\(2\)](#)

**F47** Word in Sch. 9 para. 17(3) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 17 para. 38\(3\)\(a\)](#)

**F48** Sch. 9 para. 17(3)(b) and word inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 17 para. 38\(3\)\(b\)](#)

**F49** Sch. 9 para. 17(4A) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 17 para. 38\(4\)](#)

**F50** Sch. 9 para. 17(6) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\), Sch. 17 para. 38\(5\)](#)

SCHEDULE 10 **U.K.**

Section 41

INSURANCE COMPANIES: MISCELLANEOUS

*Contingent loans*

<sup>F51</sup><sub>1</sub> .....

**Textual Amendments**

**F51** [Sch. 10 para. 1](#) omitted (with effect in accordance with Sch. 17 para. 4(1) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\), Sch. 17 para. 3\(d\)](#)



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*“Structural” assets*

2 (1) In FA 1989, after section 83 insert—

**“83XA Structural assets**

- (1) Section 83(2) does not require to be taken into account as receipts or expenses of a period of account income from, or an increase or a decrease in the value of, structural assets held by an insurance company in a non-profit fund.
- (2) For the purposes of subsection (1) above—
  - (a) an increase in the value of structural assets includes any amount by which their fair value when they cease to be structural assets, or come to be held otherwise than in any of the company's non-profit funds, exceeds their admissible value at the end of the preceding period of account, and
  - (b) a decrease in the value of structural assets includes any amount by which the admissible value of the assets at the end of the period of account in which they become structural assets, or come to be held in any of the company's non-profit funds, is less than their historic cost.
- (3) In this section “structural assets” means—
  - (a) shares, debts and loans the value of which is required to be entered in lines 21 to 24 of Form 13 in the periodical return (UK insurance dependants and other insurance dependants), and
  - (b) assets of such other descriptions as are specified by regulations made by the Treasury.
- (4) Where a structural asset held by an insurance company in a non-profit fund ceases to be a structural asset or comes to be held otherwise than in any of the company's non-profit funds and, immediately before it came to be a structural asset held in any of the company's non-profit funds it (or any part of it) was an asset of the company's long-term insurance fund, the relevant value difference is to be taken into account under section 83(2)—
  - (a) as a receipt (if it is a positive amount), or
  - (b) as an expense (if it is a negative amount),of the relevant period of account.
- (5) For the purposes of subsection (4) above “the relevant value difference”, in relation to an asset, is—

$$HC - AV$$

where—

HC is its historic cost, and

AV is its admissible value at the relevant time.

(6) In subsection (4) above “the relevant period of account” means—

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- (a) in a case within paragraph (a) of that subsection, the period of account in which the asset ceases to be a structural asset or comes to be held otherwise than in any of the company's non-profit funds, and
- (b) in a case within paragraph (b) of that subsection, the period of account in which the asset first comes to be held otherwise than by the company or (where the company is a member of a group) otherwise than by a company which is a member of the group;
- and section 170 of the Taxation of Chargeable Gains Act 1992 (meaning of “group” etc) has effect for the interpretation of this subsection.
- (7) In subsection (5) above “the relevant time” means—
- (a) in a case where assets become structural assets held in any of the company's non-profit funds by virtue of the commencement of this section, the end of the last period of account of the company beginning before 1st January 2007, and
- (b) otherwise, the time when the assets become structural assets held in any of the company's non-profit funds.
- (8) In this section “historic cost”, in relation to an asset which is or has been held in any of the company's non-profit funds, means—
- (a) where the asset came to be held in any of the company's non-profit funds on acquisition from another person, the consideration given by the company for the acquisition of the asset, and
- (b) otherwise, its fair value when it came to be held in any of the company's non-profit funds.
- (9) In this section “admissible value”, in relation to an asset and a time, means the value of the asset as shown in column 1 of Form 13 of the periodical return for the period ending with that time (or as would be so shown if there were a periodical return covering a period ending with that time).
- (10) Regulations made by the Treasury may make provision for computing for the purposes of the Taxation of Chargeable Gains Act 1992 any gain or loss arising on a disposal by an insurance company of a structural asset held in a non-profit fund in any case where the condition in subsection (11) is met.
- (11) The condition in this subsection is met if, in any period of account of the company in which the asset was held by it—
- (a) income arising from the asset was (or, had there been any, would have been) referable to any category of long-term business the profits of which fell for that period of account to be computed in accordance with the provisions applicable to Case I of Schedule D, or
- (b) the company was charged to tax on the profits of its life assurance business under Case I of Schedule D.
- (12) Structural assets held by an insurance company in a non-profit fund are to be treated as being within paragraph (f) of subsection (4) of section 440 of the Taxes Act 1988; but no disposal or re-acquisition is to be deemed to occur by virtue of an asset ceasing to be within any other paragraph of that subsection and coming within that paragraph on becoming such a structural asset.

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- (13) Structural assets held by an insurance company in a non-profit fund are to be treated as being “remaining” securities within section 440A(2)(e) of the Taxes Act 1988.
  - (14) Section 432A of the Taxes Act 1988 does not have effect in relation to income arising from, or gains and losses accruing on the disposal of, structural assets held by an insurance company in a non-profit fund.
  - (15) Regulations under subsection (3) or (10) above may be made so as to have effect in relation to periods of account current when they are made (as well as periods of account beginning later).”
- (2) In ICTA, omit section 444ACA (transfers of business).
  - (3) In section 432E(2A) of that Act, omit “444ACA(2),” and paragraph (b).
  - (4) In section 211 of TCGA 1992 (transfers of business: application of section 139 of that Act), as amended by paragraph 14 of Schedule 9 to this Act, after subsection (2) insert—
    - “(2A) The reference in subsection (2) above to assets included in the transfer does not include structural assets within the meaning of section 83XA of the Finance Act 1989.”
  - (5) In paragraph 17 of Schedule 7AC to TCGA 1992 (substantial shareholdings exemption: special rules for assets of insurance company's long-term insurance fund), after sub-paragraph (4) insert—
    - “(4A) The reference in sub-paragraph (2) to an asset of the investing company's long-term insurance fund, and the references in sub-paragraphs (3) and (4) to shares or an interest in shares held as assets of its long-term insurance fund, do not include a structural asset, or structural assets, within the meaning of section 83XA of the Finance Act 1989.”

*Losses on disposal of authorised investment fund assets to connected manager*

- 3 In TCGA 1992, after section 210B insert—

**“210C Losses on disposal of authorised investment fund assets to connected manager**

- (1) Section 18(3) does not apply in relation to a loss accruing on the disposal by an insurance company of authorised investment fund assets to the manager of the authorised investment fund.
- (2) In this section—
  - “authorised investment fund assets” means assets of the company's long-term insurance fund consisting of rights under an authorised unit trust or shares in an open-ended investment company,
  - “the manager of the authorised investment fund” means—
    - (a) in the case of an authorised unit trust, the person who is the manager of the unit trust scheme for the purposes of Chapter 3 of Part 17 of the Financial Services and Markets Act 2000, and

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(b) in the case of an open-ended investment company, a director or other person having responsibility for the management of its scheme property, and  
“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.”

*Priority of section 83(2) of FA 1989 etc*

- 4 (1) Section 83 of FA 1989 (receipts to be taken into account) is amended as follows.
- (2) After subsection (2) insert—
  - “(2ZA) Amounts brought into account as mentioned in subsection (2) above are not to be taken into account in any other way; and this subsection applies in spite of—
    - (a) section 80(5) of the Finance Act 1996 (taxation of loan relationships),
    - (b) paragraph 1(2) of Schedule 26 to the Finance Act 2002 (taxation of profits from derivative contracts), and
    - (c) paragraph 1(3) of Schedule 29 to that Act (gains and losses in respect of intangible fixed assets).”
  - (3) In subsection (2A), after paragraph (aa) insert—
    - “(ab) comprises a business transfer-in that is not brought into account in a revenue account prepared for the purposes of Chapter 9 of the Prudential Sourcebook (Insurers) in respect of the whole of the company's long-term business.”.
  - (4) Omit—
    - (a) in section 502H of ICTA, in subsection (2), paragraph (b) and the word “and” before it and subsections (8) to (10),
    - (b) paragraph 2(2) and (3) to (5) of Schedule 11 to FA 1996,
    - (c) paragraph 19(1) to (3) of Schedule 12 to FA 1997, <sup>F52</sup>...
    - <sup>F52</sup>(d) .....

**Textual Amendments**  
**F52** Sch. 10 para. 4(4)(d) and preceding word repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

*Tidying up of TCGA 1992*

- 5 (1) TCGA 1992 is amended as follows.
- (2) In section 210B(6)(a) (disposal and acquisition of section 440A securities), for the words after “are” substitute “ assets within section 212(1). ”
- (3) Omit—
  - (a) section 212(2A) (disapplication of section 212(1) to assets treated as representing rights under a creditor relationship),

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- (b) section 214 (rights under authorised unit trusts etc: transitional provisions), and
- (c) section 214A (further transitional provisions).

*Tidying up of Chapter 2 of Part 4 of FA 1996*

F536 .....

**Textual Amendments**

**F53** Sch. 10 para. 6 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

*Correction of erroneous repeal*

- 7 The repeals made by Schedule 3 to ITA 2007 in paragraph 11 of Schedule 6 to FA 1990 are deemed never to have had effect; but Schedule 3 to ITA 2007 is deemed to have included the repeal of the words before the paragraphs in sub-paragraph (1) of that paragraph.

*Non-profit companies, non-profit funds and with-profits funds*

- 8 (1) In section 431(2) of ICTA (interpretative provisions relating to insurance companies) insert at the appropriate place—

““non-profit company”, in relation to a period of account, means a company carrying on long-term business where, at the end of the period—

- (a) none of the liabilities of that business, or
- (b) none but an insignificant proportion of those liabilities,

are with-profits liabilities;”,

““non-profit fund” means a fund that is not a with-profits fund;”, and

““with-profits fund” has the meaning given by the Prudential Sourcebook (Insurers);”.

- (2) Omit—

- (a) in section 432YA(5) of ICTA, the definitions of “non-profit company” and “non-profit fund”,
- (b) section 82D(5) of FA 1989,
- (c) in section 83YA of that Act, subsection (8) and, in subsection (11), the definition of “with-profits fund”, and
- (d) in section 83A of that Act, in subsections (2)(b) and (3D)(b) “(see subsection (6))” and subsection (6).

*Internal linked funds and net value*

- 9 (1) In section 431(2) of ICTA (interpretative provisions relating to insurance companies) insert at the appropriate place—

““internal linked fund”, in relation to an insurance company, means an account—

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- (a) to which linked assets are appropriated by the company, and
- (b) which may be divided into units the value of which is determined by the company by reference to the value of those assets;”, and

““net value”, in relation to any assets, means the excess of the value of the assets over the value of money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) attributable to an internal linked fund which are not owed in respect of liabilities;”.

(2) Omit—

- (a) in section 432ZA(6) of ICTA, the definition of “internal linked fund”,
- (b) section 432A(9A) of that Act,
- (c) the definition of “internal linked fund” in section 210B(8) of TCGA 1992, and
- (d) paragraph 3A(6) of Schedule 11 to FA 1996.

*Fair value*

- 10 (1) In section 431(2) of ICTA (interpretative provisions relating to insurance companies) insert at the appropriate place—

““fair value”, in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount;”.

(2) In section 440 of ICTA (transfer of assets etc)—

- (a) in subsections (1) and (2), for “market” substitute “ fair ”, and
- (b) omit subsection (5).

(3) Omit—

- (a) section 444AB(6) of ICTA (as originally enacted),
- (b) in section 444AC(11) of that Act (as originally enacted), the words from the beginning to the end of the definition of “fair value”,
- (c) section 444AD(5) of that Act,
- (d) in section 83(8) of FA 1989, in the definition of “fair value”, paragraph (a), and
- (e) section 83YB(5) of that Act.

*Generalisation of definitions*

- 11 (1) Section 431 of ICTA (interpretative provisions relating to insurance companies) is amended as follows.

(2) For subsection (1) substitute—

“(1) This section has effect for the interpretation of the life assurance provisions of the Corporation Tax Acts.”

(3) In subsection (2), insert at the appropriate place—

““the life assurance provisions of the Corporation Tax Acts” means—

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- (a) the provisions of this Chapter so far as relating to life assurance business, companies carrying on such business and friendly societies, and
  - (b) any other provisions of the Corporation Tax Acts making separate provision by reference to whether or not the business of a company is or includes life assurance business or any category of business that includes life assurance business;”.
- 12 (1) Section 431A (power to amend) is amended as follows.
  - (2) In subsection (1), for “insurance company taxation provision” substitute “ of the life assurance provisions of the Corporation Tax Acts ”.
  - (3) Omit subsection (7).
- 13 In section 83A(1) of FA 1989 (“brought into account”)—
  - (a) omit “In sections 82A to 83B”, and
  - (b) for “those sections” substitute “ sections 82A to 83ZA ”.
- 14 (1) Omit the following provisions.
  - (2) In ICTA—
    - (a) in section 12(7B), the words from the beginning to the end of the definition of “contracts of long-term insurance”,
    - (b) in section 76(15), “and other expressions have the same meaning as in Chapter 1 of Part 12”,
    - (c) in section 587B(9), “ “life assurance business” and related expressions have the same meaning as Chapter 1 of Part 12;”,
    - (d) in section 755A(12), the definition of “long-term insurance fund”,
    - (e) section 804F, and
    - (f) in paragraph 14(1) of Schedule 28AA, the definition of “insurance company”.
  - (3) In FA 1989—
    - (a) in section 85(2A), the second sentence,
    - (b) in section 89(6), the words from the beginning to “; and”, and
    - (c) section 90A.
  - (4) In paragraph 16(7) of Schedule 7 to FA 1991, the words from “and, subject to that,” to the end.
  - (5) In TCGA 1992—
    - (a) section 214BA, and
    - (b) paragraph 17(5) of Schedule 7AC.
  - (6) In FA 1996—
    - (a) in section 87A(2), “ , within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988,” and “(see section 431(2) of that Act)”,
    - (b) section 88(7),
    - (c) in paragraph 12(9) of Schedule 9, the definitions of “contracts of long-term insurance” and “overseas life insurance company”,
    - (d) in paragraph 20(3)(b) of that Schedule, “ , within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988,” and “(see section 431(2) of that Act)”, and

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- (e) in Schedule 11, paragraph 6.
- (7) In paragraph 13(3) of Schedule 18 to FA 1998, the words after “1988”.
- (8) In CAA 2001—
  - (a) section 257(3),
  - (b) section 544(5), and
  - (c) section 560(5)(a) and (c).
- <sup>F54</sup>(9) .....
- (10) In FA 2002—
  - (a) in section 66(5), the words from the beginning to the end of the definition of “long-term insurance fund”,
  - (b) in paragraph 19(1) of Schedule 12, the definition of “life assurance business”,
  - <sup>F55</sup>(c) .....
  - <sup>F55</sup>(d) .....
  - (e) in Schedule 29, in paragraph 89(3), the definition of “contracts of long-term insurance” and paragraph 138(1).
- (11) In Schedule 23 to FA 2003—
  - (a) in paragraph 30, the definitions of “insurance company” and “life assurance business”, and
  - (b) in paragraph 31, the entries relating to those definitions.
- (12) Section 134(4)(c) of FA 2006.

**Textual Amendments**

**F54** Sch. 10 para. 14(9) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

**F55** Sch. 10 para. 14(10)(c)(d) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Minor changes*

- 15 (1) In section 432ZA(5) of ICTA (linked assets), for “432F” substitute “ 432E ”.
- (2) In section 434A(2A) of that Act (computation of losses and limitation on relief), for “paragraph 2” substitute “ paragraph 2(1) ”.
- (3) In the heading of section 88 of FA 1989, for “fraction” substitute “ share ”.
- (4) In paragraph 17 of Schedule 7 to FA 1991 (transitional provisions for chargeable gains and unrelieved general annuity business)—
  - (a) in sub-paragraph (4), for the words after “in an accounting period” substitute “ is so much of the chargeable gains arising to the company in the accounting period as are referable to its basic life assurance and general annuity business. ”, and
  - (b) omit sub-paragraphs (4A) and (5).



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*Obsolete etc provisions*

- 16 (1) Omit the following provisions (which are obsolete or of limited value).
- (2) In the Table in section 98 of TMA 1970, the words “or 441A(3)” in both columns.
- (3) In ICTA—
- (a) in section 76(7), in Step 3, the entries relating to section 587B(8)(b)(i) of ICTA and paragraph 23(2) of Schedule 13 to FA 2002,
  - (b) section 440(2A) and (2B) (transfer of assets: loan relationships and derivative contracts),
  - (c) section 442(4) (special rule for insurance companies ceasing to be resident in United Kingdom),
  - (d) section 443 (life policies carrying rights not in money),
  - (e) section 444 (life policies issued before 5th August 1965),
  - (f) section 587B(8) (gifts to charities etc: modifications for insurance companies), and
  - (g) in section 807A (disposals and acquisitions of company loan relationships with or without interest), subsections (4) and (5)(b) and, in subsection (6) (a), “or an insurance credit”.
- (4) In FA 1989—
- (a) section 84(2), (3), (5) and (6) (transitional provisions etc),
  - (b) in section 85(3) (commencement of provisions for charge of certain BLAGAB receipts), “(including the 1990 component period)”,
  - (c) in section 86 (spreading of relief for acquisition expenses), subsections (3) and (3A) and, in subsection (10), “(including the 1990 component period)”, and
  - (d) section 87 (management expenses).
- (5) In FA 1996—
- (a) paragraph 1(1) and (2) of Schedule 11 (loan relationships: I minus E basis),
  - (b) paragraph 4(6) of that Schedule (non-trading deficits: transitional provision),
  - (c) paragraph 5 of that Schedule (elections for accrual basis), and
  - (d) paragraph 1(3) of Schedule 15 (apportionment of loan relationship credits and debits: transitional provision).
- (6) Paragraph 18 of Schedule 12 to FA 1997 (leasing arrangements: meaning of “accounting purposes” for insurance companies).
- (7) Paragraph 86 of Schedule 18 to FA 1998 (non-annual actuarial investigations).
- <sup>F56</sup>(8) .....
- (9) Section 87(3) and (4) of FA 2001 (tax credits etc).
- <sup>F57</sup>(10) .....

**Textual Amendments**

**F56** Sch. 10 para. 16(8) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

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**F57** Sch. 10 para. 16(10) repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

### *Commencement*

- 17
- (1) The amendment made by paragraph 1 has effect on and after 10th May 2007.
  - (2) The amendments made by paragraphs 2, 4(2) and (4), 5, 6 and 8 to 15 have effect in relation to periods of account beginning on or after 1st January 2007.
  - (3) But the amendment made by paragraph 2(4) does not apply where the transfer of business concerned took place before 10th May 2007.
  - (4) The amendment made by paragraph 3 has effect in relation to losses accruing in a period of account beginning on or after 1st January 2007.
  - (5) The amendment made by paragraph 4(3) has effect in relation to periods of account beginning on or after 1st January 2005.

## SCHEDULE 11 U.K.

Section 42

### TECHNICAL PROVISIONS MADE BY GENERAL INSURERS

#### *Restriction on amount of technical provisions made by general insurers*

- 1
- (1) This paragraph applies if a general insurer makes any technical provisions for a period of account.
  - (2) The amount of the technical provisions stated in the accounts for that period is to be taken into account in the calculation for tax purposes of the profits of the general insurer's trade for that period unless an officer of Revenue and Customs considers that that amount exceeds the appropriate amount.
  - (3) In that case—
    - (a) the excess is not to be taken into account in that calculation, and
    - (b) the profits of the general insurer's trade for the next period of account are to be adjusted accordingly for tax purposes.
  - (4) “The appropriate amount” means such amount as is determined in accordance with regulations made by the Commissioners for Her Majesty's Revenue and Customs to be the appropriate amount to be taken into account in that calculation.
  - (5) Any such determination must be made by reference to the time at which the technical provisions are made.

#### *Enforcement*

- 2
- (1) This paragraph applies if an officer of Revenue and Customs gives a notice of enquiry under paragraph 24(1) of Schedule 18 to FA 1998 to a general insurer.
  - (2) The officer may by notice require the general insurer (at the general insurer's own expense) to provide the officer with a report as to whether (and, if so, the extent to which) the amount of any technical provisions stated in the accounts for any

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period covered by the company tax return into which the enquiry is made exceeds the appropriate amount.

- (3) The report must cover such matters, and be in such form, as the officer may reasonably require for the purposes of the enquiry.
- (4) The report must be made by a person who is appointed by the general insurer unless the officer requires the report to be made instead by another person.
- (5) As soon as the general insurer appoints a person to make the report, the general insurer must give a notice to the officer specifying that person.
- (6) A notice under sub-paragraph (2) must specify the time (which must not be less than 30 days) within which the general insurer is to comply with it.
- [<sup>F58</sup>(7) The following provisions of Schedule 36 to FA 2008 (information and inspection powers) apply in relation to a notice under sub-paragraph (2) as they apply in relation to a taxpayer notice under that Schedule—
  - (a) paragraphs 29 and 32 (right to appeal), and
  - (b) Part 7 (penalties).]

#### Textual Amendments

**F58** Sch. 11 para. 2(7) substituted for Sch. 11 para. 2(7)(8) (13.8.2009) by [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), art. 1, [Sch. para. 53](#)

#### Supplementary

- 3 (1) In paragraph 1 “general insurer” means—
  - (a) a company within the charge to corporation tax which carries on general business,
  - (b) a controlled foreign company (within the meaning of Chapter 4 of Part 17 of ICTA) which carries on general business, or
  - (c) members of a Lloyd's syndicate who carry on general business.
- (2) In paragraph 2 “general insurer” means—
  - (a) a company within the charge to corporation tax which carries on general business, or
  - (b) a company which for the purposes of Chapter 4 of Part 17 of ICTA has an interest in a controlled foreign company (within the meaning of that Chapter) which carries on general business.
- (3) For the purposes of sub-paragraphs (1) and (2) “general business” means business which consists of the effecting or carrying out of contracts that fall within Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544).
- (4) In the case of members of a Lloyd's syndicate, references in paragraph 1 to any accounts for a period are to the return of the syndicate's profits or loss for that period under regulation 4 of the Lloyd's Underwriters (Tax) Regulations 2005 (S.I. 2005/3338).
- (5) In paragraph 1 “period of account”—

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- (a) except in the case of members of a Lloyd's syndicate, means a period of account for which an account is made up, and
  - (b) in the case of members of a Lloyd's syndicate, means an underwriting year in which profits or losses are declared for an earlier underwriting year.
- (6) In paragraphs 1 and 2 “technical provisions”, except in the case of members of a Lloyd's syndicate, means any of the following—
- (a) provisions for claims outstanding,
  - (b) provisions for unearned premiums, and
  - (c) provisions for unexpired risks.
- (7) In paragraphs 1 and 2 “technical provisions”, in the case of members of a Lloyd's syndicate (“the syndicate”), means—
- (a) so much of the reinsurance to close amounts of the members, and
  - (b) so much of the provisions made by an open Lloyd's syndicate of which any member of the syndicate is a member for claims outstanding, unearned premiums and unexpired risks,
- as may be determined by or under regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (8) For this purpose—
- (a) the reference to reinsurance to close amounts of any member of a Lloyd's syndicate is to any consideration which, in accordance with the rules or practice of Lloyd's, is given (or any amount which, in accordance with those rules or practice, is treated as consideration given) by the member in respect of the liabilities arising from the member's underwriting business in an underwriting year for the purpose of closing the accounts of the business for that year, and
  - (b) a Lloyd's syndicate is an “open” Lloyd's syndicate at any time after the end of its closing year if, at that time, the accounts of its business for the underwriting year for which it was formed have not been closed,
- and in paragraph (b) “closing year” has the same meaning as in Chapter 3 of Part 2 of FA 1993 or Chapter 5 of Part 4 of FA 1994.
- (9) In this paragraph—
- “Lloyd's syndicate” means a syndicate of underwriting members of Lloyd's formed for an underwriting year, and
  - “underwriting year” means the calendar year.
- (10) In this paragraph references to provisions for claims outstanding, unearned premiums and unexpired risks have the same meaning as in [F59Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008].
- (11) The Commissioners for Her Majesty's Revenue and Customs may by regulations—
- (a) provide in prescribed circumstances for paragraph 1 not to apply in relation to any member of a Lloyd's syndicate, or
  - (b) provide in prescribed circumstances for a reduction in relation to any member of a Lloyd's syndicate of the amount which (as a result of that paragraph) is not to be taken into account in the calculation mentioned in sub-paragraph (2) of that paragraph.

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- (12) The Treasury may by regulations amend sub-paragraphs (1) to (3) (definition of “general insurer”).
- (13) In the event of any changes in the rules or practice of Lloyd's, the Commissioners for Her Majesty's Revenue and Customs may by regulations make such amendments of paragraph 1 and this paragraph as appear to the Commissioners to be expedient having regard to those changes.
- (14) Regulations under section 182(1)(a) of FA 1993 or section 229(1)(a) of FA 1994 (assessment and collection of tax charged in case of Lloyd's underwriters) may, in particular, include provision applying paragraph 2 with modifications in the case of members of a Lloyd's syndicate.
- (15) Regulations under paragraph 1 or this paragraph may—
  - (a) make different provision for different purposes, and
  - (b) make supplementary, incidental, consequential and transitional provision.

#### **Textual Amendments**

**F59** Words in Sch. 11 para. 3(10) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), [42](#) (with art. 4)

#### *Repeal of section 107 of FA 2000*

- 4 In FA 2000, omit section 107 (general insurance reserves).

#### *Commencement*

- 5 (1) Paragraphs 1 to 3 have effect in relation to periods of account ending on or after the day on which this Act is passed.
- (2) The repeal of section 107 of FA 2000 made by paragraph 4 has effect as follows.
- (3) The repeal of—
  - (a) subsections (1) to (3) of that section (technical provisions made by a general insurer proving to be excessive or insufficient),
  - (b) subsections (5) to (8) and (10) of that section so far as relating to those subsections, and
  - (c) subsections (9) and (12)(a) of that section (which relate to those subsections),has effect in relation to any amount that would otherwise have been treated as a receipt or an expense of a trade in computing for tax purposes the profits of the trade for any period of account ending on or after the day on which this Act is passed.
- (4) The repeal of—
  - (a) subsection (4) of that section (election for any part of technical provisions not to be taken into account in a period of account),
  - (b) subsections (5) to (8) and (10) of that section so far as relating to that subsection, and
  - (c) subsection (12)(b) of that section (which relates to that subsection),

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has effect so that no election may be made under that subsection in respect of technical provisions made by a general insurer for any period of account which begins on or after that day.

- (5) There is a restriction in relation to any election made by a general insurer under that subsection in respect of technical provisions made by the general insurer for the final election period.
- (6) The restriction is that the amount of the part of those provisions which the general insurer elects not to be taken into account in computing for tax purposes the profits of the general insurer's trade for that period must not exceed 10% of the total amount of those provisions.
- (7) In sub-paragraph (5) “the final election period”, in relation to any general insurer, means the general insurer's first period of account ending on or after the day on which this Act is passed.

## SCHEDULE 12 U.K.

Section 44

### FRIENDLY SOCIETIES: TRANSFERS TO INSURANCE COMPANIES ETC

#### *Exempt life or endowment business*

- 1 (1) Section 460 of ICTA (exemption from tax in respect of life or endowment business) is amended as follows.
  - (2) In subsection (10A), after “the transfer” insert “, other than any to which subsection (11) or (12) below applied immediately before the transfer had effect, ”.
  - (3) In subsection (11), for “thereafter continue to be tax exempt life or endowment business for the purposes of this Chapter.” substitute “ continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it. ”
  - (4) For subsection (12) substitute—
    - “(12) Where at any time an insurance company acquires by way of transfer of engagements from a friendly society any life or endowment business consisting of business which—
      - (a) relates to contracts made before that time; and
      - (b) immediately before that time was tax exempt life or endowment business,
 that business shall continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.
  - (13) But if any contracts constituting or forming part of the business of a company covered by subsection (11) or (12) above are varied during an accounting period of the company so as to increase the premiums payable under them, the business relating to those contracts is not exempt from corporation tax for that or any subsequent accounting period.
  - (14) For the purposes of the Corporation Tax Acts any part of a company's business which is exempt from corporation tax by virtue of subsection (11)

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or (12) above shall be treated as a separate business from any other business carried on by the company.”

(5) Insert at the end—

“(15) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (11) or (12) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.

(16) Regulations under subsection (15) above—

- (a) may make different provision for different cases,
- (b) may include any incidental, supplementary, consequential or transitional provisions which the Treasury consider appropriate, and
- (c) may include retrospective provision.”

2 (1) Section 464 of ICTA (maximum benefits payable to members) is amended as follows.

(2) For the first sentence of subsection (1) substitute—

“(1) Subject to subsections (2) and (3) below, a person is not entitled to have at any time outstanding contracts with any one or more friendly societies, registered branches or insurance companies which (taking them all together) are for the assurance of—

- (a) more than £750 by way of gross sum under business which is afforded exemption from corporation tax by section 460, or
- (b) more than £156 by way of annuity under such business.”

(3) In subsection (3), for the words preceding the paragraphs substitute “ With respect to contracts for the assurance of gross sums under business which is afforded exemption from corporation tax by section 460, a person is not entitled to have outstanding at any time with any one or more friendly societies, registered branches or insurance companies— ”.

(4) In subsection (4A), for “tax exempt life or endowment business” substitute “ business which is afforded exemption from corporation tax by section 460 if they are ”.

(5) In subsection (6), for “member has outstanding with one or more society or branch” substitute “ person has outstanding with one or more societies, branches or companies ”.

(6) In subsection (7)—

- (a) for “or registered branch” substitute “ , registered branch or insurance company ”,
- (b) for “member” (in both places) substitute “ person ”, and
- (c) for “or registered branches (taking together all such societies or branches throughout the United Kingdom)” substitute “ , registered branches or insurance companies (taken together) ”.

3 In section 466(2) of ICTA, in the definition of “tax exempt life or endowment business”, for “(11)” substitute “ (10A) ”.

*Status: Point in time view as at 16/12/2010.*

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*Other exempt business*

- 4 (1) Section 461 of ICTA (exemption of registered friendly societies from tax in respect of business which is not life or endowment business) is amended as follows.
- (2) After subsection (4) insert—
- “(4A) Where—
- (a) at any time an insurance company acquires by way of transfer of engagements from a registered friendly society any business other than life or endowment business, and
- (b) immediately before that time the society was exempt from corporation tax on profits arising from that business,
- the insurance company shall be exempt from corporation tax on its profits arising from any part of that business which relates to contracts made before that time.
- (4B) But if during an accounting period of the insurance company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on any such part of that business, the company shall not be exempt from corporation tax by virtue of subsection (4A) above for that or any subsequent accounting period.”
- (3) In subsection (5), after “(4)” insert “ or (4A) ”.
- (4) Insert at the end—
- “(12) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (4) or (4A) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.
- (13) Regulations under subsection (12) above—
- (a) may make different provision for different cases,
- (b) may include any incidental, supplementary, consequential or transitional provisions which the Treasury consider appropriate, and
- (c) may include retrospective provision.”
- 5 (1) Section 461B of ICTA (exemption of incorporated friendly societies from tax in respect of business which is not life or endowment business) is amended as follows.
- (2) For subsection (6) substitute—
- “(6) But if during an accounting period of the company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on any such part of its business, the company shall not be exempt from corporation tax by virtue of subsection (5) above for that or any subsequent accounting period.
- (6A) Where—
- (a) at any time an insurance company acquires by way of transfer of engagements from a qualifying society any business other than life or endowment business, and
- (b) immediately before that time the society was exempt from corporation tax on profits arising from that business,



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the insurance company shall be exempt from corporation tax on its profits arising from any part of that business which relates to contracts made before that time.

(6B) But if during an accounting period of the insurance company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on any such part of that business, the company shall not be exempt from corporation tax by virtue of subsection (6A) above for that or any subsequent accounting period.”

(3) In subsection (7), after “(5)” insert “ or (6A) ”.

(4) Insert at the end—

“(8) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (5) or (6A) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.

(9) Regulations under subsection (8) above—

- (a) may make different provision for different cases,
- (b) may include any incidental, supplementary, consequential or transitional provisions which the Treasury consider appropriate, and
- (c) may include retrospective provision.”

#### *Commencement*

- 6
- (1) The amendment made by sub-paragraph (2) of paragraph 1, so far as relating to section 460(11) of ICTA, and the amendments made by sub-paragraph (3) of that paragraph and paragraph 3 are deemed always to have had effect.
  - (2) The amendments made by paragraph 2 have effect in relation to contracts made after the passing of this Act.
  - (3) The amendment made by sub-paragraph (2) of paragraph 1, so far as relating to section 460(12) of ICTA, and the amendments made by sub-paragraph (4) of that paragraph and paragraphs 4(2) and (3) and 5(2) and (3) have effect in relation to transfers of engagements and conversions taking place on or after the day on which this Act is passed.

## SCHEDULE 13 **U.K.**

Section 47

### SALE AND REPURCHASE OF SECURITIES

#### *Purpose of Schedule*

- 1
- (1) The purpose of this Schedule is to secure that in the case of an arrangement—
    - (a) which involves the sale of securities and the subsequent purchase of securities, and
    - (b) which equates, in substance, to a transaction for the lending of money at interest from or to a company (with the securities which were sold as collateral for the loan),

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the charge to corporation tax in that case [<sup>F60</sup>in respect of chargeable gains] reflects the fact that the arrangement equates, in substance, to such a transaction.

(2) But this is not to be read as preventing the rules in this Schedule about corporation tax in respect of chargeable gains from having no effect in relation to debtor quasi-repos and creditor quasi-repos.

**Textual Amendments**

**F60** Words in Sch. 13 para. 1(1) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 726(2)** (with Sch. 2 Pts. 1, 2)

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**Commencement Information**

**I18** Sch. 13 para. 1 in force at 1.10.2007 with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 2**

*Meaning of debtor repo*

<sup>F61</sup><sub>2</sub> .....

**Textual Amendments**

**F61** Sch. 13 paras. 2-5 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 726(3)**, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Meaning of debtor quasi-repo*

<sup>F61</sup><sub>3</sub> .....

**Textual Amendments**

**F61** Sch. 13 paras. 2-5 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 726(3)**, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Ignoring effect on borrower of sale of securities: debtor repos, debtor quasi-repos and other arrangements*

<sup>F61</sup><sub>4</sub> .....

**Textual Amendments**

**F61** Sch. 13 paras. 2-5 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 726(3)**, **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Relief for borrower for finance charges in respect of the advance: debtor repos and debtor quasi-repos*

<sup>F61</sup><sub>5</sub> .....

*Status: Point in time view as at 16/12/2010.*

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### Textual Amendments

**F61** Sch. 13 paras. 2-5 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 726(3), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

### *Ignoring sale and subsequent purchase for purposes of chargeable gains: debtor repos*

- 6 (1) This paragraph applies if—
- (a) a company (“the borrower”) has a debtor repo, and
  - (b) the borrower (having sold the securities under the arrangement to the lender) is the only person with the right or obligation under the arrangement to buy those or similar securities at any subsequent time.
- (2) The sale of the securities, and the subsequent purchase of those or similar securities, by the borrower under the arrangement are to be ignored for the purposes of corporation tax in respect of chargeable gains (but see sub-paragraph (5)).
- (3) If at any time after the initial sale of the securities—
- (a) it becomes apparent that the borrower will not subsequently buy those or similar securities under the arrangement, or
  - (b) the accounting condition ceases to be met,
- the borrower is to be treated for the purposes of corporation tax in respect of chargeable gains as disposing of the securities at that time for a consideration equal to their market value at that time.
- (4) The accounting condition ceases to be met if, in accordance with generally accepted accounting practice, the accounts of the borrower for any period after the one in which the advance is received do not record a financial liability in respect of the advance (except as a result of the subsequent purchase of the securities or similar securities).
- (5) If sub-paragraph (3) applies because the accounting condition ceases to be met, any subsequent purchase of those or similar securities by the borrower under the arrangement is not to be ignored for the purposes of corporation tax in respect of chargeable gains as a result of this paragraph.
- (6) For the purposes of this paragraph references to the borrower include a partnership of which the borrower is a member.

### Modifications etc. (not altering text)

**C1** Sch. 13 para. 6 applied (with modifications) (with effect in accordance with reg. 1(1) of the amending S.I.) by Sale and Repurchase of Securities (Modification of Schedule 13 to the Finance Act 2007) Regulations 2007 (S.I. 2007/2485), **regs. 1(1), 2(2), 4(1)**

### Commencement Information

**I19** Sch. 13 para. 6 in force at 1.10.2007 with effect in relation to an arrangement that comes into force on or after 1.10.2007 by S.I. 2007/2483, **art. 2**

*Status: Point in time view as at 16/12/2010.*

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*Meaning of creditor repo*

F627 .....

**Textual Amendments**  
F62 Sch. 13 paras. 7-10 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 726(3), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Meaning of creditor quasi-repo*

F628 .....

**Textual Amendments**  
F62 Sch. 13 paras. 7-10 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 726(3), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Ignoring effect on lender of sale of securities: creditor repos and creditor quasi-repos*

F629 .....

**Textual Amendments**  
F62 Sch. 13 paras. 7-10 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 726(3), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Charge on lender for finance return in respect of the advance: creditor repos and creditor quasi-repos*

F6210 .....

**Textual Amendments**  
F62 Sch. 13 paras. 7-10 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 726(3), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Ignoring purchase and subsequent sale for purposes of chargeable gains: creditor repos*

- 11 (1) This paragraph applies if—
- (a) a company (“the lender”) has a creditor repo, and
  - (b) the lender (having bought the securities under the arrangement from the borrower) is the only person with the right or obligation under the arrangement to sell those or similar securities at any subsequent time.
- (2) The purchase of the securities, and the subsequent sale of those or similar securities, by the lender under the arrangement are to be ignored for the purposes of corporation tax in respect of chargeable gains (but see sub-paragraph (5)).
- (3) If at any time after the initial purchase of the securities—

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- (a) it becomes apparent that the lender will not subsequently sell those or similar securities under the arrangement, or
  - (b) the accounting condition ceases to be met,
- the lender is to be treated for the purposes of corporation tax in respect of chargeable gains as acquiring the securities at that time for a consideration equal to their market value at that time.
- (4) The accounting condition ceases to be met if, in accordance with generally accepted accounting practice, the accounts of the lender for any period after the one in which the advance is made do not record a financial asset in respect of the advance (except as a result of the subsequent sale of the securities or similar securities).
  - (5) If sub-paragraph (3) applies because the accounting condition ceases to be met, any subsequent sale of those or similar securities by the lender under the arrangement is not to be ignored for the purposes of corporation tax in respect of chargeable gains as a result of this paragraph.
  - (6) For the purposes of this paragraph references to the lender include a partnership of which the lender is a member.

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

- C2** Sch. 13 para. 11 applied (with modifications) (with effect in accordance with reg. 1(1) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Schedule 13 to the Finance Act 2007\) Regulations 2007 \(S.I. 2007/2485\)](#), **regs. 1(1), 2(2), 4(2)**

**Commencement Information**

- I20** Sch. 13 para. 11 in force at 1.10.2007 with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 2**

*Repo under arrangement designed to produce quasi-interest: anti-avoidance*

<sup>F63</sup>12 .....

**Textual Amendments**

- F63** Sch. 13 para. 12 repealed (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 726\(3\)](#), **Sch. 3 Pt. 1** (with [Sch. 2 Pts. 1, 2](#))

*Requirements to deduct tax from manufactured payments: creditor repos and debtor repos*

<sup>F64</sup>13 .....

**Textual Amendments**

- F64** Sch. 13 para. 13 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), s. 381(1), [Sch. 7 para. 115](#), **Sch. 10 Pt. 12** (with [Sch. 9 paras. 1-9, 22](#))

*Status: Point in time view as at 16/12/2010.*

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*Interpretation etc*

14 (1) In this Schedule—

“arrangement” includes any agreement or understanding (whether or not legally enforceable),

“creditor quasi-repo” has the meaning given by [F<sup>65</sup>section 544 of CTA 2009],

“creditor repo” has the meaning given by [F<sup>66</sup>section 543 of CTA 2009],

“debtor quasi-repo” has the meaning given by [F<sup>67</sup>section 549 of CTA 2009],

“debtor repo” has the meaning given by [F<sup>68</sup>section 548 of CTA 2009],

“discharge”, in relation to a liability, means the discharge of the liability in whole or in part (and “discharged” is to be read accordingly),

“the loan relationship rules” means the provisions of [F<sup>69</sup>Part 5 of CTA 2009],

“market value” has the same meaning as in TCGA 1992,

“overseas dividend”, in relation to overseas securities, means any interest, dividend or other annual payment payable in respect of the securities,

“overseas securities” means shares, stock or other securities issued by—

(a) a government or public or local authority of a territory outside the United Kingdom, or

(b) any other body of persons not resident in the United Kingdom,

“securities” (except in the definition of “overseas securities”) means shares, stock or other securities issued by—

(a) the government of the United Kingdom,

(b) any public or local authority in the United Kingdom, or

(c) any company or other body resident in the United Kingdom,

or overseas securities, and

“tax advantage” has the meaning given by section 840ZA of ICTA.

(2) For the purposes of this Schedule references to a person's receiving any asset include the person's obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.

(3) For the purposes of this Schedule—

(a) in any case where a person buys securities (or has a right or obligation to buy securities) but the securities are (or are to be) held for another person's benefit, that other person is treated as buying (or having the right or obligation to buy) the securities, and

(b) in any case where a person sells securities but the proceeds of the sale are held for another person's benefit, that other person is treated as selling the securities.

(4) For the purposes of this Schedule securities are similar if they entitle their holders to—

(a) the same rights against the same persons as to capital, interest and dividends, and

(b) the same remedies for the enforcement of those rights,

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- in spite of any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.
- (5) For the purposes of this Schedule it does not matter whether or not provision of any arrangement conferring a right or imposing an obligation on any person to buy any securities is subject to any conditions.
- (6) For the purposes of this Schedule an arrangement is in force from the time when the securities are initially sold until the earlier of—
- (a) the time when the relevant repurchase takes place, and
  - (b) the time when it becomes apparent that that repurchase will not take place.
- (7) For this purpose “the relevant repurchase” means—
- (a) in the case of a debtor repo, the subsequent buying of the securities or similar securities,
  - (b) in the case of a debtor quasi-repo, the subsequent buying of the securities or other securities by the borrower, the receipt of the asset from the borrower or (as the case may be) the discharge of the liability to the borrower,
  - (c) in the case of a creditor repo, the subsequent sale of the securities or similar securities, and
  - (d) in the case of a creditor quasi-repo, the subsequent sale of the securities or other securities by the lender, the receipt of the asset from the lender or (as the case may be) the discharge of the liability to the lender.
- (8) Any reference in this Schedule to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—
- (a) in the company's profit and loss account or income statement,
  - (b) in the company's statement of recognised gains and losses or statement of changes in equity, or
  - (c) in any other statement of items brought into account in calculating the company's profits and losses for that period.
- (9) In determining for the purposes of this Schedule whether an amount is recorded as a financial asset or liability in respect of the advance it is to be assumed that the period of account in which the advance is received or made ended immediately after the receipt or making of the advance.
- (10) For the purposes of paragraphs 6(4) and 11(4)—
- (a) any period of account in which the advance is received or made is treated as if it ended immediately after the receipt or making of the advance, and
  - (b) a new period of account is treated as beginning immediately after the end of that period.
- (11) If any person does not draw up accounts in accordance with generally accepted accounting practice, this Schedule applies as if the accounts had been drawn up by the person in accordance with that practice.

#### Textual Amendments

- F65** Words in Sch. 13 para. 14 substituted (with effect in accordance with s. 1329(1) of the amending Act) by *Corporation Tax Act 2009 (c. 4)*, s. 1329(1), **Sch. 1 para. 726(4)(a)** (with Sch. 2 Pts. 1, 2)

*Status: Point in time view as at 16/12/2010.*

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- F66** Words in Sch. 13 para. 14 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 726\(4\)\(b\)](#) (with Sch. 2 Pts. 1, 2)
- F67** Words in Sch. 13 para. 14 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 726\(4\)\(c\)](#) (with Sch. 2 Pts. 1, 2)
- F68** Words in Sch. 13 para. 14 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 726\(4\)\(d\)](#) (with Sch. 2 Pts. 1, 2)
- F69** Words in Sch. 13 para. 14 substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 726\(4\)\(e\)](#) (with Sch. 2 Pts. 1, 2)

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

- C3** Sch. 13 para. 14(6) applied (30.8.2007) by [Finance Act 2007 \(Schedules 13 and 14\) Order 2007 \(S.I. 2007/2483\), art. 6](#)
- C4** Sch. 13 para. 14(6) applied (with effect in accordance with reg. 1(1) of the amending S.I.) by [Sale and Repurchase of Securities \(Modification of Schedule 13 to the Finance Act 2007\) Regulations 2007 \(S.I. 2007/2485\), reg. 1\(1\)\(2\)](#)
- C5** Sch. 13 para. 14(6) applied (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 9 paras. 43\(3\)45\(2\)](#) (with Sch. 9 paras. 1-9, 22)
- C6** Sch. 13 para. 14(6) applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 2 para. 88\(3\)](#) (with Sch. 2)

**Commencement Information**

- I21** Sch. 13 para. 14 in force at 1.10.2007 with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483, art. 2](#)

*Power to modify Schedule*

- 15 (1) The Treasury may by regulations provide for all or any of the provisions of this Schedule to apply with modifications in relation to either or both of the following cases—
- (a) non-standard repo cases (see sub-paragraphs (2) to (5)), and
  - (b) cases involving redemption arrangements (see sub-paragraph (6)).
- (2) A case is a non-standard repo case if—
- (a) a company has a repo,
  - (b) there has been a sale of the securities under the arrangement or arrangements by reference to which the company has the repo, and
  - (c) any of conditions A to C are met in relation to the repo.
- (3) Condition A is that those securities, or similar or other securities, are not subsequently bought under the arrangement or arrangements.
- (4) Condition B is that provision is made by or under an arrangement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the subsequent purchase, are to represent those initially sold.
- (5) Condition C is that provision is made by or under an arrangement for securities to be treated as not so included.
- (6) A case involves redemption arrangements if—
- (a) arrangements, corresponding to those made in cases where a company has a repo, are made in relation to securities that are to be redeemed in the period after their sale, and



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- (b) the arrangements are such that a person (instead of having the right or obligation to buy those securities, or similar or other securities, at any subsequent time) has a right or obligation in respect of the benefits that will result from the redemption.
- (7) The regulations may—
  - (a) make different provision for different cases, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (8) Regulations about paragraph 6 or 11 may, in particular, include modifications of TCGA 1992 in relation to cases where, as a result of the regulations, any acquisition or disposal is excluded from those which are to be ignored for the purposes of corporation tax in respect of chargeable gains.
- (9) In this paragraph—
  - “modifications” include exceptions and omissions, and
  - “repo” means—
    - (a) a debtor repo or debtor quasi-repo, or
    - (b) a creditor repo or creditor quasi-repo (including anything treated, as a result of [F70section 547 of CTA 2009], as a creditor repo for the purposes of [F70section 546 of that Act]).

**Textual Amendments**

**F70** Words in Sch. 13 para. 15(9)(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 726(5)** (with [Sch. 2 Pts. 1, 2](#))

**Commencement Information**

**I22** Sch. 13 para. 15 in force at 1.10.2007 with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 2**

SCHEDULE 14 **U.K.**

Section 47

SALE AND REPURCHASE OF SECURITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

*Income and Corporation Taxes Act 1988 (c. 1)*

- 1 ICTA is amended as follows.
- F712 .....

**Textual Amendments**

**F71** Sch. 14 paras. 2, 3 repealed (1.4.2010) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

- F713 .....

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F71** Sch. 14 paras. 2, 3 repealed (1.4.2010) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

4 Omit sections 730A and 730B (treatment of price differential on sale and repurchase of securities).

**Commencement Information**

**I23** [Sch. 14 para. 4](#) in force at 1.10.2007 for the purposes of the amendments made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 3**

5 Omit section 730BB (exchange gains and losses on sale and repurchase of securities).

**Commencement Information**

**I24** [Sch. 14 para. 5](#) in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 3**

<sup>F72</sup>6 . . . . .

**Textual Amendments**

**F72** Sch. 14 para. 6 omitted (with effect in accordance with s. 66(8) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), s. **66(4)(m)**

7 Omit sections 737A to 737C (sale and repurchase of securities: deemed manufactured payments).

**Commencement Information**

**I25** [Sch. 14 para. 7](#) in force at 1.10.2007 for the purposes of the amendments made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 3**

8 Omit section 737E (power to modify sections 730A, 730BB and 737A to 737C).

**Commencement Information**

**I26** [Sch. 14 para. 8](#) in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), **art. 3**

<sup>F73F74</sup>9 . . . . .

**Textual Amendments**

**F73** Sch. 14 para. 9 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 2** (with [Sch. 2](#))

*Status: Point in time view as at 16/12/2010.*

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**F74** Sch. 14 para. 9 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 10](#) (with Sch. 9 paras. 1-9, 22)

**F75**<sup>10</sup> .....

#### Textual Amendments

**F75** Sch. 14 para. 10 repealed (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 10 Pt. 1](#) (with Sch. 9 paras. 1-9, 22)

#### *Taxation of Chargeable Gains Act 1992 (c. 12)*

11 TCGA 1992 is amended as follows.

12 (1) Section 263A (agreements for sale and repurchase of securities) is amended as follows.

(2) In subsection (1), for the words from the beginning to “were different” substitute “Subject to subsections (3) and (4) below, in any case falling within section 607(1) of ITA 2007 (treatment of price differences under repos) ”.

(3) After that subsection insert—

“(1A) If, at any time after the acquisition mentioned in subsection (1)(a) above, it becomes apparent that the interim holder will not dispose of the securities to the repurchaser, the interim holder shall be treated for the purposes of capital gains tax as acquiring them at that time for a consideration equal to their market value at that time.

(1B) If, at any time after the disposal mentioned in subsection (1)(b) above, it becomes apparent that the original owner will not acquire the securities as the repurchaser, the original owner shall be treated for the purposes of capital gains tax as disposing of them at that time for a consideration equal to their market value at that time.”

(4) Omit subsection (2).

(5) For subsections (5) and (6) substitute—

“(5) Expressions used in this section and section 607 of ITA 2007 have the same meaning in this section as in that section.

(6) This section does not apply for the purposes of corporation tax in respect of chargeable gains.”

(6) The heading accordingly becomes “ **Agreements for sale and repurchase of securities: capital gains tax** ”.

#### Commencement Information

**I27** [Sch. 14 para. 12](#) in force at 1.10.2007 for the purposes of the amendments made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483, art. 3](#)

13 (1) For paragraph 12 of Schedule 7AC substitute—

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- “12 (1) This paragraph applies where—
- (a) a company (“the borrower”) which holds shares in another company sells the shares under an arrangement by reference to which the borrower has a debtor repo, and
  - (b) by virtue of paragraph 6 of Schedule 13 to the Finance Act 2007 (sale and repurchase of securities) the sale is ignored for the purposes of corporation tax in respect of chargeable gains.
- (2) For the period for which the arrangement is in force—
- (a) the borrower shall be treated for the purposes of this Part as continuing to hold the shares and accordingly as retaining its entitlement to any rights attaching to them, and
  - (b) the lender shall be treated for those purposes as not holding the shares and as not becoming entitled to any such rights.
- This is subject to the following qualification.
- (3) If at any time before the end of that period the borrower, or another member of the same group as the borrower, becomes the holder—
- (a) of any of the shares, or
  - (b) of any shares directly or indirectly representing any of them,
- sub-paragraph (2) does not apply after that time in relation to those shares or, as the case may be, the shares represented by them.
- (4) Expressions used in this paragraph and in Schedule 13 to the Finance Act 2007 have the same meaning in this paragraph as in that Schedule.”

**Commencement Information**

**I28** Sch. 14 para. 13 in force at 1.10.2007 for the purposes of the amendments made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by S.I. 2007/2483, art. 3

*Finance Act 1996 (c. 8)*

<sup>F76</sup>14 .....

**Textual Amendments**

**F76** Sch. 14 paras. 14-18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

<sup>F76</sup>15 .....

**Textual Amendments**

**F76** Sch. 14 paras. 14-18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 3 Pt. 1 (with Sch. 2 Pts. 1, 2)

<sup>F76</sup>16 .....

*Status: Point in time view as at 16/12/2010.*

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**Textual Amendments**

**F76** Sch. 14 paras. 14-18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

<sup>F76</sup>17 .....

**Textual Amendments**

**F76** Sch. 14 paras. 14-18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

<sup>F76</sup>18 .....

**Textual Amendments**

**F76** Sch. 14 paras. 14-18 repealed (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 3 Pt. 1** (with Sch. 2 Pts. 1, 2)

*Finance Act 1994 (c. 9)*

19 In section 229(1)(ca) of FA 1994 (Lloyd's corporate members: regulations), for subparagraph (ii) substitute—  
“(ii) arrangements involving repos (within the meaning of paragraph 15 of Schedule 13 to the Finance Act 2007) or redemption arrangements (within the meaning of that paragraph);”.

**Commencement Information**

**I29** Sch. 14 para. 19 in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by **S.I. 2007/2483**, **art. 3**

*Finance Act 2006 (c. 25)*

20 In section 139 of FA 2006 (Real Estate Investment Trusts: manufactured dividends), omit subsection (5).

**Commencement Information**

**I30** Sch. 14 para. 20 in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by **S.I. 2007/2483**, **art. 3**

*Income Tax Act 2007 (c. 3)*

21 ITA 2007 is amended as follows.  
22 In section 602(1)(b) (deemed manufactured payments: repos), for “the repurchase price of the securities became due” substitute “the distribution was payable”.

*Status: Point in time view as at 16/12/2010.*

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#### Commencement Information

**I31** Sch. 14 para. 22 in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), [art. 3](#)

23 In section 607 (treatment of price differences under repos), after subsection (7) insert—

“(7A) A company within the charge to corporation tax is not to be treated as a result of this section as making any payment of interest for income tax purposes.”

#### Commencement Information

**I32** Sch. 14 para. 23 in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), [art. 3](#)

24 In section 886(2) (interest paid by recognised clearing houses etc), after “repos” insert “, or paragraph 5 of Schedule 13 to FA 2007 (relief for borrower for finance charges in case of debtor repos and debtor quasi-repos),”.

#### Commencement Information

**I33** [Sch. 14 para. 24](#) in force at 1.10.2007 for the purposes of the amendment made by that paragraph, with effect in relation to an arrangement that comes into force on or after 1.10.2007 by [S.I. 2007/2483](#), [art. 3](#)

## SCHEDULE 15 **U.K.**

Section 48

### CONTROLLED FOREIGN COMPANIES

#### *Imputation of chargeable profits and creditable tax of controlled foreign companies*

1 (1) Section 747 of ICTA (imputation of chargeable profits and creditable tax of controlled foreign companies) is amended as follows.

(2) After subsection (3) insert—

“(3A) In the case of an apportionment to a company resident in the United Kingdom which has made an application under section 751A which has been granted, subsection (3) above has effect subject to that section.”

(3) After subsection (5) insert—

“(5A) Where the resident company has made an application under section 751A which has been granted, it shall be assumed for the purposes of subsection (5) above that—

- (a) each of the persons who are connected or associated with the resident company has made an application under that section to the same effect, and
- (b) all the applications have been granted.”

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### *Residence*

- 2 In section 749 of ICTA (residence), insert at the end—
- “(10) For the purposes of subsection (8) and (9) above, the effect of any application under section 751A shall be disregarded.”

### *Elections and designations under section 749: supplementary provisions*

- 3 In section 749A of ICTA (elections and designations under section 749: supplementary provisions), insert at the end—
- “(9) For the purposes of this section the effect of any application under section 751A shall be disregarded.”

### *Territories with a lower level of taxation*

- 4 In section 750(3) of ICTA (territories with a lower level of taxation), after the “and” at the end of paragraph (a) insert—
- “(ab) there shall be disregarded the effect of any application under section 751A; and”.

### *Reduction in chargeable profits for certain activities of EEA business establishments*

- 5 In ICTA, after section 751 insert—

#### **“751A Reduction in chargeable profits for certain activities of EEA business establishments**

- (1) This section applies if—
- (a) an apportionment under section 747(3) falls to be made as regards an accounting period (“the relevant accounting period”) of a controlled foreign company,
  - (b) throughout that period the controlled foreign company has a business establishment in an EEA territory,
  - (c) throughout that period there are individuals who work for the controlled foreign company in that territory, and
  - (d) a company resident in the United Kingdom (“the UK resident company”) has a relevant interest in the controlled foreign company in that period.
- (2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period to be reduced by an amount (“the specified amount”) specified in the application (including to nil).
- (3) If the Commissioners grant the application—
- (a) those chargeable profits are treated as reduced by the specified amount, and
  - (b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in those chargeable profits,

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for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

- (4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—
- (a) arises to the appropriate body of persons (taken as a whole), and
  - (b) is created directly by qualifying work.
- (5) For the purposes of subsection (4) “net economic value” does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.
- (6) For the purposes of subsection (4) “the appropriate body of persons” means—
- (a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and
  - (b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,
- and for the purposes of this subsection “group of companies” means a company and any other companies of which it has control.
- (7) For the purposes of subsection (4) “qualifying work” means work which—
- (a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and
  - (b) is done in that territory by individuals working for the controlled foreign company there.
- (8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).
- (9) For the purposes of this section individuals are not to be regarded as working for a company in any territory unless—
- (a) they are employed by the company in the territory, or
  - (b) they are otherwise directed by the company to perform duties on its behalf in the territory.

### **751B Section 751A: supplementary**

- (1) An application by a company under section 751A—
- (a) must be made in such form as the HMRC Commissioners may determine,
  - (b) must be accompanied by such documents (or copies of documents) in the company's possession or power as those Commissioners may



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- reasonably require for the purpose of determining whether to grant the application, and
- (c) must contain such information as those Commissioners may reasonably require for that purpose.
- (2) An application by a company under section 751A—
- (a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and
  - (b) may be amended or withdrawn at any time before the application is determined by those Commissioners.
- (3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.
- (4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).
- (5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.
- (6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.
- (7) On an appeal—
- (a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,
  - (b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and
  - (c) in any other case, the Special Commissioners must confirm the refusal.
- (8) For the purposes of subsection (7) “the relevant amount” means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.
- (9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.
- (10) In this section “relevant company tax return”, in relation to a company, means the return for the accounting period for which—
- (a) any sum is chargeable on the company under section 747(4)(a), or
  - (b) any sum would be so chargeable but for section 751A,
- in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).

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(11) In this section “the HMRC Commissioners” means the Commissioners for Her Majesty's Revenue and Customs.”

*Interpretation*

6 In section 756 of ICTA (interpretation and construction of Chapter 4 of Part 17), after subsection (1) insert—

“(1A) In this Chapter “EEA territory”, in relation to any time, means a territory which is an EEA state at that time other than the United Kingdom.

(1B) But a territory is not to be regarded for the purposes of subsection (1A) above as an EEA state at any time if—

- (a) it is not a member State at that time, and
- (b) there are no arrangements made in relation to the territory having effect by virtue of section 173 of the Finance Act 2006 (international tax enforcement arrangements) at that time.”

*Exempt activities test*

7 (1) Part 2 of Schedule 25 to ICTA (supplementary provision in relation to cases where apportionment under section 747(3) does not apply: exempt activities) is amended as follows.

(2) In paragraph 5, after sub-paragraph (1) insert—

“(1A) Except as provided in paragraph 8 below, the provisions of this Part of this Schedule apply in relation to a company which is resident in an EEA territory in the same way as they apply in relation to a company which is resident elsewhere.”

(3) In paragraph 8, in sub-paragraph (1), after “fulfilled” insert “ in relation to a company which is not resident in an EEA territory ”.

(4) Insert at the end of that paragraph—

“(5) The condition in paragraph 6(1)(b) above shall not be regarded as fulfilled in relation to a company which is resident in an EEA territory unless there are sufficient individuals working for the company in the territory who have the competence and authority to undertake all, or substantially all, of the company's business.

(6) For the purposes of sub-paragraph (5) above, individuals are not to be regarded as working for a company in any territory unless—

- (a) they are employed by the company in the territory, or
- (b) they are otherwise directed by the company to perform duties on its behalf in the territory.”

*Abolition of public quotation exemption*

8 (1) In section 748(1) of ICTA (cases where apportionment under section 747(3) does not apply), omit paragraph (c) (together with the “or” at the end of it).

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- (2) In Schedule 25 to ICTA (supplementary provision in relation to cases where apportionment under section 747(3) does not apply), omit Part 3 (the public quotation condition).

*Discovery assessments*

- 9 In paragraph 44(3) of Schedule 18 to FA 1998 (discovery assessment: situation not disclosed by return or related documents etc), in the definition of “relevant claim”, insert at the end “ or an application under section 751A of the Taxes Act 1988 made by or on behalf of the company which affects the company's tax return for the period in question ”.

*Commencement*

- 10 (1) The amendments made by this Schedule have effect in relation to accounting periods of controlled foreign companies beginning on or after 6th December 2006.
- (2) In the case of an accounting period (a “straddling period”) of a controlled foreign company—
- (a) beginning before 6th December 2006, and
  - (b) ending on or after that date,
- the amendments made by this Schedule have effect as if, for the purposes of Chapter 4 of Part 17 of ICTA, so much of the straddling period as falls before that date, and so much of the straddling period as falls on or after that date, were separate accounting periods.
- (3) The company's chargeable profits for the straddling period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis.
- (4) Each of the following expressions—
- “accounting period”,
  - “chargeable profits”,
  - “controlled foreign company”, and
  - “creditable tax”,
- has the same meaning in this paragraph as in Chapter 4 of Part 17 of ICTA.

SCHEDULE 16 **U.K.**

Section 51

VENTURE CAPITAL SCHEMES ETC

**PART 1 U.K.**

LIMIT ON NUMBER OF EMPLOYEES OF COMPANY IN WHICH INVESTMENT IS MADE

*Corporate venturing scheme*

- 1 (1) Part 3 of Schedule 15 to FA 2000 (requirements as to issuing company) is amended as follows.

*Status: Point in time view as at 16/12/2010.*

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- (2) In paragraph 15 (introduction to Part) after paragraph (f) insert—  
“(fa) number of employees (see paragraph 22A); and”.
- (3) After paragraph 22 insert—

*“The number of employees requirement*

22A(1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant shares are issued.

- (2) If the issuing company is a parent company, the sum of—  
(a) the full-time equivalent employee number for it, and  
(b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,  
must be less than 50 when the relevant shares are issued.

- (3) The full-time equivalent employee number for a company is calculated as follows—

*Step 1*

Find the number of full-time employees of the company.

*Step 2*

Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.

The result is the full-time equivalent employee number.

- (4) In this paragraph references to an employee—  
(a) include a director, but  
(b) do not include—  
(i) an employee on maternity or paternity leave, or  
(ii) a student on vocational training.”

- (4) The amendments made by this paragraph do not have effect in relation to shares issued before the day on which this Act is passed.

*Enterprise investment scheme*

- 2 (1) Chapter 4 of Part 5 of ITA 2007 (the issuing company) is amended as follows.
- (2) In section 180 (overview of Chapter 4), after paragraph (e) insert—  
“(ea) number of employees (see section 186A),”.
- (3) After section 186 insert—

**“186A The number of employees requirement**

- (1) If the issuing company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant shares are issued.

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- (2) If the issuing company is a parent company, the sum of—
- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,
- must be less than 50 when the relevant shares are issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—
- Step 1*
- Find the number of full-time employees of the company.
- Step 2*
- Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.
- The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
- (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.”
- (4) The amendments made by this paragraph do not have effect in relation to—
- (a) shares issued before the day on which this Act is passed, or
  - (b) shares issued to the managers of an approved fund which closed before that day.
- (5) For the purposes of sub-paragraph (4)(b)—
- (a) “the managers of an approved fund” has the same meaning as in section 251 of ITA 2007, and
  - (b) the reference to shares issued to the managers of an approved fund is to shares issued to those managers as nominee for an individual who has invested in the fund.

#### *Venture capital trusts*

- 3 (1) Part 6 of ITA 2007 is amended as follows.
- (2) In section 286(3) (qualifying holdings: introduction) after paragraph (j) insert—  
“(ja) number of employees (see section 297A),”.
- (3) After section 297 insert—

#### **“297A The number of employees requirement**

- (1) If the relevant company is a single company, the full-time equivalent employee number for it must be less than 50 when the relevant holding is issued.
- (2) If the relevant company is a parent company, the sum of—

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- (a) the full-time equivalent employee number for it, and
  - (b) the full-time equivalent employee numbers for each of its qualifying subsidiaries,

must be less than 50 when the relevant holding is issued.
- (3) The full-time equivalent employee number for a company is calculated as follows—
  - Step 1*
  - Find the number of full-time employees of the company.
  - Step 2*
  - Add, for each employee of the company who is not a full-time employee, such fraction as is just and reasonable.
  - The result is the full-time equivalent employee number.
- (4) In this section references to an employee—
  - (a) include a director, but
  - (b) do not include—
    - (i) an employee on maternity or paternity leave, or
    - (ii) a student on vocational training.”
- (4) In section 327 (certain requirements of Chapter 4 to be treated as met)—
  - (a) in subsection (1), at the end insert “, and section 297A (the number of employees requirement). ”;
  - (b) in subsection (4)(b) for “and 297” substitute “, 297 and 297A ”.
- (5) This paragraph is deemed to have come into force on 6th April 2007.
- (6) The amendments made by this paragraph do not have effect in relation to—
  - (a) a relevant holding issued before that date, or
  - (b) a relevant holding acquired by a company (“the investing company”) by means of the investment of protected money.
- (7) For the purposes of sub-paragraph (6)(b), “protected money” is—
  - (a) money raised by the issue before 6th April 2007 of shares in or securities of the investing company, or
  - (b) money derived from the investment of such money.

## PART 2 U.K.

### LIMIT ON AMOUNT RAISED ANNUALLY BY COMPANY THROUGH RISK CAPITAL SCHEMES

#### *Corporate venturing scheme*

- 4 (1) Schedule 15 to FA 2000 is amended as follows.
- (2) In paragraph 34 (introduction to Part) after sub-paragraph (a) insert—
  - “(aa) the maximum amount raised annually through risk capital schemes (see paragraph 35A);”.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) After paragraph 35 insert—

*“Requirement as to maximum amount raised  
annually through risk capital schemes*

35A(1) The total amount of relevant investments made in the issuing company in the year ending with the date the relevant shares are issued must not exceed £2 million.

(2) In sub-paragraph (1), the reference to relevant investments made in the issuing company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the issuing company (whether or not it was such a subsidiary when the investment was made).

(3) A “relevant investment” is made in a company if—

- (a) an investment (of any kind) in the company is made by a VCT, or
- (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
  - (i) a compliance statement under paragraph 42, or
  - (ii) a compliance statement under section 205 of ITA 2007 (enterprise investment scheme),

in respect of the shares.

(4) An investment within sub-paragraph (3)(b) is regarded as made when the shares are issued.”

(4) In paragraph 63(1)(a) (withdrawal of relief: interest), after sub-paragraph (i) insert—  
“(ia) paragraph 35A (maximum amount raised annually through risk capital schemes);”.

*Enterprise investment scheme*

5 (1) Part 5 of ITA 2007 is amended as follows.

(2) In section 172 (overview of Chapter), after paragraph (a) insert—

“(aa) the maximum amount raised annually through risk capital schemes (see section 173A).”.

(3) After section 173 insert—

**“173A The maximum amount raised annually through risk capital schemes requirement**

(1) The total amount of relevant investments made in the issuing company in the year ending with the date the relevant shares are issued must not exceed £2 million.

(2) In subsection (1), the reference to relevant investments made in the issuing company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the issuing company (whether or not it was such a subsidiary when the investment was made).

*Status: Point in time view as at 16/12/2010.*

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- (3) A “relevant investment” is made in a company if—
- (a) an investment (of any kind) in the company is made by a VCT, or
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
    - (i) a compliance statement under section 205, or
    - (ii) a compliance statement under paragraph 42 of Schedule 15 to FA 2000 (corporate venturing scheme),
 in respect of the shares.
- (4) An investment within subsection (3)(b) is regarded as made when the shares are issued.”
- (4) In section 239(1) (withdrawal etc of relief: date from which interest is chargeable), in column 1 of the Table, after “163,” insert “;173A ”.
- (5) The amendments made by this paragraph do not have effect in relation to shares issued to the managers of an approved fund which closed before the day on which this Act is passed.
- (6) Paragraph 2(5) (meaning of “the managers of an approved fund” etc) applies for the purposes of sub-paragraph (5).

#### *Venture capital trusts*

- 6 (1) Chapter 4 of Part 6 of ITA 2007 (qualifying holdings) is amended as follows.
- (2) In section 286(3) (introduction) after paragraph (e) insert—
- “(ea) the maximum amount raised annually through risk capital schemes (see section 292A),”.
- (3) After section 292 insert—

#### **“292A The maximum amount raised annually through risk capital schemes requirement**

- (1) The total amount of relevant investments made in the relevant company in the year ending with the date the relevant holding is issued must not exceed £2 million.
- (2) In subsection (1), the reference to relevant investments made in the relevant company includes relevant investments made in any company that is, or has at any time in the year mentioned there been, a subsidiary of the relevant company (whether or not it was such a subsidiary when the investment was made).
- (3) A “relevant investment” is made in a company if—
- (a) an investment (of any kind) in the company is made by a VCT, or
  - (b) the company issues shares (money having been subscribed for them), and (at any time) the company provides—
    - (i) a compliance statement under section 205 (enterprise investment scheme), or
    - (ii) a compliance statement under paragraph 42 of Schedule 15 to FA 2000 (corporate venturing scheme),



*Status: Point in time view as at 16/12/2010.*

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in respect of the shares.

- (4) For the purposes of subsections (1) and (2), an investment within subsection (3)(b) is regarded as made when the shares are issued.
- (5) Subsection (6) applies if, by virtue of the provision of a compliance statement under section 205 above or paragraph 42 of Schedule 15 to FA 2000, the requirement of this section is not met.
- (6) The requirement is to be treated as having been met throughout the period—
  - (a) beginning with the time the relevant holding was issued, and
  - (b) ending with the time the compliance statement was provided.”
- (4) This paragraph is deemed to have come into force on 6th April 2007.
- (5) The amendments made by this paragraph do not have effect in relation to an investment made by a VCT of protected money.
- (6) “Protected money” means—
  - (a) money raised by the issue on or before 5th April 2007 of shares in or securities of the VCT, and
  - (b) money derived from the investment of such money.

*Enterprise investment scheme: reinvestment*

- 7
- (1) Schedule 5B to TCGA 1992 is amended as follows.
  - (2) In paragraph 1 (application of Schedule)—
    - (a) in sub-paragraph (2), after paragraph (d) insert—

“(da) the total amount of relevant investments made in the company in the year ending with the date the shares are issued does not exceed £2 million,” and
    - (b) after sub-paragraph (5) insert—

“(6) Section 173A(3) and (4) of ITA 2007 (meaning of “relevant investment”) apply for the purposes of sub-paragraph (2)(da).
    - (7) In sub-paragraph (2)(da), the reference to relevant investments made in the company includes relevant investments made in a company that is, or has at any time in the year mentioned there been, a subsidiary of the company (whether or not it was such a subsidiary when the investment was made).”
  - (3) In paragraph 1A(1) (failure of conditions of application), after “(2)(b)” insert “; or (2)(da)”.

*Transitional provision*

- 8
- (1) This paragraph applies for the purposes of—
    - (a) paragraph 35A of Schedule 15 to FA 2000,
    - (b) section 173A of ITA 2007 (including that section as applied by paragraph 1(6) of Schedule 5B to TCGA 1992), and
    - (c) section 292A of ITA 2007.
  - (2) References to investments made by a VCT do not include—

*Status: Point in time view as at 16/12/2010.*

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- (a) investments made on or before 5th April 2007,
  - (b) investments of protected money (as defined by paragraph 6(6)).
- (3) References to shares in respect of which compliance statements are provided do not include—
- (a) shares issued before the day on which this Act is passed, or
  - (b) shares issued to the managers of an approved fund which closed before that day.
- (4) Paragraph 2(5) (meaning of “the managers of an approved fund” etc) applies for the purposes of sub-paragraph (3)(b) above.

### PART 3 U.K.

#### EXCLUDED ACTIVITIES: RECEIPT OF ROYALTIES AND LICENCE FEES

##### *Corporate venturing scheme*

- 9 (1) Paragraph 29 of Schedule 15 to FA 2000 is amended as follows.
- (2) In sub-paragraph (3), for paragraphs (a) and (b) substitute—
- “(a) by the issuing company, or
  - (b) by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.”
- (3) After sub-paragraph (6) insert—
- “(7) If—
- (a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and
  - (b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,
- references in sub-paragraph (3) to the issuing company include the old company.”
- 10 In paragraph 86(2) (substitution of new shares for old shares), after “Schedule”, in the first place it occurs, insert “;(except paragraph 29(7))”.

##### *Enterprise investment scheme*

- 11 (1) In section 297 of ICTA (qualifying trades)—
- (a) in subsection (5), for paragraphs (a) and (b) substitute—
    - “(a) by the company mentioned in section 293(1), or
    - (b) by a company which was a subsidiary of that company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.”,
  - (b) in subsection (5A), omit paragraphs (b) and (c) and the words after paragraph (c), and
  - (c) after subsection (5C) insert—

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“(5D) If—

- (a) the company mentioned in section 293(1) (“the issuing company”) acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and
- (b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,

references in subsection (5) above to the company mentioned in section 293(1) include the old company.”

(2) In section 304A of that Act (acquisition of share capital by new company)—

- (a) in subsection (3), after “Chapter” insert “;(except section 297(5D))”, and
- (b) in subsection (4), after “Chapter” insert “;(except section 297(5D))”.

<sup>F77</sup>(3) .....

<sup>F77</sup>(4) .....

(5) In section 137 of ITA 2007 (share loss relief: trading requirement for shares to which EIS relief not attributable), after subsection (8) insert—

“(9) In section 195 as applied by subsection (7) for the purposes mentioned in subsection (8), references to the issuing company are to be read as references to the company mentioned in subsection (1).”

(6) In section 146 of that Act (share loss relief: substitution of new shares for old), after subsection (2) insert—

“(3) Nothing in subsection (2) applies in relation to section 195(7) as applied by section 137(7) for the purposes mentioned in section 137(8).”

(7) In section 195 of ITA 2007 (EIS: excluded activities: receipt of royalties and licence fees)—

- (a) in subsection (4), for paragraphs (a) and (b) substitute—
  - “(a) by the issuing company, or
  - (b) by a company which was a qualifying subsidiary of the issuing company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.”,
- (b) in subsection (6), omit the definition of “holding company”, and
- (c) after that subsection insert—

“(7) If—

- (a) the issuing company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the issuing company were subscriber shares, and
- (b) the consideration for the old shares consisted wholly of the issue of shares in the issuing company,

references in subsection (4) to the issuing company include the old company.”

*Status: Point in time view as at 16/12/2010.*

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- (8) In section 249 of that Act (substitution of new shares for old shares)—
- (a) in subsection (2), after “Part” insert “;(except section 195(7))”, and
  - (b) in subsection (4), after “Part” insert “;(except section 195(7))”.

#### Textual Amendments

**F77** Sch. 16 para. 11(3)(4) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

#### *Venture capital trusts*

- 12 (1) Section 306 of ITA 2007 (qualifying holdings) is amended as follows.
- (2) In subsection (4), for paragraphs (a) and (b) substitute—
- “(a) by the relevant company, or
  - (b) by a company which was a qualifying subsidiary of the relevant company throughout a period during which it created the whole or greater part (in terms of value) of the intangible asset.”
- (3) In subsection (6), omit the definition of “holding company”.
- (4) After that subsection insert—
- “(7) If—
- (a) the relevant company acquired all the shares (“old shares”) in another company (“the old company”) at a time when the only shares issued in the relevant company were subscriber shares, and
  - (b) the consideration for the old shares consisted wholly of the issue of shares in the relevant company,
- references in subsection (4) to the relevant company include the old company.”

#### *Commencement*

- 13 This Part of this Schedule is deemed to have come into force on 6th April 2007.

#### *Transitional provision*

- 14 (1) This paragraph applies if—
- (a) shares in or securities of a company (“the company”) were issued before 6th April 2007,
  - (b) immediately before that date—
    - (i) the right to exploit an intangible asset (“the asset”) was vested in the company or a subsidiary of it (in either case, whether alone or jointly with others), and
    - (ii) the asset was a relevant intangible asset,
  - (c) at any time on or after that date, an activity carried on by the company or a subsidiary of it would be an excluded activity by reason only of the receipt of royalties or licence fees attributable to the exploitation of the asset, and

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- (d) the activity would not be an excluded activity if the amendments made by this Part of this Schedule had not been made.
- (2) The activity is to be treated, in relation to those shares or securities, as not being an excluded activity at that time.
- (3) In sub-paragraphs (1) and (2), references to an excluded activity are to be read—
  - (a) for the purposes of Chapter 3 of Part 7 of ICTA (including any provision of that Chapter as applied by any other provision), as references to—
    - (i) an activity within section 293(3B)(a) of ICTA, or
    - (ii) an activity within subsection (2) of section 297 of ICTA which causes a trade to fail to comply with that section,
  - (b) for the purposes of Schedule 15 to FA 2000, as references to an excluded activity other than the receiving of royalties or licence fees within paragraph 29 of that Schedule in circumstances where the requirements of sub-paragraph (2) of that paragraph are met.

#### PART 4 **U.K.**

##### MEANING OF “QUALIFYING 90% SUBSIDIARY”

###### *Corporate venturing scheme*

- 15 (1) Schedule 15 to FA 2000 is amended as follows.
- (2) In paragraph 23 (trading activities requirement), omit sub-paragraphs (10) and (11).
  - (3) After that paragraph insert—

###### *“Meaning of “qualifying 90% subsidiary”*

- 23A(1) For the purposes of this Schedule, a company (“the subsidiary”) is a qualifying 90% subsidiary of the issuing company if the following conditions are met—
- (a) the issuing company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the subsidiary;
  - (b) the issuing company would—
    - (i) in the event of a winding up of the subsidiary, or
    - (ii) in any other circumstances,be beneficially entitled to receive not less than 90% of the assets of the subsidiary which would then be available for distribution to the shareholders of the subsidiary;
  - (c) the issuing company is beneficially entitled to not less than 90% of any profits of the subsidiary which are available for distribution to the shareholders of the subsidiary;
  - (d) no person other than the issuing company has control of the subsidiary within the meaning of section 840 of the Taxes Act 1988;
  - (e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) would cease to be met.

*Status: Point in time view as at 16/12/2010.*

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- (2) Paragraph 21(3) and (4) (effect of receivership etc) apply in relation to the conditions in sub-paragraph (1) as they apply in relation to the conditions in paragraph 21(2).
- (3) If—
- (a) arrangements are in existence for the disposal by the issuing company of all its interest in the subsidiary, and
  - (b) the disposal is to be for commercial reasons and is not to be part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax,
- the subsidiary is not to be regarded as having ceased on that account to be a qualifying 90% subsidiary of the issuing company.
- (4) For the purposes of this Schedule, a company (“company A”) which is a subsidiary of a company that is not the issuing company (“company B”) is a qualifying 90% subsidiary of the issuing company if—
- (a) company A would be a qualifying 90% subsidiary of company B (if company B were the issuing company), and company B is a qualifying 100% subsidiary of the issuing company; or
  - (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of the issuing company.
- (5) For the purposes of sub-paragraph (4), no account is to be taken of any control the issuing company may have of company A.
- (6) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in sub-paragraph (1) would be met if—
- (a) company X were the subsidiary;
  - (b) company Y were the issuing company; and
  - (c) in sub-paragraph (1) for “not less than 90%” in each place there were substituted “100%”.
- (4) In paragraph 103 (index of defined expressions), in the entry relating to the definition of “qualifying 90% subsidiary”, for “paragraph 23(10) and (11)” substitute “;paragraph 23A ”.

*Enterprise investment scheme etc*

- 16 (1) In Chapter 3 of Part 7 of ICTA—
- (a) in section 289 (eligibility for relief), for subsections (9) to (13) substitute—
 

“(9) Section 190 of ITA 2007 (meaning of “qualifying 90% subsidiary”) applies for the purposes of this Chapter.”;
  - (b) in section 312(1) (interpretation of Chapter), in the definition of “qualifying 90% subsidiary”, omit “to (13)”.
- (2) In section 190 of ITA 2007 (EIS: meaning of “qualifying 90% subsidiary”), after subsection (1) insert—
- “(1A) For the purposes of this Part, a company (“company A”) which is a subsidiary of another company (“company B”) is a qualifying 90% subsidiary of a third company (“company C”) if—

*Status: Point in time view as at 16/12/2010.*

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- (a) company A is a qualifying 90% subsidiary of company B, and company B is a qualifying 100% subsidiary of company C, or
- (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of company C.

(1B) For the purposes of subsection (1A), no account is to be taken of any control company C may have of company A.

(1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1)(a) to (e) would be met if—

- (a) company X were the subsidiary,
- (b) company Y were the relevant company, and
- (c) in subsection (1) for “at least 90%” in each place there were substituted “;100% ”.

#### *Venture capital trusts*

17 In section 301 of ITA 2007, after subsection (1) insert—

“(1A) For the purposes of this Chapter, a company (“company A”) which is a subsidiary of a company that is not the relevant company (“company B”) is a qualifying 90% subsidiary of the relevant company if—

- (a) company A would be a qualifying 90% subsidiary of company B (if company B were the relevant company), and company B is a qualifying 100% subsidiary of the relevant company, or
- (b) company A is a qualifying 100% subsidiary of company B, and company B is a qualifying 90% subsidiary of the relevant company.

(1B) For the purposes of subsection (1A), no account is to be taken of any control the relevant company may have of company A.

(1C) For those purposes, a company (“company X”) is a qualifying 100% subsidiary of another company (“company Y”) at any time when the conditions in subsection (1)(a) to (e) would be met if—

- (a) company X were the subsidiary,
- (b) company Y were the relevant company, and
- (c) in subsection (1) for “at least 90%” in each place there were substituted “;100% ”.

#### *Commencement*

18 This Part of this Schedule is deemed to have come into force on 6th April 2007.

### **PART 5 U.K.**

#### OTHER AMENDMENTS

#### *EIS: approved investment funds*

19 (1) In Part 5 of ITA 2007 (enterprise investment scheme), in section 251(1)(c) (approved investment fund as nominee), for “6” substitute “;12 ”.

*Status: Point in time view as at 16/12/2010.*

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- (2) The amendment made by this paragraph has effect in relation to approved funds which closed or close on or after 7 October 2006.

*VCTs: disposal of holding*

- 20 (1) Chapter 3 of Part 6 of ITA 2007 (VCT approvals) is amended as follows.
- (2) In section 274(3) (requirements for the giving of approval), at the end of paragraph (d) insert “, and
- (e) the 70% qualifying holdings condition by section 280A”.
- (3) After section 280 insert—

**“280A The 70% qualifying holdings condition: disposal of holding**

- (1) This section applies if—
- (a) a company which is a VCT disposes of shares or securities (“the holding”),
  - (b) the consideration for the disposal does not consist wholly of new qualifying holdings, and
  - (c) the holding was comprised in the company's qualifying holdings throughout the 6 months ending immediately before the disposal.
- (2) For the purpose of determining whether the 70% qualifying holdings condition is, has been or will be met—
- (a) the company is to be treated as if it continued to hold the holding for the period of 6 months beginning with the disposal (but see subsection (4)), and
  - (b) the value of the company's investments in that period is to be treated as reduced by the amount of any monetary consideration for the disposal.
- (3) The value of the holding in the period mentioned in subsection (2)(a) is to be treated as equal to its value (determined in accordance with this Chapter) immediately before the disposal.
- (4) If the consideration for the disposal includes new qualifying holdings, subsection (2)(a) has effect as if the reference to the holding were to the appropriate proportion of the holding (the value of which is that proportion of the value of the holding, determined in accordance with subsection (3)).
- (5) The appropriate proportion is—

$$\frac{TC - NQH}{TC}$$

where—

TC is the market value (at the time of the disposal) of the total consideration for the disposal, and

NQH is the market value (at that time) of the new qualifying holdings.



*Status: Point in time view as at 16/12/2010.*

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- (6) If at any time the value of the company's investments would by virtue of subsection (2)(b) be reduced to an amount less than the value of its qualifying holdings, the value of its investments at that time is to be treated as equal to the value of its qualifying holdings.
  - (7) “New qualifying holdings” means shares or securities which (on transfer to the company) are comprised in the company's qualifying holdings.
  - (8) If (and to the extent that) the holding was acquired with money the use of which is at any time ignored by virtue of section 280(2), subsections (2) to (6) do not apply in relation to that time.
  - (9) Nothing in this section applies in relation to disposals between companies that are merging (within the meaning of section 323).”
- (4) This paragraph is deemed to have come into force on 6th April 2007.
- (5) The amendments made by this paragraph have effect in relation to disposals made on or after that date.

*VCTs: power to make regulations as to breaches of conditions*

- 21 (1) In section 284 of ITA 2007 (power to make regulations as to procedure), in the existing provision (which becomes subsection (1))—
- (a) after paragraph (a) insert—
    - “(aa) for and in connection with the making by a company of an application to the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) for relief in respect of a breach (including a future breach) of the conditions for its VCT approval to continue in force,”
  - (b) in paragraph (c), for the words from “that the conditions” to the end substitute—
    - “(i) that the conditions for its VCT approval to continue in force are no longer met, or
    - (ii) that it is likely that those conditions will cease to be met,” and
  - (c) in paragraph (d) omit “for Her Majesty's Revenue and Customs”.
- (2) After subsection (1) insert—
- “(2) In subsection (1)(aa), the reference to relief in respect of a breach of the conditions mentioned there is to a determination by the Commissioners that they will not exercise their power to withdraw the company's VCT approval by reason of the breach for such period as they may determine (and subject to such conditions as they may determine).
- (3) The provision that may be made by virtue of subsection (1)(aa) includes—
- (a) provision as to the procedure to be followed in relation to applications and determinations,
  - (b) provision as to the grounds on which applications may be made or determined, and
  - (c) provision conferring a discretion to be exercised by the Commissioners.”

*Status: Point in time view as at 16/12/2010.*

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SCHEDULE 17 **U.K.**

Section 52

REAL ESTATE INVESTMENT TRUSTS

F78<sub>1</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F78<sub>2</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F78<sub>3</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F78<sub>4</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F78<sub>5</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F78<sub>6</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

F78<sub>7</sub> .....

*Status: Point in time view as at 16/12/2010.*

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**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>8</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>9</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>10</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>11</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>12</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>13</sub> .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

**F78**<sub>14</sub> .....

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**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

<sup>F78</sup>15 .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

<sup>F78</sup>16 .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

<sup>F78</sup>17 .....

**Textual Amendments**

**F78** Sch. 17 paras. 1-17 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 1** (with Sch. 2)

18 In section 531 of ITA 2007 (charities: exemptions)—  
(a) after subsection (2) insert—

“(2A) Distributions to which section 121 of FA 2006 (Real Estate Investment Trusts: distributions) applies and which are chargeable to income tax under Part 2 or Part 3 of ITTOIA 2005 are not taken into account in calculating total income so far as they arise in respect of shares vested in a person in trust for a charitable trust or for charitable purposes.”, and

(b) in subsection (3), for “and (2)” substitute “ to (2A) ”.

*Introduction*

1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

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*Life assurance premium contributions not to be relievable pension contributions*

- 2 In section 188(3) (relief for members' contributions: contributions which are not relievable pension contributions), after paragraph (a) insert—
- “(aa) any contributions which are life assurance premium contributions (see section 195A),”.

*Life assurance premium contributions*

- 3 After section 195 insert—

**“195A Life assurance premium contributions**

- (1) Contributions paid by or on behalf of an individual under a registered pension scheme are life assurance premium contributions for the purposes of section 188(3)(aa) if—
- (a) rights under a non-group life policy (see subsection (2)) are (or later become) held for the purposes of the pension scheme, and
  - (b) the contributions are treated by this section as paid in respect of premiums under the non-group life policy (see subsections (3) to (5)).
- (2) For the purposes of this section a “non-group life policy” is a policy of insurance under which the only benefits which may become payable are benefits payable in consequence, or in anticipation, of—
- (a) the death of the individual or one of a group of individuals which includes the individual, or
  - (b) the deaths of more than one of a group of individuals—
    - (i) which includes the individual, and
    - (ii) the other members of which are connected with the individual.
- (3) Contributions paid by or on behalf of the individual under the pension scheme are treated as paid in respect of premiums under the non-group life policy if—
- (a) the payment of the contributions constitutes the payment of premiums under the policy, or
  - (b) the person by whom the contributions are paid intends the contributions (or an amount equivalent to them) to be applied towards paying premiums under the policy.
- (4) Where the amount of the premiums under the policy in a tax year exceeds the amount of any contributions treated as paid in respect of the premiums by subsection (3), other contributions paid by or on behalf of the individual under the pension scheme in the tax year are treated as paid in respect of premiums under the policy to the extent that their amount does not exceed the difference between the amount of the premiums and the amount of any contributions treated as paid in respect of the premiums by subsection (3).
- (5) But where—
- (a) the benefits under the policy relate to the death of one or more of a group of individuals, and

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- (b) contributions are also paid under the pension scheme in the tax year by or on behalf of another member or other members of the group, the amount of the contributions paid by or on behalf of the individual which are treated as paid in respect of premiums under the policy by subsection (4) does not exceed what is just and reasonable having regard to the operation of section 188(3)(aa) in relation to the contributions paid by or on behalf of another member or other members of the group.
- (6) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend subsections (2) to (5).
- (7) Regulations under subsection (6) which limit—
- (a) the policies of insurance which are non-group life assurance policies for the purposes of this section, or
  - (b) the contributions which are treated by this section as paid in respect of premiums under such policies,
- may be made so as to have effect in relation to times before they are made.
- (8) For the purposes of this section an individual (“A”) is connected with another individual (“B”) if—
- (a) A is B's spouse or civil partner,
  - (b) A is a relative of B,
  - (c) A is the spouse or civil partner of a relative of B,
  - (d) A is a relative of B's spouse or civil partner, or
  - (e) A is the spouse or civil partner of a relative of B's spouse or civil partner;
- and for the purposes of this subsection “relative” means brother, sister, ancestor or lineal descendant.”

*Commencement: schemes other than occupational pension schemes*

- 4 (1) In relation to contributions under any pension scheme that is not an occupational pension scheme, the amendments made by this Schedule have effect in relation to contributions paid on or after 6th April 2007.
- (2) But they do not have effect in relation to such contributions paid at any time if the contributions are treated as paid in respect of premiums under a policy of insurance which at that time is a protected policy (see paragraph 5).
- 5 (1) This paragraph specifies when a policy of insurance is a protected policy in a case where the rights under it are held for the purposes of a pension scheme that is not an occupational pension scheme.
- (2) A policy of insurance within sub-paragraph (3) or (4) is a protected policy but only until a relevant event occurs (see sub-paragraphs (5) and (6)).
- (3) A policy of insurance is within this sub-paragraph if—
- (a) it is issued in respect of insurances made before 6th December 2006,
  - (b) the pension scheme became a registered pension scheme before that date, and
  - (c) rights under the policy became held for the purposes of the pension scheme before that date.

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- (4) A policy of insurance is within this sub-paragraph if—
- (a) it is issued in respect of insurances made before 1st August 2007,
  - (b) the pension scheme became a registered pension scheme before that date,
  - (c) rights under the policy became held for the purposes of the pension scheme before that date,
  - (d) the policy was issued in pursuance of a proposal made in writing (by whatever means) and received by or on behalf of the insurer before the appropriate date,
  - (e) the amount of the benefits payable under the policy (at the latest of the time when the insurances were made, the pension scheme was registered or rights under the policy became held for the purposes of the pension scheme) is no more than the amount applied for in the proposal,
  - (f) the period for which benefits are so payable (at the latest of those times) is no longer than the period specified in the proposal, and
  - (g) the policy is not a protected policy by virtue of sub-paragraph (3).
- (5) In sub-paragraph (4)(d) “the appropriate date” means—
- (a) 13th April 2007, in any case where, on the day of the making of the insurances in respect of which the policy of insurance was issued, the rights of the individual under the pension scheme included an actual or prospective entitlement to a pension, and
  - (b) 14th December 2006, in any other case.
- (6) For the purposes of sub-paragraph (2) a “relevant event” occurs if, after the relevant time, the terms of the policy are varied so as to—
- (a) increase the benefits payable under the policy, or
  - (b) extend the period during which benefits are so payable.
- (7) But where, on the day of the variation, the rights of the individual under the pension scheme included an actual or prospective entitlement to a pension, a relevant event does not occur by virtue of the variation if it was made in pursuance of a proposal made in writing (by whatever means) and received by or on behalf of the insurer before 13th April 2007.
- (8) “The relevant time”—
- (a) in the case of a policy of insurance within sub-paragraph (3) which is issued in respect of insurances made before 6th April 2006, is 20th March 2007,
  - (b) in the case of any other policy of insurance within sub-paragraph (3), is 5th December 2006, and
  - (c) in the case of a policy of insurance within sub-paragraph (4), is the time when it became a protected policy.

*Commencement: occupational pension schemes*

- 6 (1) In relation to contributions under any occupational pension scheme, the amendments made by this Schedule have effect in relation to contributions paid on or after 1st August 2007.
- (2) But they do not have effect in relation to such contributions paid at any time if the contributions are treated as paid in respect of premiums under a policy of insurance which at that time is a protected policy (see paragraph 7).

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- 7 (1) This paragraph specifies when a policy of insurance is a protected policy in a case where the rights under it are held for the purposes of an occupational pension scheme.
- (2) A policy of insurance within sub-paragraph (3) or (4) is a protected policy but only until a relevant event occurs (see sub-paragraphs (5) to (7)).
- (3) A policy of insurance is within this sub-paragraph if—
- (a) it is issued in respect of insurances made before 21st March 2007,
  - (b) the pension scheme became a registered pension scheme before that date, and
  - (c) rights under the policy became held for the purposes of the pension scheme before that date.
- (4) A policy of insurance is within this sub-paragraph if—
- (a) it is issued in respect of insurances made before 1st August 2007,
  - (b) the pension scheme became a registered pension scheme before that date,
  - (c) rights under the policy became held for the purposes of the pension scheme before that date,
  - (d) the policy was issued in pursuance of a proposal made in writing (by whatever means) and received by or on behalf of the insurer before 29th March 2007,
  - (e) the amount of the benefits payable under the policy (at the latest of the time when the insurances were made, the pension scheme was registered or rights under the policy became held for the purposes of the pension scheme) is no more than the amount applied for in the proposal,
  - (f) the period for which benefits are so payable (at the latest of those times) is no longer than the period specified in the proposal, and
  - (g) the policy is not a protected policy by virtue of sub-paragraph (3).
- (5) For the purposes of sub-paragraph (2) a “relevant event” occurs if, after the relevant time, the terms of the policy are varied so as to—
- (a) increase the benefits payable under the policy, or
  - (b) extend the period during which benefits are so payable.
- (6) “The relevant time”—
- (a) in the case of a policy of insurance within sub-paragraph (3), is 20th March 2007, and
  - (b) in the case of a policy of insurance within sub-paragraph (4), is the time when it became a protected policy.
- (7) A variation of the terms of a policy made in order to comply with the [<sup>F79</sup>Equality Act 2010, so far as relating to age,] or Employment Equality (Age) Regulations (Northern Ireland) 2006 (S.R. 2006/261) (or any regulations amending or replacing [<sup>F80</sup>those Regulations]) is to be ignored for the purposes of sub-paragraph (5).

#### Textual Amendments

**F79** Words in Sch. 18 para. 7(7) substituted by [Equality Act 2010 \(c. 15\)](#) Sch. 26 para. 95(a) (as inserted (E.W.S.) (1.10.2010) by [S.I. 2010/2279, art. 1\(2\)](#), [Sch. 1 para. 6](#) (with [S.I. 2010/2317, art. 2](#)))

**F80** Words in Sch. 18 para. 7(7) substituted by [Equality Act 2010 \(c. 15\)](#) Sch. 26 para. 95(b) (as inserted (E.W.S.) (1.10.2010) by [S.I. 2010/2279, art. 1\(2\)](#), [Sch. 1 para. 6](#) (with [S.I. 2010/2317, art. 2](#)))



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*Power to amend commencement provisions*

- 8 (1) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend paragraphs 4 to 7.
- (2) Regulations under sub-paragraph (1) having the effect of limiting the contributions which are life assurance premium contributions may be made so as to have effect in relation to times before they are made.

SCHEDULE 19 **U.K.**

Section 69

ALTERNATIVELY SECURED PENSIONS AND TRANSFER LUMP SUM DEATH BENEFIT ETC

*Introduction*

- 1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

*Alternatively secured pension: guaranteed pension and maximum*

- 2 (1) In section 165(1) (pension rules) is amended as follows.
- (2) In pension rule 2 (guaranteed pensions)—
- (a) for “, an annuity or alternatively secured pension” substitute “ or an annuity”, and
- (b) for “, annuity or alternatively secured pension” substitute “ or annuity ”.
- (3) In pension rule 7 (maximum alternatively secured pension), for “70%” substitute “ 90% ”.
- 3 In paragraph 12 of Schedule 28 (pension rules: alternatively secured pension year), omit sub-paragraphs (3) and (4) (guaranteed pensions).

*Maximum dependants' alternatively secured pension*

- 4 In section 167(1) (pension death benefit rules), in pension death benefit rule 6 (maximum dependants' alternatively secured pension), for “70%” substitute “ 90% ”.

*Abolition of transfer lump sum death benefit*

- 5 In section 168(1) (lump sum death benefit rule), omit paragraph (g) (transfer lump sum death benefit).
- 6 Omit section 172B(5)(a) (reduction for transfer lump sum death benefit).
- 7 In section 188(5) (amounts not to be treated as contributions), omit paragraph (b) and the word “and” before it.
- 8 In section 280(2) (index), omit the entry relating to transfer lump sum death benefit.
- 9 In Schedule 29, omit paragraph 19 (transfer lump sum death benefit).
- 10 In paragraph 17A of Schedule 36 (“enhanced protection”)—
- (a) in sub-paragraph (1), insert “ or ” after paragraph (a) and omit paragraph (c) and the word “or” before it, and

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- (b) in sub-paragraph (2), omit “, or to a transfer lump sum death benefit being paid.”.

*Untraceable members*

- 11 In paragraph 11 of Schedule 28 (member's alternatively secured pension fund), insert at the end—

“(6) Sub-paragraph (7) applies if—

- (a) at the time when the member reaches the age of 75, the scheme administrator has been unable to ascertain the member's whereabouts after having taken all reasonable steps to do so, and
- (b) paragraph 8(2) applies in relation to the member and the arrangement and none of the sums or assets held for the purposes of the arrangement are member-designated funds immediately before it applies.

(7) In that case the references in sub-paragraphs (2) and (3) to the time when the member reached the age of 75 are to be read as referring to the end of the period of six months beginning with any later date on which the member's whereabouts are subsequently ascertained by the scheme administrator.”

*Increase in rights on death*

- 12 (1) Section 172B (increase in rights of connected person on death) is amended as follows.

(2) In subsection (2)(b), for “, alternatively secured pension fund, dependant's unsecured pension fund or dependant's alternatively secured” substitute “ or dependant's unsecured ”.

(3) In subsection (4), for “(6)” substitute “ (5) ”.

(4) In subsection (7)(a), after “there” insert “ are ”.

(5) After subsection (8) insert—

“(8A) Nothing in this section applies in relation to the rights representing the member's unsecured pension fund if those rights would represent the member's alternatively secured pension fund but for paragraph 11(6) and (7) of Schedule 28.”

- 13 After that section insert—

**“172BA Increase in rights on death arising from alternatively secured pension fund etc**

- (1) This section applies if, at any time (“the relevant time”) after the death of a member of a registered pension scheme, another member of the pension scheme becomes entitled to alternatively secured rights.
- (2) “Alternatively secured rights” are rights representing the whole or part of the dead member's alternatively secured pension fund, or dependant's alternatively secured pension fund, in respect of an arrangement under the pension scheme.

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- (3) The pension scheme is to be treated as making an unauthorised payment to the other member (or to the other member's personal representatives).
- (4) Subject to subsection (5), the amount of the unauthorised payment is the amount by which—
  - (a) the consideration which might be expected to be received in respect of an assignment (or assignation) of the benefits to which the other member is actually or prospectively entitled under the pension scheme immediately after the relevant time, exceeds
  - (b) the consideration which might be expected to be received in respect of such an assignment (or assignation) immediately before the relevant time.
- (5) But that amount is to be reduced by so much (if any) of the excess as arises from the other member becoming entitled to pension death benefits or lump sum death benefits in respect of the dead member.
- (6) This section does not apply if the other member's entitlement to the alternatively secured rights is brought about by an assignment (or agreement to assign) within section 172.
- (7) Rights representing the member's unsecured pension fund are alternatively secured rights for the purposes of this section if they would be rights representing the member's alternatively secured pension fund but for paragraph 11(6) and (7) of Schedule 28.”

*Minimum alternatively secured pension and dependants' alternatively secured pension*

14 After section 181 insert—

*“Alternatively secured pensions*

**181A “Minimum level of payment**

- (1) The total amount of alternatively secured pension paid to a member of a registered pension scheme in each alternatively secured pension year in respect of a money purchase arrangement under the pension scheme must be at least 55% of the basis amount for the alternatively secured pension year (but subject to subsection (5)).
- (2) The total amount of dependants' alternatively secured pension paid to a dependant of a member of a registered pension scheme in each alternatively secured pension year in respect of a money purchase arrangement under the pension scheme must be at least 55% of the basis amount for the alternatively secured pension year (but subject to subsection (5)).
- (3) If subsection (1) or (2) is not complied with in an alternatively secured pension year in the case of any arrangement under a registered pension scheme, the pension scheme is to be treated as having made a scheme chargeable payment when the alternatively secured pension year ends.
- (4) The amount of the scheme chargeable payment is the difference between—

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- (a) the total amount of alternatively secured pension paid to the member, or of the dependants' alternatively secured pension paid to the dependant, in respect of the arrangement in the alternatively secured pension year, and
  - (b) 55% of the basis amount for the alternatively secured pension year, (or, if nothing is so paid, 55% of the basis amount for the alternatively secured pension year).
- (5) Subsection (1) or (2) does not apply in relation to an alternatively secured pension year if—
- (a) it is the alternatively secured pension year ending immediately before the death of the member or dependant, or
  - (b) in the alternatively secured pension year the member's alternatively secured pension fund, or the dependant's alternatively secured pension fund, in respect of the arrangement is applied on pension or annuity provision (see subsection (6)).
- (6) The member's alternatively secured pension fund, or the dependant's alternatively secured pension fund, in respect of the arrangement is applied on pension or annuity provision if all of the sums and assets representing it are applied in one or more of the following ways—
- (a) towards the provision of a scheme pension or dependants' scheme pension;
  - (b) to purchase a scheme pension or dependants' scheme pension;
  - (c) to purchase a lifetime annuity or dependants' annuity.
- (7) Part 1 of Schedule 28 gives the meaning of expressions used in this section so far as it relates to alternatively secured pension; and Part 2 of that Schedule gives the meaning of expressions used in this section so far as it relates to dependants' alternatively secured pension.”
- 15 In section 241(1) (scheme chargeable payment), after paragraph (a) insert—
- “(aa) a scheme chargeable payment which the pension scheme is to be treated as having made by section 181A (minimum alternatively secured pension etc), and”.

*Charity lump sum death benefit*

- 16 (1) Paragraph 18 of Schedule 29 (charity lump sum death benefit) is amended as follows.
- (2) In sub-paragraph (1)(c), for “income withdrawal to which the member was entitled” substitute “the member's alternatively secured pension fund (or what would be the member's alternatively secured pension fund but for paragraph 11(6) and (7) of Schedule 28) ”.
  - (3) In sub-paragraph (1)(d), insert at the end “ (or, if the member made no nomination, selected by the scheme administrator). ”
  - (4) In sub-paragraph (2)(d), for “dependants' income withdrawal to which the member was entitled” substitute “the dependant's alternatively secured pension fund ”.
  - (5) In sub-paragraph (2)(e), for “(or, if the member made no nomination, by the dependant).” substitute “or, if the member made no nomination, by the dependant”.

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(or, if neither the member nor the dependant made a nomination, selected by the scheme administrator).”

- (6) In sub-paragraph (4), after “representing” insert “ what is (or but for paragraph 11(6) and (7) of Schedule 28 would be) ”.

*Discharge of liability to scheme chargeable payment*

- 17 In section 268(6) (unauthorised payments surcharge and scheme chargeable payments), for “(assignment)” substitute “ , 172A, 172B, 172BA, 172C or 172D or arises under section 181A ”.

*Non-UK schemes*

- 18 (1) Schedule 34 (non-UK schemes application of certain charges) is amended as follows.  
(2) In paragraph 1(6), omit the words from “but also” to the end.  
(3) In paragraph 4(3), omit the words from “but also” to the end.  
(4) After paragraph 7 insert—

*“Unauthorised payment charge: alternatively secured pension etc*

- 7ZA The Commissions for Her Majesty's Revenue and Customs may by regulations make provision for—  
(a) a relieved member of a relevant non-UK scheme, or  
(b) a transfer member of such a scheme,  
to be liable to the unauthorised payment charge in circumstances which are the same as or similar to those in which the scheme administrator of such a scheme is liable to the scheme sanction charge by virtue of section 181A (minimum alternatively and dependants' alternatively secured pension).”

*Inheritance tax*

- 19 IHTA 1984 is amended as follows.  
20 (1) Section 151A (person dying with alternatively secured pension fund) is amended as follows.  
(2) For subsection (2) substitute—  
“(2) Tax shall be charged on the relevant amount as if it were part of the value transferred by the transfer of value made on the member's death at the rate or rates at which it would be charged if it formed the highest part of that value.”  
(3) In subsection (3)(a), after “death” insert “ but reduced by the amount of any previously charged income tax ”.  
(4) After subsection (4) insert—  
“(4A) In subsection (3)(a) above “the amount of any previously charged income tax” means the amount of any liability to income tax which (after the member's death but before the time when tax is charged on the transfer of value treated as made by the member on death) has arisen by virtue of the

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making of an unauthorised member payment under Part 4 of the Finance Act 2004 relating to the member's alternatively secured pension fund.

(4B) Subsection (4C) below applies where the maximum that could be transferred by the chargeable transfer made (under section 4 above) on the member's death if it were to be wholly chargeable to tax at the rate of nil per cent. exceeds—

- (a) the value actually transferred by that chargeable transfer (or nil if there is no such chargeable transfer), less
- (b) any previously untaxed alternatively secured pension fund amount.

(4C) Where this subsection applies, tax is to be charged on the previously untaxed alternatively secured pension fund amount as if the nil rate band maximum were—

$$\frac{\text{UNRB} \times 100}{100 - \text{MUPR}}$$

where—

UNRB is the unused nil-rate band, that is the excess mentioned in subsection (4B) above, and

MUPR is the maximum unauthorised payment rate, that is the maximum aggregate rate at which tax is chargeable under Part 4 of the Finance Act 2004 in respect of an unauthorised member payment.”

(5) In subsection (5), at the end of the definition of “dependants' unsecured pension” (but before “and”) insert—

““previously untaxed alternatively secured pension fund amount” means so much of the aggregate mentioned in subsection (3)(a) above as has not given rise to any liability to tax by virtue of Part 4 of the Finance Act 2004 before tax is charged on the transfer treated as made by the member on death.”

(6) After that subsection insert—

“(6) This section applies in relation to a member who would have an alternatively secured pension fund immediately before death but for sub-paragraphs (6) and (7) of paragraph 11 of Schedule 28 to the Finance Act 2004 as if those sub-paragraphs were omitted (but subject as follows).

(7) In the case of such a member the references in subsection (3)(a) and (b) to the member's death are to the date on which the scheme administrator becomes aware of the member's death.”

21 (1) Section 151B (relevant dependant with pension fund inherited from member over 75) is amended as follows.

(2) In subsection (1)(b), after “before his death” insert “ (or would have but for paragraph 11(6) and (7) of Schedule 28 to the Finance Act 2004) ”.

(3) Omit subsection (5).

22 After that section insert—

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### “151BA Rate or rates of charge under section 151B

- (1) Tax charged under section 151B above shall be charged at the rate or rates at which it would be charged on the death of the member if the amount mentioned in subsection (3) of that section (as reduced under subsection (4) of that section) (“the taxable amount”) had been included in the aggregate mentioned in section 151A(3)(a) above (but subject as follows).
  - (2) The rate or rates at which tax is charged on the taxable amount shall be determined as if the taxable amount had formed the very highest part of the value of the member's estate immediately before the member's death (above any amount which is part of that value apart from this section).
  - (3) The rate or rates at which tax is charged on the taxable amount shall be determined on the assumptions that—
    - (a) subsection (3)(b) of section 151A above were omitted, and
    - (b) the references in subsections (4A) and (5) of that section to the time when tax is charged on the transfer treated as made by the member on death were to the time when tax is charged under this section.
  - (4) Subsection (5) below applies where, before the time when the dependant dies or ceases to be a relevant dependant, there have been one or more reductions of tax by virtue of the coming into force of a substitution of a new Table in Schedule 1 to this Act since the member's death.
  - (5) The rate or rates at which tax is charged under section 151B above is to be determined as if the new Table effecting the reduction of tax (or the most recent reduction of tax) had been in force at the time of the member's death.”
- 23 (1) Section 151C (dependant dying with other pension fund) is amended as follows.
- (2) For subsection (2) substitute—

“(2) Tax shall be charged on the relevant amount as if it were part of the value transferred by the transfer of value made on the dependant's death at the rate or rates at which it would be charged if it formed the highest part of that value.”
  - (3) In subsection (3)(a), after “death” insert “ but reduced by the amount of any previously charged income tax ”.
  - (4) After that subsection insert—

“(3A) In subsection (3)(a) above “the amount of any previously charged income tax” means the amount of any liability to income tax which (after the dependant's death but before the time when tax is charged on the transfer of value treated as made by the dependant on death) has arisen by virtue of the making of an unauthorised member payment under Part 4 of the Finance Act 2004 relating to the dependant's alternatively secured pension fund.

(3B) Subsection (3C) below applies where the maximum that could be transferred by the chargeable transfer made (under section 4 above) on death if it were to be wholly chargeable to tax at the rate of nil per cent. exceeds—
    - (a) the value actually transferred by that chargeable transfer, less

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(b) any previously untaxed dependant's alternatively secured pension fund amount.

(3C) Where this subsection applies, tax is to be charged on the previously untaxed dependant's alternatively secured pension fund amount as if the nil rate band maximum were—

$$\frac{\text{UNRB} \times 100}{100 - \text{MUPR}}$$

where—

UNRB is the unused nil rate band, that is the excess mentioned in subsection (3B) above; and

MUPR is the maximum unauthorised payment rate, that is the maximum aggregate rate at which tax is chargeable under Part 4 of the Finance Act 2004 in respect of an unauthorised member payment.

(3D) The relevant amount is to be reduced by the aggregate of so much of the sums and the value of the assets of the dependant's alternatively secured pension fund as arises, or (directly or indirectly) derives, from sums or assets forming part of an alternatively secured pension fund of the member which were designated as available for the payment of—

- (a) dependants' unsecured pension, or
  - (b) dependants' alternatively secured pension,
- to the dependant under the arrangement.”

(5) In subsection (4), omit “and” at the end of the definition of “dependant” and insert at the end—

““previously untaxed dependant's alternatively secured pension fund amount” means so much of the aggregate mentioned in subsection (3)(a) above as has not given rise to any liability to tax by virtue of Part 4 of the Finance Act 2004 before tax is charged on the transfer treated as made by the dependant on death.”

- 24 In section 216(6)(ac) (delivery of account)—
- (a) after “occurs” insert “, the scheme administrator becomes aware of the death”, and
  - (b) insert at the end “ (depending on which occasions the charge) ”.
- 25 In section 226(4) (payment), after “Act” insert “, or under section 151A above by virtue of subsection (6) of that section, ”.
- 26 In section 233(1)(c) (interest on unpaid tax), after “Act” insert “, or under section 151A above by virtue of subsection (6) of that section, ”.
- 27 In Schedule 2 (provisions applying on reduction of tax), omit paragraph 6A.

*Consequential amendment*

- 28 (1) Section 636A of ITEPA 2003 (exemption for certain lump sums under registered pension schemes) is amended as follows.



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- (2) In subsection (1)—
  - (a) insert “ or ” at the end of paragraph (d), and
  - (b) omit paragraph (f) and the word “or” before it.
- (3) In subsection (7), omit “ “transfer lump sum death benefit” ”.

#### *Commencement*

- 29
- (1) The amendments made by paragraphs 2(2) and 3 have effect in relation to deaths of members of registered pension schemes occurring on or after 6th April 2007.
  - (2) The amendments made by paragraphs 2(3), 4, 14 and 15 have effect for alternatively secured pension years beginning on or after 6th April 2007.
  - (3) The amendments made by paragraphs 5 to 10, 18(2) and (3) and 28 have effect in relation to lump sum death benefits paid in respect of members of schemes whose deaths occur on or after 6th April 2007.
  - (4) The amendments made by paragraphs 11, 12(5) and 16(2), (4) and (6) are deemed to have come into force on 6th April 2006.
  - (5) The amendments made by paragraphs 12(2) and 13 have effect in relation to members of registered pension schemes becoming entitled to alternatively secured rights on or after 6th April 2007 in respect of members whose deaths occur on or after that date.
  - (6) The amendments made by paragraph 16(3) and (5) have effect in relation to charity lump sum death benefits paid on or after 6th April 2007.
  - (7) The amendment made by paragraph 17 is deemed to have come into force on 6th April 2007.
  - (8) The amendments made by paragraphs 19 to 27 have effect in relation to deaths, cases where scheme administrators become aware of deaths and cessations of dependency occurring on or after 6th April 2007.

## SCHEDULE 20 **U.K.**

Section 70

### PENSION SCHEMES ETC: MISCELLANEOUS

#### *Introduction*

- 1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

#### *Persons by whom registered pension schemes may be established*

- 2
- (1) Section 154 (persons by whom registered pension scheme may be established) is amended as follows.
  - (2) For subsection (1) substitute—
    - “(1) An application to register a pension scheme may be made only if the pension scheme—
      - (a) is an occupational pension scheme, or

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- (b) has been established by a person with permission under FISMA 2000 to establish in the United Kingdom a personal pension scheme or a stakeholder pension scheme.”

(3) After subsection (2) insert—

“(2A) Subsection (1) is to be construed in accordance with section 22 of FISMA 2000, any relevant order under that section and Schedule 2 to that Act.”

(4) Omit subsection (3).

(5) In subsection (4), omit “and section 155”.

3 Omit section 155 (persons by whom scheme may be established: supplementary).

4 In section 273 (members liable as scheme administrator)—

- (a) in subsection (5)(a), omit “was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc) and”, and
- (b) in subsection (7), omit “was established by a person or body specified in section 154(1)(a) to (g) and”.

*Unauthorised payments reduced by amount of scheme sanction charge*

5 In section 160 (unauthorised payments), after subsection (4) insert—

“(4A) If an unauthorised member payment or unauthorised employer payment made to or in respect of a person would have been greater but for a reduction made in respect of the whole, or any proportion, of the amount which the scheme administrator considers may be the amount of the liability to the scheme sanction charge in respect of it, it is to be regarded for the purposes of this Part as increased by the amount of the reduction.

(4B) But if the amount, or that proportion of the amount, of that liability is in fact less than the amount of the reduction, a subsequent payment of an amount not exceeding the difference between that amount and the amount of the reduction made—

- (a) to or in respect of the same person, and
- (b) before the end of the period of two years beginning with the date on which the unauthorised member payment or unauthorised employer payment was made,

is not to be regarded for the purposes of this Part as an unauthorised member payment or unauthorised employer payment.”

*Surrenders*

6 (1) Section 172A (surrender) is amended as follows.

(2) In subsection (5), after paragraph (d) insert—

- “(da) a surrender made as part of a retirement-benefit activities compliance exercise,
- (db) a surrender of a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) made in order to comply with the Employment Equality (Age) Regulations 2006 or Employment

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Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),”.

(3) In subsection (10), for “An” substitute “ For the purposes of this section an ”.

(4) After that subsection insert—

“(10A) For the purposes of this section a surrender relating to an arrangement under the pension scheme (“the old arrangement”) is made as part of a retirement-benefit activities compliance exercise if—

- (a) it is made in connection with the making of an arrangement under another pension scheme relating to the member (“the new arrangement”),
- (b) the old arrangement and the new arrangement relate to the same employment,
- (c) both the rights surrendered and the rights conferred under the new arrangement consist of or include a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both),
- (d) the surrender and the making of the new arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
- (e) the rights surrendered and the rights conferred under the new arrangement are not significantly different.”

*Scheme pensions where ill-health condition met*

7 (1) Schedule 28 (pension rules) is amended as follows.

(2) In paragraph 2(4) (scheme pensions: cases where cessation or reduction of pension is permitted), for paragraph (a) substitute—

“(a) the reduction of the pension if the member became entitled to it by reason of the ill-health condition being met,”.

(3) In paragraph 2A(2) (certain reductions not permitted if part of avoidance arrangements), for “the rate of which is reduced in accordance with paragraph (b) of sub-paragraph (4) of paragraph 2 but” substitute “ which is reduced in accordance with paragraph (a) of sub-paragraph (4) of paragraph 2, or the rate of which is reduced in accordance with paragraph (b) of that sub-paragraph, and ”.

*Unsecured and dependants' unsecured pensions: reference periods*

8 (1) Schedule 28 (pension rules) is amended as follows.

(2) In paragraph 10 (reference periods for unsecured pensions), for sub-paragraph (1) substitute—

“(1) Subject as follows, the period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”.

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(1A) Sub-paragraph (1B) applies if, at any time during a reference period (“the current reference period”), the member notifies the scheme administrator that the member wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

(1B) The scheme administrator may determine—

- (a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and
- (b) that (subject to any further operation of this sub-paragraph) the period of five unsecured pension years beginning with that day, and each succeeding period of five unsecured pension years, is to be a reference period.

(1C) The first day of each reference period is, in relation to that period, “the reference date”.

(3) In paragraph 24 (reference periods for dependants' unsecured pensions), for sub-paragraph (1) substitute—

“(1) Subject as follows, the period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”.

(1A) Sub-paragraph (1B) applies if, at any time during a reference period (“the current reference period”), the dependant notifies the scheme administrator that the dependant wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

(1B) The scheme administrator may determine—

- (a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and
- (b) that (subject to any further operation of this sub-paragraph) the period of five unsecured pension years beginning with that day, and each succeeding period of five unsecured pension years, is to be a reference period.

(1C) The first day of each reference period is, in relation to that period, “the reference date”.

#### *Pension commencement lump sums*

- 9 In section 166(2)(a) (when person becomes entitled to pension commencement lump sum), after “paid” insert “ (or, if the person dies before becoming entitled to the pension in connection with which it was anticipated it would be paid, immediately before death) ”.
- 10 In section 219(7) (multiple benefit crystallisation events occurring by reason of payment of lump sum death benefits treated as occurring immediately before death), insert at the end “ but immediately after any benefit crystallisation event occurring immediately before the individual's death by virtue of section 166(2). ”
- 11 (1) Schedule 29 (authorised lump sums) is amended as follows.

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- (2) In paragraph 1(1) (conditions to be met if lump sum is to be pension commencement lump sum)—
- (a) for paragraph (a) substitute—
    - “(a) the member becomes entitled to it before reaching the age of 75,
    - (aa) the member becomes entitled to it in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it)”,
  - (b) in paragraph (c), for “of three months beginning with” substitute “beginning six months before, and ending one year after, ”, and
  - (c) omit paragraph (e)(but not including the “and” at the end).
- (3) In paragraph 1(6) (power to provide that certain lump sums are to be treated as pension commencement lump sums), for “(1)(c) and (e)” substitute “(1)(a) and (c) ”.
- (4) In paragraph 2 (“permitted maximum”), after sub-paragraph (5) insert—
- “(5A) But if the member dies before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to the lump sum, the permitted maximum is the available portion of the member's lump sum allowance.”

#### *Winding-up lump sums*

- 12 (1) Paragraph 10 of Schedule 29 (winding-up lump sums) is amended as follows.
- (2) In sub-paragraph (1)(c), for “the member's employer” substitute “ any person by whom the member is employed at the time when the lump sum is paid, and who has made contributions under the pension scheme in respect of the member within the period of five years ending with the day on which it is paid, ”.
- (3) In sub-paragraph (3)—
- (a) for “are that the employer” substitute “ referred to in paragraph (c) of sub-paragraph (1) are that the person mentioned in that paragraph ”, and
  - (b) omit paragraph (a).

#### *Lump sum death benefits*

- 13 (1) Schedule 29 (authorised lump sums) is amended as follows.
- (2) In paragraph 13(c) (defined benefits lump sum death benefit), for “day on which the member died,” substitute “ earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably be expected to have known of it, ”.
- (3) In paragraph 15(1)(c) (uncrystallised funds lump sum death benefit), for “day on which the member died,” substitute “ earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably be expected to have known of it, ”.

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*Taxable property held by investment-regulated pension schemes: indirect holdings in REITs*

- 14 (1) Schedule 29A (taxable property held by investment-regulated pension schemes) is amended as follows.
- (2) In paragraph 20(1)(b) (indirect holdings: introduction to exception for REITs), for “paragraph 22 makes” substitute “ paragraphs 22, 24 and 25 make ”.
- (3) In paragraph 22 (REITs)—
- (a) in sub-paragraph (1), after paragraph (b) insert— “ and paragraph 24 applies to the pension scheme's interest in the vehicle. ”, and
- (b) omit sub-paragraph (2).
- (4) In paragraph 24(1) (conditions applying for paragraph 23), for “paragraph 23” substitute “ paragraphs 22 and 23 ”.
- (5) In paragraph 25(2) (provisions supplementing paragraph 24), for “23(1)” substitute “ 22 or 23 ”.

*Transitional provision: primary protection*

- 15 In paragraph 11D of Schedule 36 (lump sum death benefits to be taken into account as part of individual's pre-commencement rights only if paid under policy not significantly varied since 5th April 2006), after sub-paragraph (2) insert—
- “(2A) A variation of the terms of a policy of life insurance made in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (2).
- (2B) Where a policy of life insurance held on 5th April 2006 for the purposes of an occupational pension scheme is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
- (b) to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),
- the new policy is to be treated for the purposes of sub-paragraph (2) as if it were the same as the old.
- (2C) For this purpose a policy of life insurance is surrendered and a new one is taken out as part of a retirement-benefit activities compliance exercise if—
- (a) the surrender of the old policy and taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
- (b) the rights under the old policy and the new policy are not significantly different.”

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*Transitional provision: enhanced protection*

- 16 Schedule 36 (transitional provision) is amended as follows.
- 17 (1) Paragraph 12 (when enhanced protection ceases) is amended as follows.
- (2) In paragraph (c) of sub-paragraph (2), for “solely for the purposes of a permitted transfer” substitute “ in permitted circumstances ”.
- (3) After that sub-paragraph insert—
- “(2A) An arrangement is made in permitted circumstances if it is made—
- (a) for the purposes of a permitted transfer,
  - (b) as part of a retirement-benefit activities compliance exercise, or
  - (c) as part of an age-equality compliance exercise.
- (2B) For the purposes of sub-paragraph (2A)(b) an arrangement (“the new arrangement”) relating to an individual is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement,
  - (d) the making of the new arrangement and the cancellation of the old arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
  - (e) the rights cancelled under the old arrangement and the rights conferred under the new arrangement are not significantly different.
- (2C) For the purposes of sub-paragraph (2A)(c) an arrangement (“the new arrangement”) is made as part of an age-equality compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (d) the new arrangement is made, and the old arrangement cancelled, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them).”
- (4) In sub-paragraph (7)—
- (a) omit paragraph (a),

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- (b) in paragraph (b), omit “held for the purposes of, or representing accrued rights under, the arrangement”, and
  - (c) in paragraph (c), for “those” (in both places) substitute “ the ”.
- (5) In paragraph (a) of sub-paragraph (8), omit—
- (a) “, or two or more money purchase arrangements that are not cash balance arrangements,”, and
  - (b) “or” at the end.
- (6) After paragraph (b) of that sub-paragraph insert—
- “(c) where the arrangement is a cash balance arrangement or a defined benefits arrangement relating to a present or former employment, they are transferred in connection with a relevant business transfer so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement made under a registered pension scheme or recognised overseas pension scheme, or
  - (d) where the arrangement (“the old arrangement”) is a cash balance arrangement or a defined benefits arrangement, they are transferred as part of a retirement-benefit activities compliance exercise so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement (“the new arrangement”) relating to the same employment as the old arrangement and made under a registered pension scheme or recognised overseas pension scheme.”
- (7) After that sub-paragraph insert—
- “(8A) For the purposes of sub-paragraph (8)(c) “relevant business transfer” means a transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another—
- (a) which involves the transfer of at least 20 employees, and
  - (b) in the case of which, if the transferor and the transferee are bodies corporate, they would not be treated as members of the same group for the purposes of Chapter 4 of Part 10 of ICTA.
- (8B) For the purposes of sub-paragraph (8)(d) sums or assets held for the purposes of, or representing accrued rights under, the old arrangement are transferred as part of a retirement-benefit activities compliance exercise if—
- (a) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (b) the transfer constitutes or forms part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the old arrangement was made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005.”
- (8) In sub-paragraph (9)—
- (a) in paragraph (a), omit “, or each of the arrangements,” and “and” at the end,
  - (b) in paragraph (b), after “(8)(b)” insert “ or (d) ” and after “15” insert “ to 17 ”, and



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- (c) after that paragraph insert “and
  - (c) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(c), this paragraph (and paragraphs 13, 15 to 17 and 17A(3)) apply as if the arrangement to which the transfer is made were the same as that from which it is made and (if the employment is transferred) as if the employment with the transferee were the employment with the transferor.”

(9) After that sub-paragraph insert—

“(10) The Treasury may by order amend sub-paragraph (8) (and make other amendments consequential on any amendment of that sub-paragraph).”

18 In paragraph 14 (relevant contributions), after sub-paragraph (3) insert—

“(3A) A variation of the terms of a policy made in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (3).

(3B) Where a policy of insurance on the life of the individual issued, or issued in respect of insurances made, before 6th April 2006 is surrendered and a new one is taken out—

- (a) as part of a retirement-benefit activities compliance exercise, or
- (b) as part of an age-equality compliance exercise.

the new policy is to be treated for the purposes of sub-paragraph (3) as if it were the same as the old.

(3C) For the purposes of sub-paragraph (3B)(a) a policy is surrendered, and a new policy of life insurance is taken out, as part of a retirement-benefit activities compliance exercise if—

- (a) the surrender of the old policy and the taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
- (b) the rights under the old policy and the new policy are not significantly different.

(3D) For the purposes of sub-paragraph (3B)(b) a policy is surrendered, and a new policy of life insurance is taken out, as part of an age-equality compliance exercise if—

- (a) the old policy is surrendered, and the new policy is taken out, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them), and
- (b) any significant difference between the rights under the old policy and the rights under the new policy is attributable to the need to comply with those Regulations (or any regulations amending or replacing them).”

19 (1) Paragraph 15 (relevant benefit accrual) is amended as follows.

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- (2) In sub-paragraph (2), after “arrangement” (in both places) insert “ which are transferred ”.
- (3) In sub-paragraph (7), for “15 and 16” substitute “ 16 and 17 ”.

*Inheritance tax: lump sum death benefits*

- 20 In section 58 of IHTA 1984 (settlements: “relevant property”), after subsection (2) insert—

“(2A) For the purposes of subsection (1)(d) above—

- (a) property applied to pay lump sum death benefits within section 168(1) of the Finance Act 2004 in respect of a member of a registered pension scheme is to be taken to be held for the purposes of the scheme from the time of the member's death until the payment is made, and
- (b) property applied to pay lump sum death benefits in respect of a member of a section 615(3) scheme is to be taken to be so held if the benefits are paid within the period of two years beginning with the earlier of the day on which the member's death was first known to the trustees or other persons having the control of the fund and the day on which they could first reasonably be expected to have known of it.”

*Benefits under employer-financed retirement benefits schemes*

- 21 In section 393B of ITEPA 2003 (employer-financed retirement benefits schemes: relevant benefits), after subsection (4) insert—

“(4A) Regulations under subsection (3)(d) may include provision having effect in relation to times before they are made.”

*Consequential amendments*

- 22 (1) In section 167(2) of FA 2004 (meaning of “pension death benefit”), for ““Pension” substitute “ “In this Part “pension ” ”.
- (2) In section 280(2) of that Act (index of expressions), insert at the appropriate place—

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“pension death benefit	section 167(2)”. ”.
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- 23 (1) In section 1(1) of the Pension Schemes Act 1993 (c. 48) (categories of pension schemes), in paragraph (b) of the definition of “personal pension scheme”, omit “any of the paragraphs of”.
- (2) In section 1(1) of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (categories of pension schemes), in paragraph (b) of the definition of “personal pension scheme”, omit “any of the paragraphs of”.

*Commencement*

- 24 (1) The amendments made by paragraphs 2 to 4 and 23 are deemed to have come into force on 6th April 2007.

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- (2) The amendment made by paragraph 5 has effect in relation to payments made on or after 6th April 2007.
- (3) The amendments made by paragraphs 6, 7(2), 9 to 11, 15 to 19 and 22 are deemed always to have had effect.
- (4) The amendment made by paragraph 7(3) has effect in relation to reductions occurring on or after 6th April 2007.
- (5) The amendments made by paragraph 8 have effect in relation to notifications given on or after 6th December 2006.
- (6) The amendments made by paragraph 12 have effect in relation to lump sums paid on or after 6th April 2006.
- (7) The amendments made by paragraph 13 have effect in relation to deaths occurring on or after 6th April 2006.
- (8) The amendments made by paragraph 14 are deemed to have come into force on 1st January 2007.
- (9) The amendment made by paragraph 20 has effect in relation to lump sum death benefits paid on or after 6th April 2006.

SCHEDULE 21 **U.K.**

Section 73

EXEMPTIONS FROM STAMP DUTY AND SDRT: INTERMEDIARIES, REPURCHASES ETC

*Intermediaries*

- 1 (1) Section 80A of FA 1986 (exemption from stamp duty: sales to intermediaries) is amended as follows.
  - (2) For subsections (1) to (3) substitute—
    - “(1) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
      - (a) the person is a member of a regulated market on which stock of that kind is regularly traded; and
      - (b) the person is an intermediary and is recognised as such by the market in accordance with arrangements approved by the Commissioners.
    - (1A) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
      - (a) the person is a member of a multilateral trading facility, or a recognised foreign exchange, on which stock of that kind is regularly traded;
      - (b) the person is an intermediary and is recognised as such by the facility or exchange in accordance with arrangements approved by the Commissioners; and
      - (c) the sale is effected on the facility or exchange.

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- (1B) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
- (a) the person is an intermediary who is approved for the purposes of this section by the Commissioners; and
  - (b) stock of that kind is regularly traded on a regulated market.
- (1C) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
- (a) the person is an intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) stock of that kind is regularly traded on a multilateral trading facility or a recognised foreign exchange; and
  - (c) the sale is effected on the facility or exchange.
- (2) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
- (a) the person is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange;
  - (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange;
  - (c) the person is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (d) stock of that kind is regularly traded on a regulated market.
- (2A) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
- (a) the person is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange;
  - (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange;
  - (c) the person is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (d) the sale is effected on a relevant qualifying exchange on which stock of that kind is regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that exchange;
- and in paragraph (d) “relevant qualifying exchange” means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.
- (2B) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
- (a) the person is an options intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and
  - (c) stock of that kind is regularly traded on a regulated market.

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- (2C) Stamp duty shall not be chargeable on an instrument transferring stock of a particular kind on sale to a person or the person's nominee if—
- (a) the person is an options intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and
  - (c) the sale is effected on a relevant qualifying exchange on which stock of that kind is regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell stock of that kind are regularly traded on, and are listed by or quoted on, that exchange;
- and in paragraph (c) “relevant qualifying exchange” means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.”
- (3) In subsection (6) (meaning of sale being on an exchange)—
- (a) after “effected on” insert “ a facility or ”,
  - (b) for “subsection (1) or (2) above” substitute “ this section ”, and
  - (c) for “the exchange” (in each place) substitute “ the facility or exchange ”.
- (4) After that subsection insert—
- “(6A) The Commissioners may approve a person for the purposes of this section only if the person is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account), whether or not the person is authorised under the Directive.”
- (5) The amendments made by this paragraph have effect in relation to any instrument executed on or after 1st November 2007.
- 2 (1) Section 80B of FA 1986 (exemption from stamp duty on sales to intermediaries: supplementary) is amended as follows.
- (2) In subsection (2)—
- (a) after the definition of “collective investment scheme” insert—

““the Directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time;”,
  - (b) omit the definition of “EEA exchange”, and
  - (c) in the definition of “EEA State”, for “means a State which” substitute “ , in relation to any time, means a State which at that time is a member State or any other State which at that time ” and insert at the end “ (as modified or supplemented from time to time) ”.
- (3) After that subsection insert—
- “(2A) Each of the following expressions—  
“multilateral trading facility”, and  
“regulated market”,

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has the same meaning in section 80A above as it has for the purposes of the Directive.”

- (4) After subsection (5) insert—
- “(5A) The Treasury may by regulations amend section 80A above and this section (as they have effect for the time being) in order to extend the exemption from duty under that section.”
- (5) In subsection (7) (power for regulations to provide for stamp duty to be chargeable at a rate not exceeding 0.1%), for “subsection (1) or (2)” substitute “any of subsections (1) to (2C)”.
- (6) The amendments made by this paragraph have effect in relation to any instrument executed on or after 1st November 2007.
- 3 (1) Section 88A of FA 1986 (exemption from SDRT: sales to intermediaries) is amended as follows.
- (2) For subsections (1) to (3) substitute—
- “(1) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is a member of a regulated market on which securities of that kind are regularly traded; and
- (b) B is an intermediary and is recognised as such by the market in accordance with arrangements approved by the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”).
- (1A) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is a member of a multilateral trading facility, or a recognised foreign exchange, on which securities of that kind are regularly traded;
- (b) B is an intermediary and is recognised as such by the facility or exchange in accordance with arrangements approved by the Commissioners; and
- (c) the agreement is effected on the facility or exchange.
- (1B) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an intermediary who is approved for the purposes of this section by the Commissioners; and
- (b) securities of that kind are regularly traded on a regulated market.
- (1C) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an intermediary who is approved for the purposes of this section by the Commissioners;
- (b) securities of that kind are regularly traded on a multilateral trading facility or a recognised foreign exchange; and
- (c) the agreement is effected on the facility or exchange.
- (2) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—

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- (a) B is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange;
  - (c) B is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (d) securities of that kind are regularly traded on a regulated market.
- (2A) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange;
  - (c) B is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (d) the agreement is effected on a relevant qualifying exchange on which securities of that kind are regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that exchange;
- and in paragraph (d) “relevant qualifying exchange” means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.
- (2B) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an options intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and
  - (c) securities of that kind are regularly traded on a regulated market.
- (2C) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an options intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and
  - (c) the agreement is effected on a relevant qualifying exchange on which securities of that kind are regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that exchange;
- and in paragraph (c) “relevant qualifying exchange” means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.”

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- (3) In subsection (6) (meaning of sale being on an exchange)—
- (a) after “effected on” insert “ a facility or ”,
  - (b) for “subsection (1) or (2) above” substitute “ this section ”, and
  - (c) for “the exchange” (in each place) substitute “ the facility or exchange ”.
- (4) After that subsection insert—
- “(6A) The Commissioners may approve a person for the purposes of this section only if the person is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account), whether or not the person is authorised under the Directive.”
- (5) The amendments made by this paragraph have effect in relation to any agreement to transfer securities—
- (a) in a case where the agreement is conditional, if the condition is satisfied on or after 1st November 2007, and
  - (b) in any other case, if the agreement is made on or after that date.
- 4 (1) Section 88B of FA 1986 (exemption from SDRT on sales to intermediaries: supplementary) is amended as follows.
- (2) In subsection (2)—
- (a) after the definition of “collective investment scheme” insert—
 

““the Directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time;”
  - (b) omit the definition of “EEA exchange”, and
  - (c) in the definition of “EEA State”, for “means a State which” substitute “ , in relation to any time, means a State which at that time is a member State or any other State which at that time ” and insert at the end “ (as modified or supplemented from time to time) ”.
- (3) After that subsection insert—
- “(2A) Each of the following expressions—  
 “multilateral trading facility”, and  
 “regulated market”,  
 has the same meaning in section 88A above as it has for the purposes of the Directive.”
- (4) After subsection (3) insert—
- “(3A) The Treasury may by regulations amend section 88A above and this section (as they have effect for the time being) in order to extend the exemption from tax under that section.”
- (5) In subsection (5) (power for regulations to provide for SDRT to be chargeable at a rate not exceeding 0.1%), for “subsection (1) or (2)” substitute “ any of subsections (1) to (2C) ”.
- (6) In subsection (7) (regulations exercisable by statutory instrument and subject to annulment), for “(4)” substitute “ (3A) ”.



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- (7) The amendments made by this paragraph have effect in relation to any agreement to transfer securities—
- (a) in a case where the agreement is conditional, if the condition is satisfied on or after 1st November 2007, and
  - (b) in any other case, if the agreement is made on or after that date.

*Repurchases and stock lending*

- 5 (1) Section 80C of FA 1986 (exemption from stamp duty: repurchases and stock lending) is amended as follows.
- (2) In subsection (1) (application of section), after “conditions set out in subsection” insert “ (2A) or ”.
- (3) After subsection (2) insert—
- “(2A) The conditions in this subsection are—
- (a) that A or B is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account) in relation to stock of the kind concerned, whether or not A or B is authorised under the Directive; and
  - (b) that stock of the kind concerned is regularly traded on a regulated market.”
- (4) In subsection (3) (conditions for exemption)—
- (a) after “The conditions” insert “ in this subsection ”,
  - (b) for “an EEA exchange” substitute “ a regulated market, a multilateral trading facility ”, and
  - (c) after “on that” insert “ market, facility or ”.
- (5) In subsection (6) (meaning of arrangement being on an exchange)—
- (a) after “effected on” insert “ a market, a facility or ”, and
  - (b) for “the exchange” (in each place) substitute “ the market, facility or exchange ”.
- (6) In subsection (7)—
- (a) after “In this section—” insert—

““the Directive” has the meaning given in section 80B(2) above;  
“EEA State” has the meaning given in section 80B(2) above;”, and
  - (b) omit the definition of “EEA exchange” (together with the “and” at the end of it).
- (7) After that subsection insert—
- “(7A) Each of the following expressions—  
“multilateral trading facility”, and  
“regulated market”,  
has the same meaning in this section as it has for the purposes of the Directive.”

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- (8) The amendments made by this paragraph have effect in relation to any instrument executed on or after 1st November 2007.
- 6 (1) Section 89AA of FA 1986 (exemption from SDRT: repurchases and stock lending) is amended as follows.
- (2) In subsection (1) (application of section), after “conditions set out in subsection” insert “ (2A) or ”.
- (3) After subsection (2) insert—
- “(2A) The conditions in this subsection are—
- (a) that P or Q is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account) in relation to securities of the kind concerned, whether or not P or Q is authorised under the Directive; and
- (b) that securities of the kind concerned are regularly traded on a regulated market.”
- (4) In subsection (3) (conditions for exemption)—
- (a) after “The conditions” insert “ in this subsection ”,
- (b) for “an EEA exchange” substitute “ a regulated market, a multilateral trading facility ”, and
- (c) after “on that” insert “ market, facility or ”.
- (5) In subsection (5) (meaning of arrangement being on an exchange)—
- (a) after “effected on” insert “ a market, a facility or ”, and
- (b) for “the exchange” (in each place) substitute “ the market, facility or exchange ”.
- (6) In subsection (6)—
- (a) after “In this section—” insert—
- ““the Directive” has the meaning given in section 88B(2) above;
- “EEA State” has the meaning given in section 88B(2) above;”, and
- (b) omit the definition of “EEA exchange”.
- (7) After that subsection insert—
- “(6A) Each of the following expressions—
- “multilateral trading facility”, and
- “regulated market”,
- has the same meaning in this section as it has for the purposes of the Directive.”
- (8) The amendments made by this paragraph have effect in relation to any agreement to transfer securities—
- (a) in a case where the agreement is conditional, if the condition is satisfied on or after 1st November 2007, and
- (b) in any other case, if the agreement is made on or after that date.

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*Exemptions from stamp duty and SDRT in cases involving recognised investment exchanges*

- 7 (1) In section 116 of FA 1991 (stamp duty: investment exchanges and clearing houses), subsection (4) is amended as follows.
- (2) After “In this section—” insert—
- “(aa) “the Directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time,”.
- (3) In paragraph (b) (definition of “recognised investment exchange”), after “2000” insert “, a regulated market within the meaning of the Directive or a multilateral trading facility within the meaning of the Directive ”.

*Consequential repeal*

- 8 (1) In F(No.2)A 2005, omit section 50 (power to extend stamp duty and SDRT exemptions to recognised exchanges).
- (2) This paragraph comes into force on 1st November 2007.

SCHEDULE 22 **U.K.**

Section 84

AMENDMENTS AND REPEALS CONSEQUENTIAL ON EXTENSION OF HMRC POWERS

**PART 1 U.K.**

AMENDMENTS

- 1 In section 20D(1) of TMA 1970, for “sections 20A, 20BA and 20C” substitute “sections 20A and 20BA ”.

**Commencement Information**

**I34** [Sch. 22 para. 1](#) in force at 1.12.2007 by [S.I. 2007/3166](#), [art. 3\(a\)](#)

- 2 In section 67 of the Criminal Justice and Police Act 2001 (c. 16) and the heading of that section, for “customs officers” substitute “ officers of Revenue and Customs ”.

**Commencement Information**

**I35** [Sch. 22 para. 2](#) in force at 1.12.2007 by [S.I. 2007/3166](#), [art. 3\(a\)](#)

**PART 2 U.K.**

REPEALS

- 3 The provisions listed below are omitted.

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**Commencement Information**

**I36** Sch. 22 para. 3 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 4 In TMA 1970—
- (a) sections 20C and 20CC (search warrants), and
  - (b) in the definition of “tax” in section 118 the word “, 20C”.

**Commencement Information**

**I37** Sch. 22 para. 4 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 5 In CEMA 1979—
- (a) section 118C(3)(c) (gaming duty), and
  - (b) the references to “a gaming duty offence” in section 118C(4)(b) and (5).

**Commencement Information**

**I38** Sch. 22 para. 5 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 6 In BGDA 1981—
- (a) paragraph 16 of Schedule 1 (general betting duty: search warrants),
  - (b) paragraph 17 of Schedule 3 (bingo duty: search warrants), and
  - (c) paragraph 17 of Schedule 4 (amusement machine licence duty: search warrants).

**Commencement Information**

**I39** Sch. 22 para. 6 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 7 Section 148(4) of FA 1989 (definition of “business” for purposes of section 20C of TMA 1970).

**Commencement Information**

**I40** Sch. 22 para. 7 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 8 In VATA 1994—
- (a) section 72(9) (powers of arrest), and
  - (b) paragraph 10(3) to (6) of Schedule 11 (search warrants).

**Commencement Information**

**I41** Sch. 22 para. 8 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 9 In Schedule 7 to FA 1994 (insurance premium tax)—
- (a) paragraph 4(2) to (5) (search warrants), and
  - (b) paragraph 4(6) and (7) (power of arrest).

*Status: Point in time view as at 16/12/2010.*

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**Commencement Information**

**I42** Sch. 22 para. 9 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 10 In Schedule 5 to FA 1996 (landfill tax)—
- (a) paragraph 5 (search warrants), and
  - (b) paragraph 6 (power of arrest).

**Commencement Information**

**I43** Sch. 22 para. 10 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 11 In Schedule 6 to FA 2000 (climate change levy)—
- (a) paragraph 97 (power of arrest), and
  - (b) paragraph 130 (search warrants).

**Commencement Information**

**I44** Sch. 22 para. 11 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 12 In FA 2001 (aggregates levy)—
- (a) paragraph 6 of Schedule 6 (power of arrest), and
  - (b) paragraph 7 of Schedule 7 (search warrants).

**Commencement Information**

**I45** Sch. 22 para. 12 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 13 (1) In the Criminal Justice and Police Act 2001—
- (a) section 57(1)(c) (section 20CC of TMA 1970),
  - (b) section 63(2)(e) (section 20C of TMA 1970), and
  - (c) section 65(3) (section 20C of TMA 1970).
- (2) In Schedule 1 to that Act—
- (a) paragraph 13 (section 20C of TMA 1970),
  - (b) paragraph 28 (paragraph 17(2) of Schedule 3 to BGDA 1981),
  - (c) paragraph 29 (paragraph 17(2) of Schedule 4 to BDGA 1981),
  - (d) paragraph 57 (paragraph 4(3) of Schedule 7 to FA 1994),
  - (e) paragraph 58 (paragraph 10(3) of Schedule 11 to VATA 1994),
  - (f) paragraph 61 (paragraph 5(2) of Schedule 5 to FA 1996), and
  - (g) paragraph 72 (paragraph 130(2) of Schedule 6 to FA 2000).

**Commencement Information**

**I46** Sch. 22 para. 13 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 14 Section 36(2) and (3) of the Tax Credits Act 2002 (c. 21) (search warrants).

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**Commencement Information**

**I47** Sch. 22 para. 14 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 15 Section 323(3)(e) and (f) of the Proceeds of Crime Act 2002 (c. 29) (approval of applications under section 20C of TMA 1970).

**Commencement Information**

**I48** Sch. 22 para. 15 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 16 Part 7 of Schedule 13 to FA 2003 (stamp duty land tax: search warrants).

**Commencement Information**

**I49** Sch. 22 para. 16 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

- 17 In CRCA 2005—
- (a) section 13(3)(b) and (c) (Commissioners' functions not delegable to officers), and
  - (b) section 14(2)(b) and (c) (non-delegable functions of Commissioners).

**Commencement Information**

**I50** Sch. 22 para. 17 in force at 1.12.2007 by S.I. 2007/3166, art. 3(a)

SCHEDULE 23 **U.K.**

Section 85

EXTENSION OF HMRC POWERS: SCOTLAND

*Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*

- 1 Part 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.
- 2 The heading to that Part becomes “ Investigation of Revenue and Customs offences ”.

**Commencement Information**

**I51** Sch. 23 para. 2 in force at 1.12.2007 for the purposes of the amendment made by that paragraph by S.I. 2007/3166, art. 3(b)

- 3 At the beginning of that Part insert—

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### *“Investigation of offences by HMRC*

#### **Investigation of offences by Her Majesty's Revenue and Customs**

- 23A(1) This Part of this Act applies to the investigation of Revenue and Customs offences.
- (2) Subject to subsection (3) below, in this Part of this Act, a “Revenue and Customs offence” is an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions other than any matter specified in—
- (a) section 54(4)(b) or (f) of; or
  - (b) paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters).
- (3) In sections 23B to 23P and 26A of this Act, any reference to a “Revenue and Customs offence” shall be construed as if, in subsection (2) above, there were added at the end the words “and other than any matter relating to the movement of goods which is subject to any prohibition or restriction for the time being in force under or by virtue of any enactment”.

### *Production orders*

#### **Production orders**

- 23B(1) The sheriff may, if satisfied on information on oath given by an authorised officer as to the matters mentioned in subsection (2) below, make an order under subsection (3) below (in this Part, a “production order”).
- (2) Those matters are—
- (a) that there are reasonable grounds to suspect that a Revenue and Customs offence has been or is being committed; and
  - (b) that a person (in this Part, a “haver”) specified by the officer has possession or control of a document which may be required as evidence for the purposes of any proceedings in respect of such an offence.
- (3) A production order is an order requiring the haver, before the expiry of the period specified in the order—
- (a) to deliver the document to an officer; or
  - (b) to—
    - (i) give an officer access to the document; and
    - (ii) permit the officer to make copies of or remove the document.
- (4) The period specified in a production order is—
- (a) the period of 10 working days beginning with the day on which the order is made; or
  - (b) such other period as the sheriff considers appropriate.

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- (5) A sheriff may make a production order in relation to a haver residing or having a place of business in an area of Scotland notwithstanding that it is outside the area of that sheriff and any such order shall, without being backed or endorsed by another sheriff, have effect throughout Scotland.
- (6) Subject to section 23J of this Act, a production order has effect in spite of any restriction on disclosure of information (however imposed).
- (7) Without prejudice to section 23D(1) of this Act, failure by a person to comply with a production order may be dealt with as a contempt of court.
- (8) In subsection (4)(a) above, “working day” means any day other than—
  - (a) a Saturday;
  - (b) a Sunday; or
  - (c) any day which is a public holiday in the area in which the production order is to have effect.

#### **Production orders: supplementary**

- 23C (1) The sheriff may deal with an application for a production order ex parte in chambers.
- (2) The sheriff may, on the application of a person mentioned in subsection (3) below—
    - (a) vary; or
    - (b) discharge,
 a production order.
  - (3) The persons referred to in subsection (2) above are—
    - (a) the authorised officer who applied for the production order;
    - (b) a person affected by the order.
  - (4) Without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995, rules of court made by Act of Adjournal may make provision in relation to—
    - (a) proceedings relating to the making of production orders; and
    - (b) the variation or discharge of such orders.

#### **Offences in relation to production orders**

- 23D (1) A person who intentionally—
- (a) falsifies;
  - (b) conceals;
  - (c) destroys or otherwise disposes of,
- a document to which this section applies, or who causes or permits any of those acts, commits an offence.
- (2) This section applies to a document which the person is required, under a production order, to—
    - (a) deliver to an officer; or
    - (b) give an officer access to.



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- (3) A person does not commit an offence if the person acts—
  - (a) with the written permission of—
    - (i) an officer; or
    - (ii) the sheriff who made the order,after the document has been delivered or the officer has had access to it;
  - (b) subject to subsection (4) below, after the expiry of the period of 2 years beginning with the day on which the order is made.
- (4) Subsection (3)(b) above does not apply where, before the expiry of the period referred to in that paragraph, an officer gives notice in writing to the person that the order has not been complied with to that officer's satisfaction.
- (5) A person who commits an offence under subsection (1) above is liable—
  - (a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine or both.

#### *Revenue and Customs warrants*

#### **Revenue and Customs warrants**

- 23E (1) The sheriff may, if satisfied on information on oath given by an authorised officer as to the matters mentioned in subsection (2) below, grant a warrant under subsection (3) below (in this Part, a “Revenue and Customs warrant”).
- (2) Those matters are—
    - (a) that there are reasonable grounds to suspect that a Revenue and Customs offence has been or is being committed; and
    - (b) that evidence of that offence is to be found in or on premises specified in the information.
  - (3) A Revenue and Customs warrant is a warrant authorising an officer to—
    - (a) enter, if necessary by force, the premises specified in the information; and
    - (b) search those premises,before the expiry of the period of one month beginning with the day on which the warrant is granted.
  - (4) The sheriff may, when granting a warrant, impose such conditions as the sheriff considers appropriate.
  - (5) An officer who enters premises under the authority of a Revenue and Customs warrant may—
    - (a) subject to any condition imposed under subsection (4) above, take with the officer such other persons (including persons who are not officers) as appear to that officer to be necessary;
    - (b) subject to subsection (6) below, seize and remove any document or other thing found in or on the premises which the officer has

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- reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of the offence mentioned in subsection (2)(a) above; and
- (c) subject to subsections (6) and (7) below—
- (i) search or cause to be searched any person found in or on the premises whom the officer has reasonable cause to believe may be in possession of any such document or thing; and
  - (ii) seize and remove any such document or thing found.
- (6) An officer acting under the authority of a Revenue and Customs warrant may, if the officer considers it appropriate, make copies of any document or thing found in or on the premises or on any person searched under subsection (5) (c) above.
- (7) No person may be searched under subsection (5)(c) above except by a person of the same sex.
- (8) A sheriff may grant a Revenue and Customs warrant in relation to premises situated in an area of Scotland notwithstanding that it is outside the area of that sheriff and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.
- (9) In this section and in sections 23F to 23H of this Act, “premises” includes any place and, in particular—
- (a) any vehicle, vessel, aircraft or hovercraft;
  - (b) any offshore installation (within the meaning of section 12(1) of the Mineral Workings (Offshore Installations) Act 1971); and
  - (c) any tent or other movable structure.

*Orders and warrants: common provisions*

**Procedure where documents etc removed**

- 23F (1) This section applies where—
- (a) a document is removed under a production order;
  - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) An officer who removes any document or thing shall, if requested to do so by a person mentioned in subsection (3) below, provide that person with a record of what that officer removed.
- (3) The persons referred to in subsection (2) above are—
- (a) in the case of a document removed under a production order, a haver;
  - (b) in the case of a document or thing removed under a Revenue and Customs warrant—
    - (i) a person who is the occupier of any premises from which the document or thing was removed; or
    - (ii) a person who had possession or control of the document or thing before it was removed.

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- (4) The officer must provide the record within a reasonable time of the request for it.

### **Access to and copies of documents etc removed**

23G(1) This section applies where—

- (a) a document is removed under a production order;
  - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) A person mentioned in subsection (3) below may apply to the officer in overall charge of the investigation to which the order or warrant relates—
- (a) for access to the document or thing; or
  - (b) for a copy or photograph of it.
- (3) The persons referred to in subsection (2) above are—
- (a) in the case of a document removed under a production order—
    - (i) a haver; or
    - (ii) a person acting on behalf of the haver;
  - (b) in the case of a document or thing removed under a Revenue and Customs warrant, a person who had possession or control of the document or thing before it was removed.
- (4) Unless subsection (5) below applies, the officer in overall charge of the investigation shall—
- (a) in a case to which subsection (2)(a) above applies, allow the applicant supervised access to the document or thing; or
  - (b) in a case to which subsection (2)(b) above applies—
    - (i) allow the applicant supervised access to the document or thing for the purposes of photographing or copying it; or
    - (ii) photograph or copy the document or thing (or cause it to be so photographed or copied) and provide the applicant with such a photograph or copy within a reasonable time.
- (5) The officer in overall charge need not comply with subsection (4) above where that officer has reasonable grounds for believing that to do so would prejudice—
- (a) the investigation;
  - (b) the investigation of a Revenue and Customs offence other than the offence for the purposes of the investigation of which the document or thing was removed; or
  - (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b) above.
- (6) In subsection (4) above, “supervised access” means access under the supervision of an officer approved by the officer in overall charge of the investigation.

### **Failure to comply with requirements of section 23F and 23G**

23H(1) This section applies where—

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- (a) a document is removed under a production order;
  - (b) a document or other thing is removed under a Revenue and Customs warrant.
- (2) Subject to subsection (3) below, a person who claims that—
- (a) an officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
  - (b) an officer in overall charge of an investigation has failed to comply with the requirements of section 23G(4) of this Act,
- may apply to the sheriff for an order under subsection (4) below.
- (3) An application under subsection (2) above—
- (a) relating to a failure mentioned in subsection (2)(a) above, may be made only by a person who is entitled to make a request under section 23F(2) of this Act;
  - (b) relating to a failure mentioned in subsection (2)(b) above, may be made only by—
    - (i) a haver;
    - (ii) a person acting on behalf of a haver but only where that person applied under section 23G(2) of this Act;
    - (iii) a person who had possession or control of the document or thing before it was removed under a Revenue and Customs warrant.
- (4) The sheriff may, if satisfied that—
- (a) the officer has failed to comply with the requirements of section 23F(2) or (3) of this Act; or
  - (b) the officer in overall charge of the investigation has failed to comply with the requirements of section 23G(4) of this Act,
- order the officer or, as the case may be, the officer in overall charge of the investigation to comply with the requirements within such time and in such manner as the sheriff specifies in the order.

### **Confidentiality**

- 23J (1) Neither a production order nor a Revenue and Customs warrant authorises the seizure, removal or copying of any documents or other things subject to legal privilege.
- (2) Subsection (1) above does not apply where the document or thing is held for the purposes of furthering a criminal purpose.
- (3) In this section—
- “documents or other things subject to legal privilege” means—
- (a) communications between a professional legal adviser and the adviser's client; or
  - (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,
- which would, in legal proceedings, be protected from disclosure by virtue of any rule of law relating to confidentiality of communications.

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### **Meaning of “document” etc**

- 23K(1) In sections 23B to 23J of this Act, references to a “document” include—
- (a) any thing in which information of any description is recorded; and
  - (b) any part of such a thing.
- (2) Where a production order or a Revenue and Customs warrant applies to a document in electronic or magnetic form, the order or, as the case may be, the warrant requires the person having possession or control of the document to deliver or, as the case may be, give access to the information in a form which is visible and legible and, if the officer executing the order or warrant wishes to remove it, in a form which can be removed.

### *Execution and enforcement of orders and warrants outwith Scotland*

### **Cross-border exercise of powers**

- 23L (1) Section 4 of the Summary Jurisdiction Act 1881 (execution of process of Scottish courts in England and Wales) shall apply to—
- (a) a production order; and
  - (b) a Revenue and Customs warrant,
- as it applies to a process mentioned in that section.
- (2) Section 29 of the Petty Sessions (Ireland) Act 1851 (execution of warrants in Northern Ireland) shall apply to—
- (a) a production order; and
  - (b) a Revenue and Customs warrant,
- as it applies to a warrant mentioned in that section.

### *Detention and questioning of suspects and witnesses*

### **Powers relating to suspects and potential witnesses**

- 23M(1) Where an authorised officer has reasonable grounds for suspecting that a person has committed or is committing, at any place, a Revenue and Customs offence, the officer may require—
- (a) that person, if found by the officer at that place or at any place where the officer is entitled to be, to give—
    - (i) the information mentioned in subsection (2) below; and
    - (ii) an explanation of the circumstances which have given rise to the officer's suspicion;
  - (b) any other person whom the officer finds at that place or at any place where the officer is entitled to be and who the officer believes has information relating to the offence, to give the information mentioned in subsection (2) below.
- (2) That information is—
- (a) the person's name;
  - (b) the person's address;

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- (c) the person's date of birth;
  - (d) the person's place of birth (in such detail as the officer considers necessary or expedient for the purpose of establishing that person's identity); and
  - (e) the person's nationality.
- (3) The officer may require the person mentioned in paragraph (a) of subsection (1) above to remain with the officer while the officer (any or all) —
- (a) subject to subsection (4) below, verifies any information mentioned in subsection (2) above given by the person;
  - (b) subject to section (5) below, establishes whether the person may be a person suspected of having committed a Revenue and Customs offence other than the offence in relation to which the officer made the requirement of that person under paragraph (a) of subsection (1) above;
  - (c) notes any explanation proffered by the person.
- (4) The officer shall exercise the power under paragraph (a) of subsection (3) above only where it appears to the officer that such verification can be obtained quickly.
- (5) The officer shall exercise the power under paragraph (b) of subsection (3) above only where—
- (a) the person mentioned in paragraph (a) of subsection (1) above has given a name and address; and
  - (b) it appears to the officer that establishing the matter mentioned in paragraph (b) of subsection (3) above can be achieved quickly.
- (6) The officer may use reasonable force to ensure that the person mentioned in paragraph (a) of subsection (1) above remains with that officer.
- (7) The officer shall inform a person, when making a requirement of that person under—
- (a) paragraph (a) of subsection (1) above, of the officer's suspicion and of the general nature of the offence which the officer suspects that the person has committed or is committing;
  - (b) paragraph (b) of subsection (1) above, of the officer's suspicion, of the general nature of the offence which the officer suspects has been or is being committed and that the reason for the requirement is that the officer believes the person has information relating to the offence;
  - (c) subsection (3) above, why the person is being required to remain with the officer;
  - (d) any of the said subsections, that failure to comply with the requirement may constitute an offence.

### **Fingerprinting of persons suspected of offences**

23N(1) An authorised officer may, if the person mentioned in section 23M(1)(a) of this Act gives a name and address, require that person to provide—

- (a) that person's fingerprints; or

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- (b) a record, created by an approved device, of the skin on that person's fingers.
- (2) Such fingerprints or record may be used only for the purposes of—
- (a) verifying the name and address given by the person;
  - (b) establishing whether the person may be a person who is suspected of having committed any other Revenue and Customs offence,
- and all record of such fingerprints or record shall be destroyed as soon as possible after they have fulfilled those purposes.
- (3) The officer shall inform a person, when making a requirement of that person under subsection (1) above—
- (a) of the existence of the power to make the requirement and why the officer proposes to exercise it in the person's case; and
  - (b) that failure to comply with the requirement may constitute an offence.
- (4) In subsection (1)(b) above, an “approved device” is any device approved by the Scottish Ministers under section 13(8) of the Criminal Procedure (Scotland) Act 1995.

#### **Offences arising from breach of requirements under sections 23M and 23N**

- 23P (1) A person mentioned in paragraph (a) of subsection (1) of section 23M of this Act who, having been required—
- (a) under that subsection to give the information mentioned in subsection (2) of that section;
  - (b) under subsection (3) of that section to remain with an officer; or
  - (c) under subsection (1) of section 23N of this Act to provide that person's fingerprints or a record such as is mentioned in paragraph (b) of that subsection,
- fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) A person mentioned in paragraph (b) of subsection (1) of section 23M of this Act who, having been required under that subsection to give the information mentioned in subsection (2) of that section, fails, without reasonable excuse, to do so, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (3) An authorised officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting has committed an offence under subsection (1) or (2) above.”

#### **Commencement Information**

**I52** [Sch. 23 para. 3](#) in force at 1.12.2007 for the purposes of the amendment made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

- 4 In section 24 (detention and questioning by customs officers)—
- (a) in subsection (1)—

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- (i) for “an offence punishable by imprisonment relating to an assigned matter” substitute “ a Revenue and Customs offence punishable by imprisonment ”,
- (ii) for “a customs office” substitute “ an office of Revenue and Customs ”, and
- (iii) for “customs office”, in the second place, substitute “ office of Revenue and Customs ”,
- (b) in subsection (5), for “customs office” (in both places) substitute “ office of Revenue and Customs ”,
- (c) in subsection (8)—
  - (i) for “his name and address” substitute “ the information mentioned in subsection (8A) below ”, and
  - (ii) for “customs office” substitute “ office of Revenue and Customs ”,
- (d) after that subsection insert—
  - “(8A) That information is—
    - (a) the person's name;
    - (b) the person's address;
    - (c) the person's date of birth;
    - (d) the person's place of birth (in such detail as the officer considers necessary or expedient for the purpose of establishing that person's identify); and
    - (e) the person's nationality.”,
- (e) omit subsection (9), and
- (f) the heading accordingly becomes “ **Detention and questioning at office of Revenue and Customs** ”.

#### Commencement Information

**I53** [Sch. 23 para. 4](#) in force at 1.12.2007 for the purposes of the amendments made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

- 5 In section 25(1) (right to have someone informed of the fact of detention)—
- (a) for “a customs office” substitute “ “an office of Revenue and Customs ”, and
  - (b) for “customs office”, in the second and third places, substitute “ office of Revenue and Customs ”.

#### Commencement Information

**I54** [Sch. 23 para. 5](#) in force at 1.12.2007 for the purposes of the amendments made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

- 6 In section 26 (detention in connection with drug smuggling offences), for “a customs office” (in both places) substitute “ an office of Revenue and Customs ”.



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#### Commencement Information

**I55** Sch. 23 para. 6 in force at 1.12.2007 for the purposes of the amendments made by that paragraph by S.I. 2007/3166, art. 3(b)

7 After that section insert—

#### *“Power of arrest*

#### **26A Power of arrest**

Where an authorised officer has reasonable grounds for suspecting that a Revenue and Customs offence has been or is being committed, the officer may arrest without warrant any person whom the officer has reasonable grounds for suspecting to be guilty of the offence.

#### *General provisions*

#### **26B Interpretation of Part 3 etc**

(1) In this Part of this Act—

“authorised officer” means an officer acting with the authority (which may be general or specific) of the Commissioners for Her Majesty's Revenue and Customs;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty's Revenue and Customs; and

“officer” means an officer of Revenue and Customs.

(2) In any proceedings (whether civil or criminal) under or arising from this Part of this Act, a certificate of the Commissioners for Her Majesty's Revenue and Customs that an officer had authority to exercise a power or function conferred by a provision of this Part shall be conclusive proof of that fact.”

#### Commencement Information

**I56** Sch. 23 para. 7 in force at 1.12.2007 for the purposes of the amendment made by that paragraph by S.I. 2007/3166, art. 3(b)

#### *Criminal Procedure (Scotland) Act 1995 (c. 46)*

8 Section 307 of the Criminal Procedure (Scotland) Act 1995 (interpretation) is amended as follows.

9 In subsection (1), in the definition of “officer of law”, for paragraph (ba) substitute—

“(ba) subject to subsection (1A) below, an officer of Revenue and Customs acting with the authority (which may be general or specific) of the Commissioners for Her Majesty's Revenue and Customs;”.

*Status: Point in time view as at 16/12/2010.*

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**Commencement Information**

**I57** [Sch. 23 para. 9](#) in force at 1.12.2007 for the purposes of the amendment made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

10 After that subsection insert—

“(1A) The inclusion of officers of Revenue and Customs as “officers of law” shall not have effect in relation to any matter specified in—

(a) section 54(4)(b) or (f) of; or

(b) paragraphs 3, 7, 10, 13 to 15, 19 or 24 to 29 of Schedule 1 to, the Commissioners for Revenue and Customs Act 2005 (former Inland Revenue matters).

(1B) In any proceedings (whether civil or criminal) under or arising from this Act, a certificate of the Commissioners for Her Majesty's Revenue and Customs that an officer of Revenue and Customs had the authority to exercise a power or function conferred by a provision of this Act shall be conclusive evidence of that fact.”

**Commencement Information**

**I58** [Sch. 23 para. 10](#) in force at 1.12.2007 for the purposes of the amendment made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

*Criminal Justice and Police Act 2001 (c. 16)*

11 The Criminal Justice and Police Act 2001 is amended as follows.

12 In section 63(2) (powers to obtain hard copies etc of information stored in electronic form), after paragraph (g) insert—

“(ga) section 23E(5)(b) (as read with section 23K(2)) of the Criminal Law (Consolidation) (Scotland) Act 1995;”.

**Commencement Information**

**I59** [Sch. 23 para. 12](#) in force at 1.12.2007 for the purposes of the amendment made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

13 In Schedule 1—

(a) in Part 1, after paragraph 59 insert—

*“Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*

59A The power of seizure conferred by section 23E(3) of the Criminal Law (Consolidation) (Scotland) Act 1995 (seizure of evidence of Revenue and Customs offences).”, and

(b) in Part 2, after paragraph 81 insert—

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“*Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39)*”

- 81A The power of seizure conferred by section 23E(3) (as read with section 23E(5)(c)) of the Criminal Law (Consolidation) (Scotland) Act 1995 (seizure of evidence of Revenue and Customs offences).”

**Commencement Information**

- I60** [Sch. 23 para. 13](#) in force at 1.12.2007 for the purposes of the amendments made by that paragraph by [S.I. 2007/3166, art. 3\(b\)](#)

- 14 (1) The amendments made by this Schedule come into force in accordance with provision made by the Treasury by order.
- (2) The power to make an order under this paragraph is exercisable by statutory instrument.

SCHEDULE 24 **U.K.**

Section 97

PENALTIES FOR ERRORS

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

- C7** Sch. 24 applied (N.I.) (1.4.2008) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2000 \(S.R. 2000/121\), regs. 7\(2A\)\(b\), 26\(4\)](#) (as amended by [S.R. 2008/129, regs. 1, 3\(a\), 4](#))
- C8** Sch. 24 applied (6.4.2008) by [The Social Security \(Contributions\) Regulations 2001 \(S.I. 2001/1004\), Sch. 4 paras. 22\(7\), 31\(8\)](#) (as amended by [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/636\), regs. 1\(3\)\(b\), 7](#))
- C9** Sch. 24 applied (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009 \(S.I. 2009/470\), regs. 1\(1\), 13\(3\)\(b\), 40\(4\), 59\(8\)\(b\)](#) (with [reg. 1\(4\)\(6\)](#))
- C10** Sch. 24 applied (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/128\), regs. 1\(1\), 9\(3\)\(b\), 35\(4\), 54\(8\)\(b\)](#)
- C11** Sch. 24 applied (with modifications) by [SI 2001/1004 reg. 81\(1\)\(1A\)](#) (as substituted (with application in accordance with [reg. 1\(3\)](#) of the amending S.I.) by [The Social Security \(Contributions\) \(Amendment No. 4\) Regulations 2010 \(S.I. 2010/721\), regs. 1\(2\), 4](#))
- C12** Sch. 24 modified (8.4.2010) by [Finance Act 2010 \(c. 13\), Sch. 1 para. 37](#)

**PART 1 U.K.**

LIABILITY FOR PENALTY

*Error in taxpayer's document*

- 1 (1) A penalty is payable by a person (P) where—
- (a) P gives HMRC a document of a kind listed in the Table below, and
- (b) Conditions 1 and 2 are satisfied.

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- (2) Condition 1 is that the document contains an inaccuracy which amounts to, or leads to—
- (a) an understatement of [<sup>F81</sup>a] liability to tax,
  - (b) a false or inflated statement of a loss <sup>F82</sup>..., or
  - (c) a false or inflated claim to repayment of tax.
- (3) Condition 2 is that the inaccuracy was [<sup>F83</sup>careless (within the meaning of paragraph 3) or deliberate on P's part].
- (4) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.
- <sup>F84</sup>(5) In relation to a return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975 [<sup>F85</sup>or a statement or declaration under paragraph 13A of that Schedule], references in this Schedule to P include any person who, after the giving of the return for a taxable field (within the meaning of that Act), becomes the responsible person for the field (within the meaning of that Act).]

<i>Tax</i>	<i>Document</i>
Income tax or capital gains tax	Return under section 8 of TMA 1970 (personal return).
Income tax or capital gains tax	Return under section 8A of TMA 1970 (trustee's return).
Income tax or capital gains tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief.
Income tax or capital gains tax	Accounts in connection with ascertaining liability to tax.
Income tax or capital gains tax	Partnership return.
Income tax or capital gains tax	Statement or declaration in connection with a partnership return.
Income tax or capital gains tax	Accounts in connection with a partnership return.
[ <sup>F86</sup> Income tax	Return under section 254 of FA 2004.]
Income tax	Return for the purposes of PAYE regulations.
Construction industry deductions	Return for the purposes of regulations under section 70(1)(a) of FA 2004 in connection with deductions on account of tax under the Construction Industry Scheme.
Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998.

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Corporation tax	Return, statement or declaration in connection with a claim for an allowance, deduction or relief.
Corporation tax	Accounts in connection with ascertaining liability to tax.
VAT	VAT return under regulations made under paragraph 2 of Schedule 11 to VATA 1994.
VAT	Return, statement or declaration in connection with a claim.
[ <sup>F87</sup> Insurance premium tax	Return under regulations under section 54 of FA 1994.
Insurance premium tax	Return, statement or declaration in connection with a claim.
Inheritance tax	Account under section 216 or 217 of IHTA 1984.
Inheritance tax	Information or document under regulations under section 256 of IHTA 1984.
Inheritance tax	Statement or declaration in connection with a deduction, exemption or relief.
Stamp duty land tax	Return under section 76 of FA 2003.
Stamp duty reserve tax	Return under regulations under section 98 of FA 1986.
Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to the Oil Taxation Act 1975.
[ <sup>F88</sup> Petroleum revenue tax	Statement or declaration in connection with a claim under paragraph 13A of Schedule 2 to the Oil Taxation Act 1975.]
Petroleum revenue tax	Statement or declaration in connection with a claim under Schedule 5, 6, 7 or 8 to the Oil Taxation Act 1975.
Petroleum revenue tax	Statement under section 1(1)(a) of the Petroleum Revenue Tax Act 1980.
Aggregates levy	Return under regulations under section 25 of FA 2001.
Climate change levy	Return under regulations under paragraph 41 of Schedule 6 to FA 2000.
Landfill tax	Return under regulations under section 49 of FA 1996.
Air passenger duty	Return under section 38 of FA 1994.

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Alcoholic liquor duties	Return under regulations under section 13, 49, 56 or 62 of the Alcoholic Liquor Duties Act 1979.
Alcoholic liquor duties	Statement or declaration in connection with a claim for repayment of duty under section 4(4) of FA 1995.
Tobacco products duty	Return under regulations under section 7 of the Tobacco Products Duties Act 1979.
Hydrocarbon oil duties	Return under regulations under section 21 of the Hydrocarbon Oil Duties Act 1979.
Excise duties	Return under regulations under section 93 of CEMA 1979.
Excise duties	Return under regulations under section 100G or 100H of CEMA 1979.
Excise duties	Statement or declaration in connection with a claim.
General betting duty	Return under regulations under paragraph 2 of Schedule 1 to BGDA 1981.
Pool betting duty	Return under regulations under paragraph 2A of Schedule 1 to BGDA 1981.
Bingo duty	Return under regulations under paragraph 9 of Schedule 3 to BGDA 1981.
Lottery duty	Return under regulations under section 28(2) of FA 1993.
Gaming duty	Return under directions under paragraph 10 of Schedule 1 to FA 1997.
Remote gaming duty	Return under regulations under section 26K of BGDA 1981.]
[ <sup>F89</sup> Any of the taxes mentioned above ]	Any document which is likely to be relied upon by HMRC to determine, without further inquiry, a question about— <ul style="list-style-type: none"> <li>(a) P's liability to tax,</li> <li>(b) payments by P by way of or in connection with tax,</li> <li>(c) any other payment by P (including penalties), or</li> <li>(d) repayments, or any other kind of payment or credit, to P.</li> </ul>

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#### Textual Amendments

- F81** Word in Sch. 24 para. 1(2) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(2\)\(a\)](#); [S.I. 2009/571, art. 2](#)
- F82** Words in Sch. 24 para. 1(2) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(2\)\(b\)](#); [S.I. 2009/571, art. 2](#)
- F83** Words in Sch. 24 para. 1(3) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(3\)](#); [S.I. 2009/571, art. 2](#)
- F84** Sch. 24 para. 1(5) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(7\)](#); [S.I. 2009/571, art. 2](#)
- F85** Words in Sch. 24 para. 1(5) inserted (with effect in accordance with s. 28(2) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 12 para. 12\(3\)](#)
- F86** Words in Sch. 24 para. 1 inserted (with effect in accordance with art. 3-5 of the commencing S.I.) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(4\)](#); [S.I. 2009/571, art. 2](#)
- F87** Words in Sch. 24 para. 1 inserted (with effect in accordance with art. 3-5 of the commencing S.I.) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(5\)](#); [S.I. 2009/571, art. 2](#)
- F88** Words in Sch. 24 para. 1 inserted (with effect in accordance with s. 28(2) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [Sch. 12 para. 12\(2\)](#)
- F89** Words in Sch. 24 para. 1 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 2\(6\)](#); [S.I. 2009/571, art. 2](#)

#### Commencement Information

- I61** Sch. 24 para. 1 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2](#) (with [art. 3](#))

*[<sup>F90</sup>Error in taxpayer's document attributable to another person*

#### Textual Amendments

- F90** Sch. 24 para. 1A and cross-heading inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 3](#); [S.I. 2009/571, art. 2](#)

- 1A (1) A penalty is payable by a person (T) where—
- another person (P) gives HMRC a document of a kind listed in the Table in paragraph 1,
  - the document contains a relevant inaccuracy, and
  - the inaccuracy was attributable to T deliberately supplying false information to P (whether directly or indirectly), or to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.
- (2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—
- an understatement of a liability to tax,
  - a false or inflated statement of a loss, or
  - a false or inflated claim to repayment of tax.
- (3) A penalty is payable under this paragraph in respect of an inaccuracy whether or not P is liable to a penalty under paragraph 1 in respect of the same inaccuracy.]

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### *Under-assessment by HMRC*

- 2 (1) A penalty is payable by a person (P) where—
- (a) an assessment issued to P by HMRC understates P's liability to [<sup>F91</sup>a relevant tax], and
  - (b) P has failed to take reasonable steps to notify HMRC, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.
- (2) In deciding what steps (if any) were reasonable HMRC must consider—
- (a) whether P knew, or should have known, about the under-assessment, and
  - (b) what steps would have been reasonable to take to notify HMRC.
- [<sup>F92</sup>(3) In sub-paragraph (1) “relevant tax” means any tax mentioned in the Table in paragraph 1.]
- [<sup>F93</sup>(4) In this paragraph (and in Part 2 of this Schedule so far as relating to this paragraph)—
- (a) “assessment” includes determination, and
  - (b) accordingly, references to an under-assessment include an under-determination.]

#### **Textual Amendments**

- F91** Words in Sch. 24 para. 2(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 4\(2\); S.I. 2009/571, art. 2](#)
- F92** Sch. 24 para. 2(3) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 4\(3\); S.I. 2009/571, art. 2](#)
- F93** Sch. 24 para. 2(4) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 57 para. 2](#)

#### **Commencement Information**

- I62** Sch. 24 para. 2 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2 \(with art. 3\)](#)

### *Degrees of culpability*

- 3 (1) [<sup>F94</sup>For the purposes of a penalty under paragraph 1, inaccuracy in] a document given by P to HMRC is—
- (a) “careless” if the inaccuracy is due to failure by P to take reasonable care,
  - (b) “deliberate but not concealed” if the inaccuracy is deliberate [<sup>F95</sup>on P's part] but P does not make arrangements to conceal it, and
  - (c) “deliberate and concealed” if the inaccuracy is deliberate [<sup>F95</sup>on P's part] and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
- (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate [<sup>F96</sup>on P's part] when the document was given, is to be treated as careless if P—
- (a) discovered the inaccuracy at some later time, and
  - (b) did not take reasonable steps to inform HMRC.



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#### Textual Amendments

- F94** Words in Sch. 24 para. 3(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 5\(2\)\(a\)](#); [S.I. 2009/571, art. 2](#)
- F95** Words in Sch. 24 para. 3(1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 5\(2\)\(b\)](#); [S.I. 2009/571, art. 2](#)
- F96** Words in Sch. 24 para. 3(2) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 5\(3\)](#); [S.I. 2009/571, art. 2](#)

#### Commencement Information

- I63** Sch. 24 para. 3 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2](#) (with [art. 3](#))

## PART 2 **U.K.**

### AMOUNT OF PENALTY

#### *Standard amount*

- 4 (1) The penalty payable under paragraph 1 is—
- (a) for careless action, 30% of the potential lost revenue,
  - (b) for deliberate but not concealed action, 70% of the potential lost revenue, and
  - (c) for deliberate and concealed action, 100% of the potential lost revenue.
- [<sup>F97</sup>(1A) The penalty payable under paragraph 1A is 100% of the potential lost revenue.]
- (2) The penalty payable under paragraph 2 is 30% of the potential lost revenue.
- (3) Paragraphs 5 to 8 define “potential lost revenue”.

#### Textual Amendments

- F97** Sch. 24 para. 4(1A) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 6](#); [S.I. 2009/571, art. 2](#)

#### Commencement Information

- I64** Sch. 24 para. 4 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2](#) (with [art. 3](#))

#### *Potential lost revenue: normal rule*

- 5 (1) “The potential lost revenue” in respect of an inaccuracy in a document [<sup>F98</sup>(including an inaccuracy attributable to a supply of false information or withholding of information)] or a failure to notify an under-assessment is the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.
- (2) The reference in sub-paragraph (1) to the additional amount due or payable includes a reference to—
- (a) an amount payable to HMRC having been erroneously paid by way of repayment of tax, and

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- (b) an amount which would have been repayable by HMRC had the inaccuracy or assessment not been corrected.
- (3) In sub-paragraph (1) “tax” includes national insurance contributions.
- (4) The following shall be ignored in calculating potential lost revenue under this paragraph—
  - (a) group relief, and
  - [<sup>F99</sup>(b) any relief under [<sup>F100</sup>section 458 of CTA 2010] (relief in respect of repayment etc of loan) which is deferred under [<sup>F101</sup>subsection (5)] of that section;]
 (but this sub-paragraph does not prevent a penalty being charged in respect of an inaccurate claim for relief).

#### Textual Amendments

**F98** Words in Sch. 24 para. 5(1) inserted (1.4.2009) by Finance Act 2008 (c. 9), s. 122(2), **Sch. 40 para. 7**; S.I. 2009/571, art. 2

**F99** Sch. 24 para. 5(4)(b) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 57 para. 3**

**F100** Words in Sch. 24 para. 5(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 575(a)** (with Sch. 2)

**F101** Words in Sch. 24 para. 5(4)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 575(b)** (with Sch. 2)

#### Commencement Information

**I65** Sch. 24 para. 5 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by S.I. 2008/568, **art. 2** (with art. 3)

#### *Potential lost revenue: multiple errors*

- 6 (1) Where P is liable to a penalty [<sup>F102</sup>under paragraph 1] in respect of more than one inaccuracy, and the calculation of potential lost revenue under paragraph 5 in respect of each inaccuracy depends on the order in which they are corrected—
  - (a) careless inaccuracies shall be taken to be corrected before deliberate inaccuracies, and
  - (b) deliberate but not concealed inaccuracies shall be taken to be corrected before deliberate and concealed inaccuracies.
- (2) In calculating potential lost revenue where P is liable to a penalty [<sup>F103</sup>under paragraph 1] in respect of one or more understatements in one or more documents relating to a tax period, account shall be taken of any overstatement in any document given by P which relates to the same tax period.
- (3) In sub-paragraph (2)—
  - (a) “understatement” means an inaccuracy that satisfies Condition 1 of paragraph 1, and
  - (b) “overstatement” means an inaccuracy that does not satisfy that condition.
- (4) For the purposes of sub-paragraph (2) overstatements shall be set against understatements in the following order—
  - (a) understatements in respect of which P is not liable to a penalty,
  - (b) careless understatements,

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- (c) deliberate but not concealed understatements, and
  - (d) deliberate and concealed understatements.
- (5) In calculating [<sup>F104</sup>for the purposes of a penalty under paragraph 1] potential lost revenue in respect of a document given by or on behalf of P no account shall be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person's tax liability to be adjusted by reference to P's).

#### Textual Amendments

- F102** Words in Sch. 24 para. 6(1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 8\(2\); S.I. 2009/571, art. 2](#)
- F103** Words in Sch. 24 para. 6(2) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 8\(2\); S.I. 2009/571, art. 2](#)
- F104** Words in Sch. 24 para. 6(5) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 8\(3\); S.I. 2009/571, art. 2](#)

#### Commencement Information

- I66** Sch. 24 para. 6 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2 \(with art. 3\)](#)

#### *Potential lost revenue: losses*

- 7 (1) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is calculated in accordance with paragraph 5.
- (2) Where an inaccuracy has the result that a loss is wrongly recorded for purposes of direct tax and the loss has not been wholly used to reduce the amount due or payable in respect of tax, the potential lost revenue is—
- (a) the potential lost revenue calculated in accordance with paragraph 5 in respect of any part of the loss that has been used to reduce the amount due or payable in respect of tax, plus
  - (b) 10% of any part that has not.
- (3) Sub-paragraphs (1) and (2) apply both—
- (a) to a case where no loss would have been recorded but for the inaccuracy, and
  - (b) to a case where a loss of a different amount would have been recorded (but in that case sub-paragraphs (1) and (2) apply only to the difference between the amount recorded and the true amount).
- (4) Where an inaccuracy has the effect of creating or increasing an aggregate loss recorded for a group of companies—
- (a) the potential lost revenue shall be calculated in accordance with this paragraph, and
  - (b) in applying paragraph 5 in accordance with sub-paragraphs (1) and (2) above, group relief may be taken into account (despite paragraph 5(4)(a)).
- (5) The potential lost revenue in respect of a loss is nil where, because of the nature of the loss or P's circumstances, there is no reasonable prospect of the loss being used to support a claim to reduce a tax liability (of any person).

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I67** Sch. 24 para. 7 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

#### *Potential lost revenue: delayed tax*

- 8 (1) Where an inaccuracy resulted in an amount of tax being declared later than it should have been (“the delayed tax”), the potential lost revenue is—
- (a) 5% of the delayed tax for each year of the delay, or
  - (b) a percentage of the delayed tax, for each separate period of delay of less than a year, equating to 5% per year.
- (2) This paragraph does not apply to a case to which paragraph 7 applies.

#### Commencement Information

**I68** Sch. 24 para. 8 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

#### *Reductions for disclosure*

- <sup>F105</sup>(A1) Paragraph 10 provides for reductions in penalties under paragraphs 1, 1A and 2 where a person discloses an inaccuracy, a supply of false information or withholding of information, or a failure to disclose an under-assessment.]
- (1) A person discloses an inaccuracy<sup>F106</sup>, a supply of false information or withholding of information,] or a failure to disclose an under-assessment by—
    - (a) telling HMRC about it,
    - (b) giving HMRC reasonable help in quantifying the inaccuracy<sup>F107</sup>, the inaccuracy attributable to the <sup>F108</sup>supply of false information] or withholding of information, or the] under-assessment, and
    - (c) allowing HMRC access to records for the purpose of ensuring that the inaccuracy<sup>F109</sup>, the inaccuracy attributable to the <sup>F110</sup>supply of false information] or withholding of information, or the] under-assessment is fully corrected.
  - (2) Disclosure—
    - (a) is “unprompted” if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy<sup>F111</sup>, the supply of false information or withholding of information, or the under-assessment], and
    - (b) otherwise, is “prompted”.
  - (3) In relation to disclosure “quality” includes timing, nature and extent.

#### Textual Amendments

**F105** Sch. 24 para. 9(A1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 9\(2\)](#); [S.I. 2009/571](#), [art. 2](#)

*Status: Point in time view as at 16/12/2010.*

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- F106** Words in Sch. 24 para. 9(1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 9\(3\)\(a\)](#); [S.I. 2009/571](#), art. 2
- F107** Words in Sch. 24 para. 9(1)(b) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 9\(3\)\(b\)](#); [S.I. 2009/571](#), art. 2
- F108** Words in Sch. 24 para. 9(1)(b) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 4](#)
- F109** Words in Sch. 24 para. 9(1)(c) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 9\(3\)\(b\)](#); [S.I. 2009/571](#), art. 2
- F110** Words in Sch. 24 para. 9(1)(c) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 4](#)
- F111** Words in Sch. 24 para. 9(2)(a) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 9\(4\)](#); [S.I. 2009/571](#), art. 2

#### Commencement Information

- I69** Sch. 24 para. 9 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

- 10 (1) Where a person who would otherwise be liable to a 30% penalty has made an unprompted disclosure, HMRC shall reduce the 30% to a percentage (which may be 0%) which reflects the quality of the disclosure.
- (2) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC shall reduce the 30% to a percentage, not below 15%, which reflects the quality of the disclosure.
- (3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.
- (4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC shall reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.
- (5) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC shall reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.
- (6) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

#### Commencement Information

- I70** Sch. 24 para. 10 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

#### *Special reduction*

- 11 (1) If they think it right because of special circumstances, HMRC may reduce a penalty under paragraph 1<sup>F112</sup>, 1A] or 2.
- (2) In sub-paragraph (1) “special circumstances” does not include—
- (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

*Status: Point in time view as at 16/12/2010.*

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- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, and
  - (b) agreeing a compromise in relation to proceedings for a penalty.

#### Textual Amendments

**F112** Word in Sch. 24 para. 11(1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 10](#); [S.I. 2009/571](#), art. 2

#### Commencement Information

**I71** Sch. 24 para. 11 in force at 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

### *Interaction with other penalties <sup>F113</sup> and late payment surcharges*

#### Textual Amendments

**F113** Words in Sch. 24 para. 12 cross-heading inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 11\(4\)](#); [S.I. 2009/571](#), art. 2

- 12 (1) The final entry in the Table in paragraph 1 excludes a document in respect of which a penalty is payable under section 98 of TMA 1970 (special returns).
- (2) The amount of a penalty for which P is liable under paragraph 1 or 2 in respect of a document relating to a tax period shall be reduced by the amount of any other penalty <sup>F114</sup>incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.]
- (3) In the application of section 97A of TMA 1970 (multiple penalties) no account shall be taken of a penalty under paragraph 1 or 2.
- <sup>F115</sup>(4) Where penalties are imposed under paragraphs 1 and 1A in respect of the same inaccuracy, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.]

#### Textual Amendments

**F114** Words in Sch. 24 para. 12(2) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 11\(2\)](#); [S.I. 2009/571](#), art. 2

**F115** Sch. 24 para. 12(4) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 11\(3\)](#); [S.I. 2009/571](#), art. 2

#### Commencement Information

**I72** Sch. 24 para. 12 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

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### PART 3 U.K.

#### PROCEDURE

##### *Assessment*

- 13 (1) [<sup>F116</sup>Where a person] becomes liable for a penalty under paragraph 1 [<sup>F117</sup>, 1A] or 2 HMRC shall—
- (a) assess the penalty,
  - (b) [<sup>F118</sup>notify the person], and
  - (c) state in the notice a tax period in respect of which the penalty is assessed.
- [<sup>F119</sup>(1A) A penalty under paragraph 1, 1A or 2 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.]
- (2) An assessment—
- (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
  - (b) may be enforced as if it were an assessment to tax, and
  - (c) may be combined with an assessment to tax.
- (3) An assessment of a penalty under paragraph 1 [<sup>F120</sup> or 1A] must be made [<sup>F121</sup>before the end of the] period of 12 months beginning with—
- (a) the end of the appeal period for the decision correcting the inaccuracy, or
  - (b) if there is no assessment [<sup>F122</sup>to the tax concerned] within paragraph (a), the date on which the inaccuracy is corrected.
- (4) An assessment of a penalty under paragraph 2 must be made [<sup>F123</sup>before the end of the period of 12 months beginning with—
- (a) the end of the appeal period for the assessment of tax which corrected the understatement, or
  - (b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.]
- (5) For the purpose of sub-paragraphs (3) and (4) a reference to an appeal period is a reference to the period during which—
- (a) an appeal could be brought, or
  - (b) an appeal that has been brought has not been determined or withdrawn.
- (6) Subject to sub-paragraphs (3) and (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.
- [<sup>F124</sup>(7) In this Part of this Schedule references to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.]

#### Textual Amendments

**F116** Words in Sch. 24 para. 13(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 12\(2\)\(a\)](#); [S.I. 2009/571](#), art. 2

**F117** Word in Sch. 24 para. 13(1) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 12\(2\)\(b\)](#); [S.I. 2009/571](#), art. 2

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- F118** Words in Sch. 24 para. 13(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 12(2)(c)**; [S.I. 2009/571](#), art. 2
- F119** Sch. 24 para. 13(1A) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 12(3)**; [S.I. 2009/571](#), art. 2
- F120** Words in Sch. 24 para. 13(3) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 12(4)(a)**; [S.I. 2009/571](#), art. 2
- F121** Words in Sch. 24 para. 13(3) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 12(4)(b)**; [S.I. 2009/571](#), art. 2
- F122** Words in Sch. 24 para. 13(3) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 12(4)(c)**; [S.I. 2009/571](#), art. 2
- F123** Words in Sch. 24 para. 13(4) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), **Sch. 40 para. 12(5)**; [S.I. 2009/571](#), art. 2
- F124** Sch. 24 para. 13(7) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 57 para. 5**

#### Commencement Information

- I73** Sch. 24 para. 13 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), **art. 2** (with **art. 3**)

#### Suspension

- 14 (1) HMRC may suspend all or part of a penalty for a careless inaccuracy under paragraph 1 by notice in writing to P.
- (2) A notice must specify—
- what part of the penalty is to be suspended,
  - a period of suspension not exceeding two years, and
  - conditions of suspension to be complied with by P.
- (3) HMRC may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under paragraph 1 for careless inaccuracy.
- (4) A condition of suspension may specify—
- action to be taken, and
  - a period within which it must be taken.
- (5) On the expiry of the period of suspension—
- if P satisfies HMRC that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and
  - otherwise, the suspended penalty or part becomes payable.
- (6) If, during the period of suspension of all or part of a penalty under paragraph 1, P becomes liable for another penalty under that paragraph, the suspended penalty or part becomes payable.

#### Commencement Information

- I74** Sch. 24 para. 14 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), **art. 2** (with **art. 3**)



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### Appeal

- 15 (1) [<sup>F125</sup>A person may] appeal against a decision of HMRC that a penalty is payable [<sup>F126</sup>by the person].
- (2) [<sup>F125</sup>A person may] appeal against a decision of HMRC as to the amount of a penalty payable [<sup>F126</sup>by the person].
- (3) [<sup>F125</sup>A person may] appeal against a decision of HMRC not to suspend a penalty payable [<sup>F126</sup>by the person].
- (4) [<sup>F125</sup>A person may] appeal against a decision of HMRC setting conditions of suspension of a penalty payable [<sup>F126</sup>by the person].

#### Textual Amendments

**F125** Words in Sch. 24 para. 15 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 13\(a\)](#); [S.I. 2009/571, art. 2](#)

**F126** Words in Sch. 24 para. 15 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 13\(b\)](#); [S.I. 2009/571, art. 2](#)

#### Commencement Information

**I75** Sch. 24 para. 15 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2](#) (with [art. 3](#))

- <sup>F127</sup>16(1) An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).
- (2) [<sup>F128</sup>Sub-paragraph (1) does not apply—
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
- (b) in respect of any other matter expressly provided for by this Act.]]

#### Textual Amendments

**F127** Sch. 24 para. 16 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 1 para. 466](#)

**F128** Sch. 24 para. 16(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\), Sch. 57 para. 6](#)

- 17 (1) On an appeal under paragraph 15(1) the <sup>F129</sup>... tribunal may affirm or cancel HMRC's decision.
- (2) On an appeal under paragraph 15(2) the <sup>F130</sup>... tribunal may—
- (a) affirm HMRC's decision, or
- (b) substitute for HMRC's decision another decision that HMRC had power to make.
- (3) If the <sup>F131</sup>... tribunal substitutes its decision for HMRC's, the <sup>F131</sup>... tribunal may rely on paragraph 11—

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- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
  - (b) to a different extent, but only if the <sup>F131</sup>... tribunal thinks that HMRC's decision in respect of the application of paragraph 11 was flawed.
- (4) On an appeal under paragraph 15(3)—
- (a) the <sup>F132</sup>... tribunal may order HMRC to suspend the penalty only if it thinks that HMRC's decision not to suspend was flawed, and
  - (b) if the <sup>F133</sup>... tribunal orders HMRC to suspend the penalty—
    - (i) P may appeal <sup>F134</sup>... against a provision of the notice of suspension, and
    - (ii) the <sup>F135</sup>... tribunal may order HMRC to amend the notice.
- (5) On an appeal under paragraph 15(4) the <sup>F136</sup>... tribunal—
- (a) may affirm the conditions of suspension, or
  - (b) may vary the conditions of suspension, but only if the <sup>F136</sup>... tribunal thinks that HMRC's decision in respect of the conditions was flawed.
- [<sup>F137</sup>(5A) In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 16(1)).]
- (6) In sub-paragraphs (3)(b), (4)(a) and (5)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (7) Paragraph 14 (see in particular paragraph 14(3)) is subject to the possibility of an order under this paragraph.

#### Textual Amendments

- F129** Word in Sch. 24 para. 17(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(2)**
- F130** Word in Sch. 24 para. 17(2) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(2)**
- F131** Word in Sch. 24 para. 17(3) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(2)**
- F132** Word in Sch. 24 para. 17(4)(a) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(3)(a)**
- F133** Word in Sch. 24 para. 17(4)(b) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(3)(b)(i)**
- F134** Words in Sch. 24 para. 17(4)(b)(i) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(3)(b)(ii)**
- F135** Word in Sch. 24 para. 17(4)(b)(ii) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(3)(b)(iii)**
- F136** Word in Sch. 24 para. 17(5) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(4)**
- F137** Sch. 24 para. 17(5A) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 467(5)**

#### Commencement Information

- I76** Sch. 24 para. 17 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), **art. 2** (with **art. 3**)

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## PART 4 U.K.

### MISCELLANEOUS

#### *Agency*

- 18 (1) P is liable under paragraph 1(1)(a) where a document which contains a careless inaccuracy (within the meaning of paragraph 3) is given to HMRC on P's behalf.
- (2) In paragraph 2(1)(b) and (2)(a) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.
- (3) Despite sub-paragraphs (1) and (2), P is not liable to a penalty [<sup>F138</sup>under paragraph 1 or 2] in respect of anything done or omitted by P's agent where P satisfies HMRC that P took reasonable care to avoid inaccuracy (in relation to paragraph 1) or unreasonable failure (in relation to paragraph 2).
- (4) In paragraph 3(1)(a) (whether in its application to a document given by P or, by virtue of sub-paragraph (1) above, in its application to a document given on P's behalf) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.
- (5) In paragraph 3(2) a reference to P includes a reference to a person who acts on P's behalf in relation to tax.

#### **Textual Amendments**

**F138** Words in Sch. 24 para. 18(3) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\), Sch. 40 para. 15; S.I. 2009/571, art. 2](#)

#### **Commencement Information**

**I77** Sch. 24 para. 18 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568, art. 2](#) (with [art. 3](#))

#### *Companies: officers' liability*

- 19 (1) Where a penalty under paragraph 1 is payable by a company for a deliberate inaccuracy which was attributable to an officer [<sup>F139</sup>of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as HMRC] may specify by written notice to the officer.
- (2) Sub-paragraph (1) does not allow HMRC to recover more than 100% of a penalty.
- (3) In the application of sub-paragraph (1) to a body corporate [<sup>F140</sup>other than a limited liability partnership] “officer” means—
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006 (c. 46)), <sup>F141</sup>...
- [<sup>F142</sup>(aa) a manager, and]
- (b) a secretary.
- [<sup>F143</sup>(3A) In the application of sub-paragraph (1) to a limited liability partnership, “officer” means a member.]
- (4) In the application of sub-paragraph (1) in any other case “officer” means—

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- (a) a director,
- (b) a manager,
- (c) a secretary, and
- (d) any other person managing or purporting to manage any of the company's affairs.

[<sup>F144</sup>(5) Where HMRC have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

- (a) paragraph 11 applies to the specified portion as to a penalty,
- (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
- (c) paragraph 13(2), (3) and (5) apply as if the notice were an assessment of a penalty,
- (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 13(6),
- (e) paragraphs 15(1) and (2), 16 and 17(1) to (3) and (6) apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and
- (f) paragraph 21 applies as if the officer were liable to a penalty.]

[<sup>F145</sup>(6) In this paragraph “company” means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.]

#### Textual Amendments

**F139** Words in Sch. 24 para. 19(1) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 16\(2\)](#); [S.I. 2009/571](#), art. 2

**F140** Words in Sch. 24 para. 19(3) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 7\(2\)\(a\)](#)

**F141** Word in Sch. 24 para. 19(3)(a) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 7\(2\)\(b\)](#)

**F142** Sch. 24 para. 19(3)(aa) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 7\(2\)\(c\)](#)

**F143** Sch. 24 para. 19(3A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 7\(3\)](#)

**F144** Sch. 24 para. 19(5) substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 16\(3\)](#); [S.I. 2009/571](#), art. 2

**F145** Sch. 24 para. 19(6) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 7\(4\)](#)

#### Commencement Information

**I78** Sch. 24 para. 19 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), art. 2 (with art. 3)

#### Partnerships

- 20 (1) This paragraph applies where P is liable to a penalty under paragraph 1 for an inaccuracy in or in connection with a partnership return.
- (2) Where the inaccuracy affects the amount of tax due or payable by a partner of P, the partner is also liable to a penalty (“a partner's penalty”).
- (3) Paragraphs 4 to 13 and 19 shall apply in relation to a partner's penalty (for which purpose a reference to P shall be taken as a reference to the partner).

*Status: Point in time view as at 16/12/2010.*

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- (4) Potential lost revenue shall be calculated separately for the purpose of P's penalty and any partner's penalty, by reference to the proportions of any tax liability that would be borne by each partner.
- (5) Paragraph 14 shall apply jointly to P's penalty and any partner's penalties.
- (6) P may bring an appeal under paragraph 15 in respect of a partner's penalty (in addition to any appeal that P may bring in connection with the penalty for which P is liable).

#### Commencement Information

- I79** Sch. 24 para. 20 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

#### *Double jeopardy*

- 21 <sup>[F146]</sup>A person is] not liable to a penalty under paragraph 1 <sup>[F147]</sup>, 1A] or 2 in respect of an inaccuracy or failure in respect of which <sup>[F148]</sup>the person has] been convicted of an offence.

#### Textual Amendments

- F146** Words in Sch. 24 para. 21 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 17\(a\)](#); [S.I. 2009/571](#), [art. 2](#)
- F147** Word in Sch. 24 para. 21 inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 17\(b\)](#); [S.I. 2009/571](#), [art. 2](#)
- F148** Words in Sch. 24 para. 21 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 17\(c\)](#); [S.I. 2009/571](#), [art. 2](#)

#### Commencement Information

- I80** Sch. 24 para. 21 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

## PART 5 **U.K.**

### GENERAL

#### *Interpretation*

- 22 Paragraphs 23 to <sup>[F149]</sup>27] apply for the construction of this Schedule.

#### Textual Amendments

- F149** Word in Sch. 24 para. 22 substituted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 18](#); [S.I. 2009/571](#), [art. 2](#)

#### Commencement Information

- I81** Sch. 24 para. 22 in force at 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

23 HMRC means Her Majesty's Revenue and Customs.

**Commencement Information**

**I82** Sch. 24 para. 23 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

[<sup>F150</sup>23A “Tax”, without more, includes duty.]

**Textual Amendments**

**F150** Sch. 24 para. 23A inserted (1.4.2009) by [Finance Act 2008 \(c. 9\)](#), s. 122(2), [Sch. 40 para. 19](#); [S.I. 2009/571](#), [art. 2](#)

24 An expression used in relation to income tax has the same meaning as in the Income Tax Acts.

**Commencement Information**

**I83** Sch. 24 para. 24 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

25 An expression used in relation to corporation tax has the same meaning as in the Corporation Tax Acts.

**Commencement Information**

**I84** Sch. 24 para. 25 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

26 An expression used in relation to capital gains tax has the same meaning as in the enactments relating to that tax.

**Commencement Information**

**I85** Sch. 24 para. 26 in force at 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

27 An expression used in relation to VAT has the same meaning as in VATA 1994.

**Commencement Information**

**I86** Sch. 24 para. 27 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

28 In this Schedule—

- (a) a reference to corporation tax includes a reference to tax or duty which by virtue of an enactment is assessable or chargeable as if it were corporation tax,
- (b) a reference to tax includes a reference to construction industry deductions under Chapter 3 of Part 3 of FA 2004,

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- (c) “direct tax” means—
  - (i) income tax,
  - (ii) capital gains tax, <sup>F151</sup>...
  - (iii) corporation tax, [<sup>F152</sup>and
  - (iv) petroleum revenue tax,]
- (d) a reference to understating liability to VAT includes a reference to overstating entitlement to a VAT credit,
- <sup>F153</sup>(da) .....
- (e) a reference to a loss includes a reference to a charge, expense, deficit and any other amount which may be available for, or relied on to claim, a deduction or relief,
- (f) a reference to repayment of tax includes a reference to allowing a credit [<sup>F154</sup>against tax or to a payment of a corporation tax credit],
- [<sup>F155</sup>(fa) “corporation tax credit” means—
  - (i) an R&D tax credit under [<sup>F156</sup>Chapter 2 or 7 of Part 13 of CTA 2009],
  - (ii) a land remediation tax credit or life assurance company tax credit under [<sup>F157</sup>Chapter 3 or 4 respectively of Part 14 of CTA 2009],
  - <sup>F158</sup>(iii) .....
  - (iv) a film tax credit under [<sup>F159</sup>Chapter 3 of Part 15 of CTA 2009], or
  - (v) a first-year tax credit under Schedule A1 to CAA 2001,]
- (g) “tax period” means a tax year, accounting period or other period in respect of which tax is charged,
- (h) a reference to giving a document to HMRC includes a reference to communicating information to HMRC in any form and by any method (whether by post, fax, email, telephone or otherwise),
- (i) a reference to giving a document to HMRC includes a reference to making a statement or declaration in a document,
- (j) a reference to making a return or doing anything in relation to a return includes a reference to amending a return or doing anything in relation to an amended return, and
- (k) a reference to action includes a reference to omission.

#### Textual Amendments

- F151** Word in Sch. 24 para. 28(c) omitted (1.4.2009) by virtue of [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 20\(2\)](#); [S.I. 2009/571, art. 2](#)
- F152** Sch. 24 para. 28(c)(iv) and preceding word inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 20\(2\)](#); [S.I. 2009/571, art. 2](#)
- F153** Sch. 24 para. 28(da) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 8](#)
- F154** Words in Sch. 24 para. 28(f) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 20\(4\)](#); [S.I. 2009/571, art. 2](#)
- F155** Sch. 24 para. 28(fa) inserted (1.4.2009) by [Finance Act 2008 \(c. 9\), s. 122\(2\)](#), [Sch. 40 para. 20\(5\)](#); [S.I. 2009/571, art. 2](#)
- F156** Words in Sch. 24 para. 28(fa)(i) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 1 para. 727\(a\)](#) (with [Sch. 2 Pts. 1, 2](#))
- F157** Words in Sch. 24 para. 28(fa)(ii) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\)](#), [Sch. 1 para. 727\(b\)](#) (with [Sch. 2 Pts. 1, 2](#))

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**F158** Sch. 24 para. 28(fa)(iii) omitted (with effect in accordance with s. 1329(1) of the amending Act) by virtue of [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 727\(c\)](#) (with [Sch. 2 Pts. 1, 2](#))

**F159** Words in Sch. 24 para. 28(fa)(iv) substituted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), [Sch. 1 para. 727\(d\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### Commencement Information

**I87** Sch. 24 para. 28 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

#### Consequential amendments

29 The following provisions are omitted—

- (a) sections 95, 95A, 97 and 98A(4) of TMA 1970 (incorrect returns and accounts),
- (b) sections 100A(1) and 103(2) of TMA 1970 (deceased persons),
- (c) in Schedule 18 to FA 1998 (company tax returns), paragraphs 20 and 89 (company tax returns), and
- (d) sections 60, 61, 63 and 64 of VATA 1994 (evasion).

#### Commencement Information

**I88** Sch. 24 para. 29 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [arts. 3, 4](#))

30 In [<sup>F160</sup>paragraphs 7 and 7B] of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) (penalties) a reference to a provision of TMA 1970 shall be construed as a reference to this Schedule so far as is necessary to preserve its effect.

#### Textual Amendments

**F160** Words in Sch. 24 para. 30 substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 9](#)

#### Commencement Information

**I89** Sch. 24 para. 30 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))

31 In [<sup>F161</sup>paragraphs 7 and 7B] of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (penalties) a reference to a provision of TMA 1970 shall be construed as a reference to this Schedule so far as is necessary to preserve its effect.

#### Textual Amendments

**F161** Words in Sch. 24 para. 31 substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 9](#)

#### Commencement Information

**I90** Sch. 24 para. 31 in force at 1.4.2008 for certain purposes, 1.7.2008 for certain purposes, 1.1.2009 for certain purposes, and 1.4.2009 in so far as not already in force by [S.I. 2008/568](#), [art. 2](#) (with [art. 3](#))



*Status: Point in time view as at 16/12/2010.*

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## SCHEDULE 25 **U.K.**

Section 105

### AMENDMENTS CONNECTED WITH GAMBLING ACT 2005

#### PART 1 **U.K.**

##### AMENDMENTS OF THE TAX ACTS

###### *Exemption from corporation tax for profits of charitable companies from certain lotteries*

F162<sup>1</sup> .....

###### Textual Amendments

**F162** Sch. 25 para. 1 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

###### *Exemption from income tax for profits of charitable trusts from certain lotteries*

- 2 In section 530(2) of ITA 2007 (charitable trusts: exemption for profits from lotteries), for paragraph (a) (together with the “or” following it) substitute—
- “(a) the lottery is an exempt lottery within the meaning of the Gambling Act 2005 by virtue of Part 1 or 4 of Schedule 11 to that Act,
  - (ab) the lottery is promoted in accordance with a lottery operating licence within the meaning of Part 5 of that Act, or”.

###### Commencement Information

**191** [Sch. 25 para. 2](#) in force at 1.9.2007 by [S.I. 2007/2532](#), [art. 2](#)

#### PART 2 **U.K.**

##### AMENDMENTS OF BGDA 1981

###### *Introductory*

- 3 BGDA 1981 is amended as follows.

###### *Bookmakers: spread bets*

- 4 (1) Section 3 (bookmakers: spread bets) is amended as follows.
- (2) In subsection (1), omit paragraph (b) (together with the “and” before it).
- (3) For subsection (2) substitute—
- “(2) A bet is a spread bet if it constitutes a contract the making or accepting of which is a regulated activity within the meaning of section 22 of the Financial Services and Markets Act 2000.”

*Status: Point in time view as at 16/12/2010.*

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*Liability to pay general betting duty*

- 5 In section 5B(3)(a) (liability to pay general betting duty), for “bookmaker's permit” substitute “ general betting operating licence (in Great Britain), or a bookmaker's permit (in Northern Ireland), ”.

**Commencement Information**

**I92** Sch. 25 para. 5 in force at 1.9.2007 by S.I. 2007/2532, art. 2

*Bet-brokers*

- 6 In section 5C(5) (bet-brokers: cases where section 5C does not apply), omit paragraph (b) (together with the “or” before it).

*Definitions for purposes of betting duties*

- 7 (1) Section 12(4) (definitions for purposes of Part 1) is amended as follows.
- (2) In the definition of “betting office licence”, omit paragraph (a) (together with the “and” following it).
- (3) In the definition of “bookmaker's permit”, omit paragraph (a) (together with the “and” following it).
- (4) After that definition insert—  
““general betting operating licence” has the same meaning as in Part 5 of the Gambling Act 2005 (see section 65(2)(c));”.
- (5) Omit the definitions of “meeting”, “totalisator” and “track”.

**Commencement Information**

**I93** Sch. 25 para. 7(1)(5) in force at Royal Assent see Sch. 25 para. 23

**I94** Sch. 25 para. 7(2)-(4) in force at 1.9.2007 by S.I. 2007/2532, art. 2 (with art. 4)

*Combined bingo*

- 8 In section 20A(1) (meaning of “combined bingo”), omit paragraph (a) (together with the “or” following it).

**Commencement Information**

**I95** Sch. 25 para. 8 in force at 1.9.2007 by S.I. 2007/2532, art. 2

*Definitions for purposes of bingo duty*

- 9 (1) Section 20C(2) (definitions for purposes of Part 2) is amended as follows.
- (2) After the definition of “bingo” insert—  
““bingo premises licence” has the same meaning as in Part 8 of the Gambling Act 2005 (see section 150(1)(b));”.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) For the definition of “licensed bingo” substitute—

““licensed bingo”—

- (a) in Great Britain, means bingo played at premises licensed under a bingo premises licence, and
- (b) in Northern Ireland, means bingo played at premises licensed under Chapter 2 of Part 3 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985.”.

**Commencement Information**

**I96** Sch. 25 para. 9 in force at 1.9.2007 by S.I. 2007/2532, art. 2 (with art. 5)

*Definition of “gaming”*

10 In section 33(1) (interpretation of Act), for the definition of “gaming” substitute—

““gaming” means playing a game of chance for a prize within the meaning of Group 4 of Schedule 9 to the Value Added Tax Act 1994;”.

**Commencement Information**

**I97** Sch. 25 para. 10 in force at 1.9.2007 by S.I. 2007/2532, art. 2

*Supplementary provisions as to betting duties*

11 (1) Schedule 1 (enforcement) is amended as follows.

(2) Omit paragraph 7 (production of documents etc relating to general betting business or pool betting business).

(3) In paragraph 15 (cancellation of betting office licence)—

(a) at the beginning insert—

“(A1) This paragraph applies only in relation to premises in Northern Ireland.”,

(b) in sub-paragraph (2), omit “in England or Wales or Northern Ireland”,

(c) omit sub-paragraphs (3) to (4A), and

(d) in sub-paragraph (5), omit “in Northern Ireland”.

**Commencement Information**

**I98** Sch. 25 para. 11(1)(2) in force at Royal Assent, see Sch. 25 para 23

**I99** Sch. 25 para. 11(3) in force at 1.9.2007 by S.I. 2007/2532, art. 2

*Exemptions from bingo duty*

12 (1) Schedule 3 (exemptions from bingo duty) is amended as follows.

(2) For paragraph 2B (and the italic cross-heading before it) substitute—

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*“Non-profit making bingo*

- 2B (1) In calculating liability to bingo duty no account shall be taken of non-profit making bingo.
- (2) “Non-profit making bingo” means bingo—
- (a) in respect of the playing of which no charge in money or money's worth is made, and
  - (b) in respect of which no levy is charged on any of the stakes or on the winnings of any of the players (irrespective of the means by which the levy is charged),
- and it does not matter whether the charge or levy is compulsory, customary or voluntary.
- (3) In sub-paragraph (2)(a) “charge” includes an admission charge, but does not include—
- (a) any payment of the whole or any part of an annual subscription to a club,
  - (b) any payment of an entrance subscription for membership of a club, or
  - (c) any stakes hazarded.
- (4) In sub-paragraph (3)—
- “club” means a club which is so constituted and conducted, in respect of membership and otherwise, as not to be of a temporary character, and
- “membership of a club” does not include temporary membership of a club.”
- (3) In paragraph 5(1) (small-scale amusements provided commercially)—
- (a) in paragraph (a), for the words from “premises” to the end substitute “ family entertainment centre within the meaning of the Gambling Act 2005 (see section 238); ”, and
  - (b) in paragraph (b), for the words from “a permit” to “that Act” substitute “ an adult gaming centre premises licence issued under Part 8 of the Gambling Act 2005 (see section 150(1)(c)) ”.
- (4) In paragraph 10(2) (notification to Commissioners by, and registration of, bingo-promoters), in the second sentence, for “the Gaming Act 1968” substitute “ a bingo premises licence ”.

**Commencement Information**

**I100** Sch. 25 para. 12 in force at 1.9.2007 by S.I. 2007/2532, art. 2 (with art. 6)

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### PART 3 U.K.

#### AMENDMENTS OF FA 1993 RELATING TO LOTTERY DUTY

##### *Introductory*

- 13 Chapter 2 of Part 1 of FA 1993 (lottery duty) is amended as follows.

##### *Charge to lottery duty*

- 14 In section 24(4) (lotteries in respect of which lottery duty not chargeable)—
- (a) in the opening words, for “not chargeable in respect” substitute “ not chargeable (in Great Britain) in respect of a lottery which is an exempt lottery within the meaning of the Gambling Act 2005 (see section 258) or (in Northern Ireland) in respect ”,
  - (b) in paragraph (a), omit “the Lotteries and Amusements Act 1976 or”,
  - (c) in paragraph (b), omit “Act or”,
  - (d) in paragraph (c), omit “Act or” and “section 5(3) of that Act or”, and
  - (e) omit paragraph (d).

##### **Commencement Information**

**1101** Sch. 25 para. 14 in force at 1.9.2007 by S.I. 2007/2532, art. 2

##### *Disclosure of information*

- 15 In section 37 (disclosure of information to or by the Gaming Board for Great Britain etc)—
- (a) in subsection (1), for “Gaming Board for Great Britain” substitute “ Gambling Commission ” and for “or Gaming Board” (in both places) substitute “ or Gambling Commission ”, and
  - (b) in subsection (2), for “Gaming Board for Great Britain” substitute “ Gambling Commission ” and for “or Gaming Board” substitute “ or Gambling Commission ”.

### PART 4 U.K.

#### AMENDMENTS OF FA 1997 RELATING TO GAMING DUTY

##### *Introductory*

- 16 FA 1997 is amended as follows.

##### *Charge to gaming duty*

- 17 (1) Section 10 (charge to gaming duty) is amended as follows.
- (2) In subsection (3)—
- (a) in paragraph (a), for “section 2(2) of the Gaming Act 1968” substitute “ Part 1 of Schedule 15 to the Gambling Act 2005 ”,

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) in paragraph (b), for “section 6 of that Act” substitute “ section 279 of that Act ”,
- (c) omit paragraph (c),
- (d) in paragraph (d), omit “section 41 of that Act or”, and
- (e) in paragraph (e), for “section 15 or 16 of the Lotteries and Amusements Act 1976” substitute “ Part 13 of that Act ”.

(3) After that subsection insert—

“(3A) This section does not apply to any gaming taking place by means of a machine that is an amusement machine for the purposes of the Betting and Gaming Duties Act 1981.

(3B) This section does not apply to any lawful gaming which consists of games played in Great Britain at an entertainment in respect of which all the payments made by the players (whether by way of entrance fee or stake or otherwise) are, after making permissible deductions from those payments, applied for a purpose other than that of private gain (within the meaning of the Gambling Act 2005).

(3C) For the purposes of subsection (3B), only the following deductions are permissible deductions—

- (a) deductions on account of reasonable expenses incurred in providing the facilities for the purposes of the games, and
- (b) deductions for the provision of prizes or awards in respect of the games.”

<sup>F163</sup>(4) .....

#### Textual Amendments

**F163** Sch. 25 para. 17(4) omitted (retrospective to 27.4.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), s. 114(16) (b)(17) (with s. 114(18))

#### Commencement Information

**I102** Sch. 25 para. 17 in force at 1.9.2007 by [S.I. 2007/2532](#), art. 2

#### *Banker's profits from gaming*

- 18 (1) Section 11 (rate of gaming duty) is amended as follows.
- (2) In paragraph (b) of subsection (10), for “the value, in money or money's worth, of the winnings paid” substitute “ the value of the prizes provided ”.
- (3) After that subsection insert—
- “(10A) Subsections (2) to (6)(a) of section 20 of the Betting and Gaming Duties Act 1981 (expenditure on bingo winnings: valuation of prizes) apply, with any necessary modifications, for the purposes of gaming duty as they apply for the purposes of bingo duty.”
- (4) In subsection (11), for “(10)” substitute “ (10A) ”.

*Status: Point in time view as at 16/12/2010.*

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#### Commencement Information

**I103** Sch. 25 para. 18 in force at 1.9.2007 by S.I. 2007/2532, art. 2

#### *Definition of “gaming”*

19 In section 15(3) (definitions for purposes of the gaming duty provisions), for the definition of “gaming” substitute—

““gaming” has the same meaning as in the Betting and Gaming Duties Act 1981 (see section 33(1));”.

#### Commencement Information

**I104** Sch. 25 para. 19 in force at 1.9.2007 by S.I. 2007/2532, art. 2

#### *Gaming Duty Register*

20 (1) Schedule 1 (gaming duty: administration, enforcement etc) is amended as follows.

(2) In sub-paragraph (1) of paragraph 2 (interpretation), before the definition of “the register” insert—

““casino premises licence” has the same meaning as in Part 8 of the Gambling Act 2005 (see section 150(1)(a));

“club gaming permit” has the same meaning as in that Act (see section 271);”.

(3) In sub-paragraph (2) of that paragraph, for paragraphs (a) and (b) substitute—

“(a) in respect of which a casino premises licence is for the time being in force, or

(b) in respect of which a club gaming permit is for the time being in force.”

(4) In paragraph 3(4)(a) (registrable persons: holders of licences under the Gaming Act 1968)—

(a) for “licence under the Gaming Act 1968” substitute “casino premises licence or club gaming permit”, and

(b) after “which the licence” insert “or permit”.

(5) In paragraph 6 (notification of premises)—

(a) in sub-paragraph (10)(a), for “licence under the Gaming Act 1968” substitute “casino premises licence or club gaming permit” and after “of the licence” insert “or permit”, and

(b) in sub-paragraph (11)(a), for “licence under the Gaming Act 1968” substitute “casino premises licence or club gaming permit” and after “of the licence” insert “or permit”.

(6) In paragraph 14 (disclosure of information)—

(a) in sub-paragraph (1), for “the Gaming Board for Great Britain” substitute “the Gambling Commission”, for “that Board” (in each place) substitute “that

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- Commission ” and for “that Board's functions under the Gaming Act 1968” substitute “ that Commission's functions under the Gambling Act 2005 ”, and
- (b) in sub-paragraph (2), for “the Gaming Board for Great Britain” substitute “ the Gambling Commission ” and for “that Board” (in both places) substitute “ that Commission ”.

#### Commencement Information

**I105** Sch. 25 para. 20(1)(6) in force at Royal Assent, see Sch. 25 para. 23

**I106** Sch. 25 para. 20(2)-(5) in force at 1.9.2007 by [S.I. 2007/2532](#), [art. 2](#)

## PART 5 **U.K.**

### MISCELLANEOUS AMENDMENTS

#### *Provision of FA 1966 relating to repealed law*

- 21 In Schedule 3 to FA 1966 (provision relating to Schedule 1 to the Betting, Gaming and Lotteries Act 1963 (c. 2)), omit paragraph 6.

#### Commencement Information

**I107** Sch. 25 para. 21 in force at 1.9.2007 by [S.I. 2007/2532](#), [art. 2](#)

#### *Customs and Excise Management Act 1979*

- 22 In section 1(1) of CEMA 1979 (interpretation), in paragraph (a)(ic) of the definition of “revenue trader”, for the words from “any gaming” to the end substitute “ gaming within the meaning of the Betting and Gaming Duties Act 1981 (see section 33(1)) ”.

#### Commencement Information

**I108** Sch. 25 para. 22 in force at 1.9.2007 by [S.I. 2007/2532](#), [art. 2](#)

## PART 6 **U.K.**

### COMMENCEMENT

- 23 (1) Paragraphs 3, 4, 6, 7(1) and (5), 11(1) and (2), 13, 15, 16 and 20(1) and (6) and this paragraph come into force on the day on which this Act is passed.
- (2) The other provisions of this Schedule come into force in accordance with provision made by the Treasury by order.
- (3) The power to make an order under this paragraph is exercisable by statutory instrument.
- (4) An order under this paragraph—



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- (a) may make different provision for different purposes, and
- (b) may contain transitional provision and savings.

## SCHEDULE 26 U.K.

Section 109

### MEANING OF “RECOGNISED STOCK EXCHANGE” ETC

*Meaning of “recognised stock exchange” etc in Tax Acts and TCGA 1992*

1 For section 1005 of ITA 2007 substitute—

#### “1005 Meaning of “recognised stock exchange” etc

- (1) In the Income Tax Acts “recognised stock exchange” means—
  - (a) any market of a recognised investment exchange which is for the time being designated as a recognised stock exchange for the purposes of this section by an order made by the Commissioners for Her Majesty's Revenue and Customs, and
  - (b) any market outside the United Kingdom which is for the time being so designated.
- (2) An order under subsection (1) may—
  - (a) designate a market by name or by reference to any class or description of market (including, in the case of a market outside the United Kingdom, one framed by reference to any authority or approval given in a country outside the United Kingdom),
  - (b) contain incidental, supplemental, consequential and transitional provision and savings, and
  - (c) vary or revoke a previous order under that subsection.
- (3) References in the Income Tax Acts to securities which are listed on a recognised stock exchange are to securities—
  - (a) which are admitted to trading on that exchange, and
  - (b) which are included in the official UK list or are officially listed in a qualifying country outside the United Kingdom in accordance with provisions corresponding to those generally applicable in EEA states.
- (4) For this purpose “qualifying country outside the United Kingdom” means any country outside the United Kingdom in which there is a recognised stock exchange.
- (5) References in the Income Tax Acts to securities which are included in the official UK list are to securities which are included in the official list (within the meaning of Part 6 of FISMA 2000) in accordance with the provisions of that Part.
- (6) In this section—
  - “recognised investment exchange” has the same meaning as in FISMA 2000 (see section 285), and
  - “securities” includes shares and stock.”

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F164<sup>2</sup> .....

#### Textual Amendments

**F164** Sch. 26 para. 2 repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 1 (with Sch. 2)

- 3 In section 288 of TCGA 1992 (interpretation), after subsection (5) insert—
- “(5A) References in this Act to shares or securities which are listed on a recognised stock exchange shall be construed in accordance with subsections (3) and (4) of section 1005 of ITA 2007.
- (5B) References in this Act to shares or securities which are included in the official UK list shall be construed in accordance with subsection (5) of that section.”

#### *Valuation of shares listed on recognised stock exchange for purposes of TCGA 1992 etc*

- 4 (1) In section 272 of TCGA 1992 (valuation: general), for subsections (3) and (4) substitute—
- “(3) The Treasury may make regulations as to the manner for determining for the purposes of this Act—
- (a) the market value at any time of shares or securities which are included in the official UK list, and
- (b) the market value at any time of shares or securities which are listed on a recognised stock exchange outside the United Kingdom.
- (4) The regulations may—
- (a) make different provision for different cases, and
- (b) contain incidental, supplemental, consequential and transitional provision and savings.”
- (2) The amendment made by sub-paragraph (1) has effect where the date of valuation falls on or after such day as may be appointed by the Treasury by order; and different days may be appointed for different purposes.
- 5 (1) In ITTOIA 2005, for sections 450 and 451 substitute—

#### “450 Market value of strips etc

- (1) The Treasury may make regulations as to the manner for determining—
- (a) the market value at any time of a strip for the purposes of this Chapter, and
- (b) the market value at any time of a security exchanged for strips of that security for the purposes of section 445(1).
- (2) The regulations may—
- (a) make different provision for different cases, and
- (b) contain incidental, supplemental, consequential and transitional provision and savings.”

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- (2) The amendment made by sub-paragraph (1) has effect where the date of valuation falls on or after such day as may be appointed by the Treasury by order; and different days may be appointed for different purposes.

*Minor and consequential amendments*

- 6 In section 90(8) of FA 1986 (exceptions to the charge to SDRT), for paragraph (b) substitute—

“(b) references to anything listed on a recognised stock exchange shall be construed in accordance with section 1005 of the Income Tax Act 2007;”.

- 7 (1) ICTA is amended as follows.

F165(2) .....

- (3) In section 312(1E)(a) (interpretation of Chapter 3 of Part 7), for “section 841” substitute “ section 1005(1)(b) of ITA 2007 ”.

F166(4) .....

F166(5) .....

F166(6) .....

F166(7) .....

F166(8) .....

F166(9) .....

- (10) In paragraph 5 of Schedule 20 (charities: qualifying investments and loans), omit “, or which are dealt in on the Unlisted Securities Market”.

**Textual Amendments**

**F165** Sch. 26 para. 7(2) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 1 (with Sch. 2)

**F166** Sch. 26 para. 7(4)-(9) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 3 Pt. 1 (with Sch. 2)

- 8 (1) TCGA 1992 is amended as follows.

- (2) In section 130(1)(a) (composite new holdings)—

- (a) for “had quoted market values” substitute “ were listed ”, and  
(b) omit “in the United Kingdom or elsewhere”.

- (3) In section 144(8)(a) (options and forfeited deposits), for “quoted on” substitute “ listed on ”.

- (4) In section 146(4)(b) (options: application of rules as to wasting assets), omit “in the United Kingdom or elsewhere”.

- (5) In section 273(2) (unquoted shares and securities), for “quoted” substitute “ listed ”.

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- (6) Omit section 285 (recognised investment exchanges).
- 9 In paragraph 4(2C)(b) of Schedule 26 to FA 2002 (derivative contracts: contracts excluded by virtue of their underlying subject matter), for “quoted” substitute “listed”.
- 10 (1) ITEPA 2003 (persons to whom section 421J applies) is amended as follows.
- (2) In section 421L (persons to whom section 421J applies)—
- (a) in paragraph (b) of subsection (6), for “or dealt in on a recognised stock exchange” substitute “on a recognised stock exchange or dealt in on any designated market in the United Kingdom”, and
- (b) after that subsection insert—
- “(7) In subsection (6)(b) “designated” means designated by an order made by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of that provision.
- (8) An order under subsection (7) may—
- (a) designate a market by name or by reference to any class or description of market, and
- (b) vary or revoke a previous order under that subsection.”
- (3) In section 717(2) (orders and regulations made by Treasury or Commissioners), insert at the end “or section 421L(7) (persons to whom section 421J applies: order in relation to excluded securities).”
- 11 (1) ITTOIA 2005 is amended as follows.
- (2) In section 443(2) (application of Chapter 8 of Part 4 to strips of government securities)—
- (a) at the end of paragraph (e) insert “and”, and
- (b) omit paragraph (g).
- (3) In section 460(3) (minor definitions in Chapter 8 of Part 4), omit “or 451”.
- 12 (1) ITA 2007 is amended as follows.
- (2) In section 143(2)(a) (losses on disposal of shares: the unquoted status requirement), for “1005” substitute “1005(1)(b)”.
- (3) In section 151(2) (interpretation of Chapter 6 of Part 4), for “the Stock Exchange” substitute “a recognised stock exchange”.
- (4) In section 184 (EIS: the unquoted status requirement)—
- (a) in subsection (3)(a), for the words from “the Stock Exchange” to the end substitute “a recognised stock exchange”, and
- (b) in subsection (6)(a), for “1005” substitute “1005(1)(b)”.
- (5) In section 257(5) (minor definitions in Part 5), for “the Stock Exchange” substitute “a recognised stock exchange”.
- (6) In section 274(2) (requirements for the giving of VCT approval), for “listed throughout the relevant period in the Official List of the Stock Exchange” substitute “included in the official UK list throughout the relevant period”.
- (7) In section 295(3) (VCTs: the unquoted status requirement)—

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- (a) in paragraph (a), for the words from “the Stock Exchange” to the end substitute “ a recognised stock exchange, ”, and
  - (b) in paragraph (c), omit “on the Unlisted Securities Market or dealt in”.
- (8) In section 382(2) (minor definitions in Part 7), for “the Stock Exchange” substitute “ a recognised stock exchange ”.
- (9) In section 397(6) (eligibility requirements for interest on loans within section 396), in the definition of “unquoted company”, for “listed in the Official List of the Stock Exchange” substitute “ included in the official UK list ”.
- (10) In section 432 (gifts of shares, securities and real property to charities etc: meaning of “qualifying investment”)—
- (a) in subsection (1)(a), for “or dealt in on a recognised stock exchange” substitute “ on a recognised stock exchange or dealt in on any designated market in the United Kingdom ”,
  - (b) in subsection (2), after “In this section—” insert—
    - ““designated” means designated by an order made by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of subsection (1)(a),”, and
  - (c) after that subsection insert—
    - “(3) An order under subsection (2) may—
    - (a) designate a market by name or by reference to any class or description of market, and
    - (b) vary or revoke a previous order under that subsection.”
- F167(11) .....
- (12) In section 989 (list of Income Tax Acts definitions), after the definition of “settlor” insert—
- ““shares, stock or other securities included in the official UK list” is to be read in accordance with section 1005,
  - “shares, stock or other securities listed on a recognised stock exchange” is to be read in accordance with section 1005.”.
- (13) Omit section 1010 (application of Income Tax Acts to recognised investment exchanges).
- (14) In section 1014(2)(g) (orders and regulations)—
- (a) after sub-paragraph (ii) (but before the “and”) insert—
    - “(iia) section 432(2) (gifts of shares, securities and real property to charities etc: meaning of “qualifying investment”),”, and
  - (b) in sub-paragraph (iii), for “1005(1)(b)” substitute “ 1005(1) ”.
- (15) In Schedule 4 (index of defined expressions), after the entry relating to “share loss relief (in Chapter 6 of Part 4)” insert—

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“shares, stock or other securities included in section 1005  
the official UK list

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shares, stock or other securities listed on a recognised stock exchange      section 1005”

#### Textual Amendments

**F167** Sch. 26 para. 12(11) omitted (with effect in accordance with Sch. 12 para. 15(1) of the amending Act) by virtue of Finance Act 2010 (c. 13), Sch. 12 para. 13

## SCHEDULE 27 **U.K.**

Section 114

### REPEALS

#### PART 1 **U.K.**

##### ENVIRONMENT

##### (1) EXEMPT AGGREGATES: RAILWAYS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2001 (c. 9)	In section 17(3), the word “or” at the end of paragraph (d).

##### (2) CLIMATE CHANGE LEVY: REDUCED-RATE SUPPLIES ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2000 (c. 17)	In Schedule 6— <ol style="list-style-type: none"> <li>(a) in paragraph 11, in sub-paragraph (1), the words “has, before the supply is made, notified the supplier” and “that he” (in both places), and, in sub-paragraph (3), the words “has, before the supply is made, notified the supplier that” and “he”,</li> <li>(b) paragraph 45(2) to (4), and</li> <li>(c) in paragraph 101, sub-paragraph (1), and, in sub-paragraph (3), the words “notification or”.</li> </ol>

The repeal of paragraph 45(2) to (4) of Schedule 6 to FA 2000 has effect in accordance with Schedule 2 to this Act.

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## PART 2 **U.K.**

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

#### (1) RESTRICTIONS ON TRADE LOSS RELIEF FOR PARTNERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax Act 2007 (c. 3)	In section 104(5), the words “(see section 112)”. Section 106. In section 107(2), the words “(see section 112)”. In section 110(1)(a), the words “(see section 112)”. Section 112(1) to (5). In section 115(1)(d), the words “(see section 112)”. Section 116.

These repeals have effect in accordance with Schedule 4 to this Act.

#### (2) EXTENSION OF RESTRICTIONS ON ALLOWABLE CAPITAL LOSSES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 8(2A) to (2C).
Finance Act 2006 (c. 25)	Section 69.

These repeals have effect in accordance with section 27 of this Act.

#### (3) AVOIDANCE INVOLVING FINANCIAL ARRANGEMENTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 347A. Section 660C(4).
Finance Act 1988 (c. 39)	Section 36(1).
Capital Allowances Act 2001 (c. 2)	In section 228F— (a) subsection (4), and (b) in subsection (8), paragraph (b) (together with the word “and” before it).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraph 272(4).
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraph 52.

These repeals have effect in accordance with Schedule 5 to this Act.

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#### (4) RESTRICTIONS ON COMPANIES BUYING LOSSES OR GAINS: TAX AVOIDANCE SCHEMES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 184A(2), the words “unless the gains accrue to the company on a disposal of a pre-change asset”. In section 184B(2), the words “unless the loss accrues to the company on a disposal of a pre-change asset”.
Finance Act 2006 (c. 25)	In section 70(9)— (a) in paragraph (a), the words “or 184B”, (b) paragraph (d) (together with the word “and” following it), and (c) in paragraph (e), the words “, or a qualifying gain for the purposes of section 184B of that Act,”.

These repeals have effect in accordance with section 32 of this Act.

#### (5) EMPLOYEE BENEFIT CONTRIBUTIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2003 (c. 14)	In Schedule 24, in paragraph 9(1), the definition of “the third party”.
Finance Act 2004 (c. 12)	Section 245(2).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraph 624(2).

These repeals have effect in accordance with section 34 of this Act.

#### (6) SCHEMES ETC DESIGNED TO INCREASE DOUBLE TAXATION RELIEF

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 804ZA(8)(c), the words “resident in a territory outside the United Kingdom”.

This repeal has effect in accordance with section 35 of this Act.

#### (7) INSURANCE COMPANIES: GROSS-ROLL UP BUSINESS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98, in the Table, the entries relating to section 333B of the Income and Corporation Taxes Act 1988.
Income and Corporation Taxes Act 1988 (c. 1)	In section 76— (a) in subsection (1), the second sentence, (b) subsection (14), and

These repeals have effect in accordance with section 38 of this Act.



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(c) in subsection (15), the definition of “capital redemption business”.

Section 333B.

Section 403E(3).

In section 431(2), the definitions of “annuity business” and “overseas life assurance fund”.

In section 431A(3)(a), the words “and Schedule 19AA”.

In section 432A—

(a) subsection (4),

(b) in subsection (5), the words “(apart from overseas life assurance business)”,

(c) in subsection (7)(c)(i), the word “438B,” and

(d) subsection (9).

In section 432AA—

(a) subsection (3), and

(b) in subsection (5), the words “(3) or”.

Section 432AB(6).

In section 432B—

(a) in subsection (4), paragraph (b) and the word “and” before it,

(b) in subsection (5), the words “the relevant fraction of”,

(c) in subsection (7), the words “the relevant fraction of” (in both places),

(d) in subsections (8A) and (8C), the words “the relevant fraction of”, and

(e) in subsection (9), the definitions of “the relevant fraction” and “the section 83 net amount”.

Section 432D.

In section 432E—

(a) in subsection (3)(b), the words “mentioned in subsection (1) above”, and

(b) subsections (5) and (6).

In section 432F(2)—

(a) the words “For each category of business in relation to which section 432E falls to be applied”, and

(b) the words “, after making any reduction required by section 432E(5),”.

Section 434(6A)(b).

In section 434A(2)(a), the words “the aggregate of” and sub-paragraph (iii).

Section 436.

Section 438(2) and (4).

Section 438B.

Section 438C.

Section 439.

Section 439B.

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	Section 440A(2)(c).
	Section 441.
	In section 444A(3), paragraph (b) and the word “or” before it.
	Sections 458 and 458A.
	Section 460(2)(cb).
	Section 461(3A).
	Section 461B(2A).
	In section 466—
	(a) in subsection (2), the definition of “life assurance business”, and
	(b) subsections (2ZA), (2A) and (2B).
	In section 804B—
	(a) in subsection (2), the words “or section 438B”,
	(b) in subsection (4), the words “or 438B”, and
	(c) in subsection (6), the words “or 432D” (in both places).
	Schedule 19AA.
Finance Act 1989 (c. 26)	In Schedule 8, paragraph 6.
Finance Act 1990 (c. 29)	In Schedule 6—
	(a) in paragraph 1(2)(b), the entry relating to “overseas life assurance fund”, and
	(b) paragraph 7.
	In Schedule 7, paragraphs 3, 6 and 10(2).
Finance Act 1991 (c. 31)	In Schedule 7, paragraph 4(1)(b).
	In Schedule 15, paragraph 16.
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 204(10)(b), the word “other”.
	In section 210B(6), paragraph (b) and the word “or” before it.
	In section 213(1A), the words following “general annuity business”.
Finance Act 1995 (c. 4)	In Schedule 8—
	(a) in paragraph 1, the entry relating to “reinsurance business”,
	(b) paragraph 3,
	(c) paragraph 5(2),
	(d) paragraph 8,
	(e) paragraph 9(2),
	(f) in paragraph 12(1)(a), the words “section 432C(1), section 432D(1) (in both places) and” and “and (6)(a)”,
	(g) paragraph 13(5),
	(h) paragraph 14,
	(i) paragraph 15,
	(j) paragraph 16(3),
	(k) paragraph 17(2),
	(l) paragraph 27(1) and (2),

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	(m) paragraph 51(5), and (n) in paragraph 55(1), the word “3,”. In Schedule 9, paragraph 1(3).
Finance Act 1996 (c. 8)	Section 167(2). Section 168(1) and (3). In Schedule 11— (a) in paragraph 3A(5), paragraph (c) and the word “and” before it, and (b) in paragraph 4, in sub-paragraph (1), paragraph (b) and the word “or” before it, and sub-paragraph (16). In Schedule 31, paragraph 7(2).
Finance (No. 2) Act 1997 (c. 58)	In Schedule 3, paragraphs 3 and 6(3).
Finance Act 1998 (c. 36)	Section 77.
Finance Act 2000 (c. 17)	Section 108(1). Section 109(3), (4), (7) and (9)(b). In Schedule 27, paragraph 8.
Capital Allowances Act 2001 (c. 2)	Section 255(2).
Finance Act 2001 (c. 9)	In Schedule 22, in paragraph 14(10), “or (6)”. In Schedule 25, paragraphs 5, 6 and 8.
Finance Act 2003 (c. 14)	In section 153(1)(a), the words “in Schedule 19AA, paragraph 5(5)(c);” In Schedule 33, paragraphs 1(3)(a) and (4)(a), 6(7)(a), 9, 10(2) and 13(6)(b).
Child Trust Funds Act 2004 (c. 6)	Section 14.
Finance Act 2004 (c. 12)	Section 147(1), (2) and (4). In Schedule 7, paragraph 9(1). In Schedule 35, paragraph 22(3).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	In Schedule 1, paragraphs 143 and 175.
Finance (No. 2) Act 2005 (c. 22)	In Schedule 9— (a) paragraph 18(5) and (6), and (b) paragraph 19(1) to (3).
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraphs 78 and 83.

These repeals have effect in accordance with section 38 of this Act.

## (8) INSURANCE COMPANIES: BASIS OF TAXATION ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 76— (a) in subsection (7), Steps 9 and 10, and (b) subsections (10) and (11). Section 439A. Section 440B(5).

These repeals have effect in accordance with section 39 of this Act.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Finance Act 1989 (c. 26)	Section 88(2).
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 212(7A).
Finance (No.2) Act 1992 (c. 48)	Section 65.
Finance Act 1993 (c. 34)	In Schedule 14, paragraph 9.
Finance Act 1995 (c. 4)	In Schedule 8— (a) paragraph 12(3), (b) paragraph 16(6), (c) paragraph 20(2), (d) paragraph 26, (e) paragraph 28(5), and (f) paragraph 51(3).
Finance Act 1996 (c. 8)	In Schedule 11, paragraph 4(12) to (14).
Finance (No.2) Act 1997 (c. 58)	In Schedule 3, paragraph 15.
Finance Act 2002 (c. 23)	In Schedule 29, paragraph 36(6).
Finance Act 2003 (c. 14)	In Schedule 33, paragraph 7.

These repeals have effect in accordance with section 39 of this Act.

#### (9) INSURANCE COMPANIES: TRANSFERS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 12(7B), the definition of “insurance business transfer scheme”. In section 444A— (a) in subsection (1), the words “Subject to subsection (7) below,” and (b) subsections (7) and (8). Section 444AB(11) (as originally enacted). In section 444AC(11) (as originally enacted), the definition of “insurance business transfer scheme”. Section 444AD. Section 460(10B).
Taxation of Chargeable Gains Act 1992 (c. 12)	In Schedule 10, paragraph 14(25).
Finance Act 1989 (c. 26)	Section 82C. In section 83— (a) subsection (2A)(b), (b) in subsection (2B), the second sentence, (c) subsections (3) to (7), and (d) in subsection (8), the definitions of “add”, “demutualisation” and “total reinsurance”. Section 83AA. Section 83AB.

These repeals have effect in accordance with Schedule 9 to this Act.

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*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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Finance Act 1996 (c. 8)	In Schedule 9, in paragraph 12(9), the definition of “insurance business transfer scheme”. In Schedule 31— (a) paragraph 5, (b) paragraph 9, and (c) in paragraph 10(2), the words “Subject to paragraph 9 above,”.
Finance Act 2000 (c. 17)	In Schedule 29, paragraph 30.
Capital Allowances Act 2001 (c. 2)	Section 560(5)(b).
Finance Act 2002 (c. 23)	In section 66— (a) in subsection (5), the definition of “transfer scheme”, and (b) subsections (6) and (7). In Schedule 9, paragraph 5(11). In Schedule 22, in paragraph 10— (a) in sub-paragraph (4), the definition of “transfer scheme”, and (b) sub-paragraphs (5) and (6). In Schedule 26, paragraph 28(5). In Schedule 29, in paragraph 89(3), the definition of “insurance business transfer scheme”.
Finance Act 2003 (c. 14)	In Schedule 33— (a) paragraph 2(3), (4) and (6), (b) paragraph 5(b), (c) paragraphs 18 and 19, and (d) paragraph 20(4).
Finance Act 2004 (c. 12)	In Schedule 7— (a) paragraphs 2 to 4, and (b) in paragraph 5(2) and (3).
Finance (No.2) Act 2005 (c. 22)	In Schedule 9— (a) paragraphs 6 and 7, (b) paragraph 11, (c) paragraph 12(4) and (6), and (d) paragraph 20(3) to (5).
Finance Act 2006 (c. 25)	In Schedule 11— (a) paragraph 3, (b) paragraph 4, and (c) paragraph 6(2).

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These repeals have effect in accordance with Schedule 9 to this Act.

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#### (10) INSURANCE COMPANIES: MISCELLANEOUS

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***Short title and chapter***

***Extent of repeal***

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These repeals have effect in accordance with Schedule 10 to this Act.

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*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Taxes Management Act 1970 (c. 9)	In section 98, in the Table, in both columns, the words “or 441A(3)”.
Income and Corporation Taxes Act 1988 (c. 1)	<p>In section 12(7B), the words from the beginning to the end of the definition of “contracts of long-term insurance”.</p> <p>In section 76—</p> <ul style="list-style-type: none"> <li>(a) in subsection (7), in Step 3, the entries relating to section 587B(8)(b)(i) of ICTA and paragraph 23(2) of Schedule 13 to FA 2002, and</li> <li>(b) in subsection (15), the words “and other expressions have the same meaning as in Chapter 1 of Part 12”.</li> </ul> <p>Section 431A(7).</p> <p>In section 432YA(5), the definitions of “non-profit company” and “non-profit fund”.</p> <p>In section 432ZA(6), the definition of “internal linked fund”.</p> <p>Section 432A(9A).</p> <p>In section 432E(2A), the words “444ACA(2),” and paragraph (b).</p> <p>Section 440(2A), (2B) and (5).</p> <p>Section 442(4).</p> <p>Sections 443 and 444.</p> <p>Section 444AB(6) (as originally enacted).</p> <p>In section 444AC(11) (as originally enacted), the words from the beginning to the end of the definition of “fair value”.</p> <p>Section 444ACA.</p> <p>Section 444AD(5).</p> <p>In section 502H—</p> <ul style="list-style-type: none"> <li>(a) in subsection (2), paragraph (b) and the word “and” before it”, and</li> <li>(b) subsections (8) to (10).</li> </ul> <p>In section 587B—</p> <ul style="list-style-type: none"> <li>(a) subsection (8), and</li> <li>(b) in subsection (9), the words “ “life assurance business” and related expressions have the same meaning as in Chapter 1 of Part 12;”.</li> </ul> <p>In section 587BA—</p> <ul style="list-style-type: none"> <li>(a) subsection (12), and</li> <li>(b) in subsection (13), paragraph (b) and the word “and” before it.</li> </ul> <p>In section 755A(12), the definition of “long-term insurance fund”.</p> <p>Section 804F.</p> <p>In section 807A—</p> <ul style="list-style-type: none"> <li>(a) subsections (4) and (5)(b), and</li> <li>(b) in subsection (6)(a), the words “or an insurance credit”.</li> </ul>

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

	In Schedule 28AA, in paragraph 14(1), the definition of “insurance company”.
Finance Act 1989 (c. 26)	Section 82D(5). In section 83(8), in the definition of “fair value”, paragraph (a). In section 83YA— (a) subsection (8), and (b) in subsection (11), the definition of “with-profits fund”. Section 83YB(5). In section 83A— (a) in subsection (1), the words “In sections 82A to 83AB”, (b) in subsections (2)(b) and (3D)(b), the words “(see subsection (6))”, and (c) subsection (6). Section 84(2), (3), (5) and (6). In section 85— (a) in subsection (2A), the second sentence, and (b) in subsection (3), the words “(including the 1990 component period)”. In section 86— (a) subsections (3) and (3A), and (b) in subsection (10), the words “(including the 1990 component period)”. Section 87. In section 89(6), the words from the beginning to “; and”. Section 90A.
Finance Act 1991 (c. 31)	In Schedule 7— (a) paragraph 13(2), (b) in paragraph 16(7), the words from “and, subject to that,” to the end, and (c) paragraph 17(4A) and (5).
Taxation of Chargeable Gains Act 1992 (c. 12)	In section 210B(8), the definition of “internal linked fund”. Section 212(2A). Section 214. Section 214A. Section 214BA. In Schedule 7AC, paragraph 17(5). In Schedule 10, paragraph 14(22)(b).
Finance Act 1993 (c. 34)	Section 91(5) and (6).
Finance Act 1995 (c. 4)	In Schedule 8, paragraph 9(3). In Schedule 9— (a) in paragraph 1(2)(d), the words “214(11) and 214A(7)”, and

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	(b) paragraph 5.
Finance Act 1996 (c. 8)	In section 87A(2), the words “, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988,” and the words “(see section 431(2) of that Act)”. Section 88(7). In section 103(3), the word “or” at the end of paragraph (a). In Schedule 9— (a) in paragraph 12(9), the definitions of “contracts of long-term insurance” and “overseas life insurance company”, and (b) in paragraph 20(3)(b), the words “, within the meaning of Chapter 1 of Part 12 of the Taxes Act 1988,” and the words “(see section 431(2) of that Act)”. In Schedule 11— (a) paragraph 1, (b) paragraph 2(2) and (3) to (5), (c) paragraph 3A(6), (d) paragraph 4(6), and (e) paragraphs 5 and 6. In Schedule 14, paragraphs 25 and 63. In Schedule 15, paragraph 1(3). In Schedule 31, paragraph 6.
Finance Act 1997 (c. 16)	In Schedule 12— (a) paragraph 18, and (b) paragraph 19(1) to (3).
Finance Act 1998 (c. 36)	In Schedule 18— (a) in paragraph 13(3), the words after “1988”, and (b) paragraph 86.
Finance Act 1999 (c. 16)	In Schedule 6, paragraph 4.
Finance Act 2000 (c. 17)	In Schedule 30, paragraph 19.
Capital Allowances Act 2001 (c. 2)	Section 257(3). Section 544(5). Section 560(5)(a) and (c).
Finance Act 2001 (c. 9)	Section 87(3) and (4). In Schedule 22, in paragraph 31(1), the definitions of “insurance company” and “life assurance business”.
Finance Act 2002 (c. 23)	In section 66(5), the words from the beginning to the end of the definition of “long-term insurance fund”. In Schedule 12, in paragraph 19(1), the definition of “life assurance business”. In Schedule 13—



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	(a) paragraphs 22 and 23, (b) paragraph 25(3), and (c) in paragraph 27, the definition of “life assurance business”.
	In Schedule 22, in paragraph 10(4), the words before the definition of “transfer scheme”.
	In Schedule 26—
	(a) in paragraph 12, in sub-paragraph (1), the references to the expressions “Integrated Prudential Sourcebook” and “long-term insurance fund” and sub-paragraphs (15) and (16), and
	(b) in paragraph 54(1), the definitions of “insurance company”, “life assurance business”, “long-term insurance business” and “contract of long-term insurance”.
	In Schedule 27, paragraph 5.
	In Schedule 29—
	(a) paragraph 36(4) and (5), (b) in paragraph 89(3), the definition of “contracts of long-term insurance”, and (c) paragraph 138(1).
Finance Act 2003 (c. 14)	In Schedule 33, paragraphs 1(2), 26 and 30 to 32.
Finance Act 2004 (c. 12)	In Schedule 10, paragraphs 43 and 70.
Finance (No.2) Act 2005 (c. 22)	In Schedule 9, paragraphs 4, 8, and 13(5).
Finance Act 2006 (c. 25)	Section 134(4)(c).
Income Tax Act 2007 (c. 3)	In section 442(6), paragraph (b) and the word “and” before it. Section 443(6). In Schedule 1, paragraph 137(8).

These repeals have effect in accordance with Schedule 10 to this Act.

#### (11) TECHNICAL PROVISIONS MADE BY GENERAL INSURERS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 804E(3)(d).
Finance Act 2000 (c. 17)	Section 107.
Finance Act 2003 (c. 14)	Section 153(1)(c).

These repeals have effect in accordance with Schedule 11 to this Act.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## (12) FRIENDLY SOCIETIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance (No.2) Act 1992 (c. 48)	In Schedule 9, paragraphs 8(3) and 11(2).
These repeals have effect in accordance with Schedule 12 to this Act.	

## (13) PURCHASED LIFE ANNUITIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	Section 437(1C)(c)(i) and (d)(i). Section 656(5) and (6). Section 658(1) and (4) to (6). In section 828(4), the word “658(3)”.
Income Tax (Trading and Other Income) Act 2005 (c. 5)	Section 717(3). Section 723. Section 724(2). Section 873(3)(b). In Schedule 1, paragraphs 268(3) and 270. In Schedule 2, paragraphs 143 and 145.
Commissioners for Revenue and Customs Act 2005 (c. 11)	In Schedule 4, paragraph 133(5).
These repeals have effect in accordance with section 46 of this Act.	

## (14) SALE AND REPURCHASE OF SECURITIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 231AA(4), the words “or 737A(5)”. Sections 730A to 730BB. In section 731(2A), the words “section 737A(5) below or”. Sections 737A to 737C. Section 737E.
Taxation of Chargeable Gains Act 1992 (c. 12)	Section 263A(2).
Finance Act 1994 (c. 9)	Section 122.
Finance Act 1995 (c. 4)	Section 80(1) and (3).
Finance Act 1996 (c. 8)	Section 100(2A). In Schedule 14, paragraph 37.
Finance Act 1997 (c. 16)	Section 91(5).
Finance Act 2002 (c. 23)	In Schedule 25, paragraphs 32 and 52.
Finance Act 2003 (c. 14)	In Schedule 38, paragraphs 2, 3, 5, 7 to 14, 16 to 20 and 21(3).
These repeals have effect in accordance with section 47 of this Act.	

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Finance Act 2004 (c. 12)	In Schedule 10, paragraphs 44 and 78.
Finance (No.2) Act 2005 (c. 22)	In Schedule 7, paragraph 19.
Finance Act 2006 (c. 25)	Section 139(5). In Schedule 6, paragraphs 5 and 20.
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraphs 164 to 166, 173, 174 and 334.

These repeals have effect in accordance with section 47 of this Act.

#### (15) CONTROLLED FOREIGN COMPANIES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 748(1), paragraph (c) (together with the word “or” at the end of it). In Schedule 25, Part 3.
Finance Act 1996 (c. 8)	In Schedule 38, in paragraph 6— (a) in sub-paragraph (2), paragraph (m) (together with the word “and” before it), and (b) in sub-paragraph (5), the words “and (m)”.

These repeals have effect in accordance with Schedule 15 to this Act.

#### (16) VENTURE CAPITAL SCHEMES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In section 297(5A), paragraphs (b) and (c) and the words after paragraph (c). In section 312(1), in the definition of “qualifying 90% subsidiary”, the words “to (13)”.
Finance Act 2000 (c. 17)	In Schedule 15— (a) in paragraph 15, the word “and” at the end of paragraph (f), and (b) paragraph 23(10) and (11).
Finance Act 2004 (c. 12)	In Schedule 18, paragraph 1(8). In Schedule 20, paragraph 7(d).
Income Tax Act 2007 (c. 3)	In section 195(6), the definition of “holding company”. In section 274(3), the word “and” at the end of paragraph (c). In section 284(d), the words “for Her Majesty's Revenue and Customs”. In section 306(6), the definition of “holding company”.

These repeals have effect in accordance with Schedule 16 to this Act.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

In section 327(1), the word “and”  
immediately before “section 297”.

These repeals have effect in accordance with Schedule 16 to this Act.

#### (17) REAL ESTATE INVESTMENT TRUSTS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2006 (c. 25)	Section 107(5), (7) and (7A). In section 115(2), the words “+ Financing Costs”. In Schedule 17— (a) paragraph 6(2) and (3), and (b) in paragraph 14, the words “+ Financing Costs (all)” and paragraph (b) of the substituted subsection (2).
Income Tax Act 2007 (c. 3)	In Schedule 1, paragraph 617.

These repeals have effect in accordance with section 52 of this Act.

#### (18) OFFSHORE FUNDS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In Schedule 27, in paragraph 6(1)(c), the words “without regard to the provisions of this paragraph,”.

This repeal has effect in accordance with section 57 of this Act.

#### (19) BENEFITS CODE: WHETHER EMPLOYMENT IS “LOWER-PAID EMPLOYMENT”

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income Tax (Earnings and Pensions) Act 2003 (c. 1)	Section 219(5) and (6).

This repeal has effect in accordance with section 62 of this Act.

### PART 3 **U.K.**

#### PENSIONS

##### (1) ALTERNATIVELY SECURED PENSIONS ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Inheritance Tax Act 1984 (c. 51)	In section 151C(4), the word “and” at the end of the definition of “dependant”. In Schedule 2, paragraph 6A.

These repeals have effect in accordance with Schedule 19 to this Act.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Income Tax (Earnings and Pensions) Act 2003 (c. 1)	In section 636A— (a) in subsection (1), paragraph (f) and the word “or” before it, and (b) in subsection (7), the words ““transfer lump sum death benefit””.
Finance Act 2004 (c. 12)	Section 168(1)(g). Section 172B(5)(a). In section 188(5), paragraph (b) and the word “and” before it. In section 280(2), the entry relating to transfer lump sum death benefit. In Schedule 28, paragraph 12(3) and (4). In Schedule 29, paragraph 19. In Schedule 34, in— (a) paragraph 1(6), and (b) paragraph 4(3), the words from “but also” to the end. In Schedule 36, in paragraph 17A— (a) in sub-paragraph (1), paragraph (c) and the word “or” before it, and (b) in sub-paragraph (2), the words “, or to a transfer lump sum death benefit being paid.”.
Finance Act 2006 (c. 25)	In Schedule 22, paragraph 11.

These repeals have effect in accordance with Schedule 19 to this Act.

## (2) MISCELLANEOUS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Pension Schemes Act 1993 (c. 48)	In section 1(1), in the definition of “personal pension scheme”, in paragraph (b), the words “any of the paragraphs of”.
Pension Schemes (Northern Ireland) Act 1993 (c. 49)	In section 1(1), in the definition of “personal pension scheme”, in paragraph (b), the words “any of the paragraphs of”.
Finance Act 2004 (c. 12)	In section 154— (a) subsection (3), and (b) in subsection (4), the words “and section 155”. Section 155. In section 273— (a) in subsection (5)(a), the words “was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc) and”, and (b) in subsection (7), the words “was established by a person or body

These repeals have effect in accordance with Schedule 20 to this Act.

*Status: Point in time view as at 16/12/2010.*

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specified in section 154(1)(a) to (g) and”.

In Schedule 29—

- (a) in paragraph 1(1), paragraph (e) (but not including the word “and” at the end), and
- (b) paragraph 10(3)(a).

In Schedule 29A, paragraph 22(2).

In Schedule 36, in paragraph 12—

- (a) in sub-paragraph (7), paragraph (a) and, in paragraph (b), the words “held for the purposes of, or representing accrued rights under, the arrangement”,
- (b) in sub-paragraph (8)(a), the words “, or two or more money purchase arrangements that are not cash balance arrangements,” and the word “or” at the end, and
- (c) in sub-paragraph (9)(a), the words “, or each of the arrangements,” and the word “and” at the end.

These repeals have effect in accordance with Schedule 20 to this Act.

## PART 4 **U.K.**

### SDLT, STAMP DUTY AND SDRT

#### (1) ANTI-AVOIDANCE: PARTNERSHIPS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2003 (c. 14)	In Schedule 15— (a) paragraphs 13 and 14(1)(b) and (4), and (b) in the italic cross-heading before paragraph 14, the words “ <i>for consideration</i> ”.

These repeals have effect in accordance with section 72 of this Act.

#### (2) EXEMPTIONS: INTERMEDIARIES, REPURCHASES ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1986 (c. 41)	In section 80B(2), the definition of “EEA exchange”. In section 80C(7), the definition of “EEA exchange” (together with the word “and” at the end of it).

<sup>1</sup> Subject to Note 2, these repeals have effect in accordance with Schedule 21 to this Act.

<sup>2</sup> The repeals of section 73 of, and Schedule 21 to, this Act have effect in accordance with sections 108 and 110 of FA 1990.

*Status: Point in time view as at 16/12/2010.*

*Changes to legislation: Finance Act 2007 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

	In section 88B(2), the definition of “EEA exchange”.
	In section 89AA(6), the definition of “EEA exchange”.
Finance (No.2) Act 2005 (c. 22)	Section 50.
Finance Act 2007 (c. 11)	Section 73. Schedule 21.

1 Subject to Note 2, these repeals have effect in accordance with Schedule 21 to this Act.  
2 The repeals of section 73 of, and Schedule 21 to, this Act have effect in accordance with sections 108 and 110 of FA 1990.

### (3) CERTAIN TRANSFERS OF SCHOOL LAND

<i>Short title and chapter</i>	<i>Extent of repeal</i>
School Standards and Framework Act 1998 (c. 31)	Sections 79 and 79A.
Education and Inspections Act 2006 (c. 40)	In Part 3 of Schedule 4, paragraph 20.

These repeals have effect in accordance with section 79 of this Act.

### (4) PAYMENT OF SDLT

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2003 (c. 14)	In section 76(3), paragraph (b) and the word “and” before it. In section 81(2), paragraph (b) and the word “and” before it. In Schedule 10, in paragraph 2(2), paragraph (b) and the word “and” before it.

These repeals have effect in accordance with section 80 of this Act.

## PART 5 U.K.

### INVESTIGATION, ADMINISTRATION ETC

#### (1) CRIMINAL INVESTIGATIONS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	Sections 20C and 20CC. In section 118(1), in the definition of “tax”, the word “, 20C”.
Customs and Excise Management Act 1979 (c. 2)	In section 118C— (a) in subsection (3), paragraph (c) and the word “or” before it,

These repeals have effect in accordance with section 84(5) of this Act.

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*Status: Point in time view as at 16/12/2010.*

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	(b) in subsection (4)(b), the words “or in respect of a gaming duty offence”, and (c) in subsection (5), the words from “and “a gaming duty offence”” to the end.
Betting and Gaming Duties Act 1981 (c. 63)	In Schedule 1, paragraph 16. In Schedule 3, paragraph 17. In Schedule 4, paragraph 17.
Finance Act 1984 (c. 43)	In Schedule 3, paragraph 7(12).
Police and Criminal Evidence Act 1984 (c. 60)	In Schedule 6, paragraph 39(b) to (d).
Finance Act 1989 (c. 26)	Section 146 and 147. Section 148(4).
Finance Act 1994 (c. 9)	In Schedule 7, paragraph 4(2) to (7).
Value Added Tax Act 1994 (c. 23)	Section 72(9). In Schedule 11, paragraph 10(3) to (6).
Finance Act 1995 (c. 4)	In Schedule 3, paragraph 11(10).
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)	In Schedule 4, paragraph 91(a).
Finance Act 1996 (c. 8)	In Schedule 5, paragraphs 5 and 6.
Finance Act 1997 (c. 16)	In Schedule 2, paragraph 4(3) to (5).
Finance Act 2000 (c. 17)	Section 149(4). Section 150. In Schedule 6, paragraphs 97 and 130.
Finance Act 2001 (c. 9)	In Schedule 6, paragraph 6. In Schedule 7, paragraph 7.
Criminal Justice and Police Act 2001 (c. 16)	Section 57(1)(c). Section 63(2)(e). Section 65(3). In Schedule 1, paragraphs 13, 28, 29, 57, 58, 61 and 72. In Schedule 2, paragraph 13(2)(d).
Tax Credits Act 2002 (c. 21)	Section 36(2) and (3).
Proceeds of Crime Act 2002 (c. 29)	Section 323(3)(e) and (f).
Finance Act 2003 (c. 14)	Part 7 of Schedule 13.
Commissioners for Revenue and Customs Act 2005 (c. 11)	Section 13(3)(b) and (c). Section 14(2)(b) and (c). In Schedule 2, paragraphs 7 and 9.

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These repeals have effect in accordance with section 84(5) of this Act.

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## (2) CRIMINAL INVESTIGATIONS: SCOTLAND

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### *Short title and chapter*

### *Extent of repeal*

This repeal has effect in accordance with Schedule 23 to this Act.

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*Status: Point in time view as at 16/12/2010.*

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Criminal Law (Consolidation) (Scotland) Act Section 24(9).  
1995 (c. 39)

This repeal has effect in accordance with Schedule 23 to this Act.

(3) FILING DATES FOR RETURNS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 8— (a) in subsection (1)(a), the words “, on or before the day mentioned in subsection (1A) below”, and (b) subsection (1A). In section 8A— (a) in subsection (1)(a) the words “, on or before the day mentioned in subsection (1A) below”, and (b) subsection (1A). In section 33A(9), the definition of “filing date”. In section 93A(8), the definition of “the filing date”.
Finance Act 1996 (c. 8)	Section 125(3).

These repeals have effect in accordance with section 92 of this Act.

(4) MANDATORY ELECTRONIC FILING OF RETURNS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Value Added Tax Act 1994 (c. 23)	In section 76(3), the word “and” at the end of paragraph (d).
Commissioners for Revenue and Customs Act 2005 (c. 11)	In Schedule 2, paragraph 12. In Schedule 4, paragraph 95(2).

(5) PENALTIES FOR ERRORS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	Section 95. Section 95A. Section 97. Section 98A(4). Section 100A(1). Section 103(2).
Finance Act 1989 (c. 26)	Section 163(1)(a).
Finance Act 1994 (c. 9)	In Schedule 19, paragraphs 27(1), 28 and 32.
Value Added Tax Act 1994 (c. 23)	Sections 60 and 61. Sections 63 and 64.

These repeals have effect in accordance with section 97 of this Act.

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Finance Act 1996 (c. 8)	Section 36. Section 123(12) and (13).
Finance Act 1998 (c. 36)	In Schedule 18, paragraphs 20 and 89.
Finance Act 2001 (c. 9)	Section 98(3). In Schedule 29, paragraph 32.

These repeals have effect in accordance with section 97 of this Act.

## PART 6 U.K.

### MISCELLANEOUS

#### (1) VAT: NON-BUSINESS USE ETC OF BUSINESS GOODS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Value Added Tax Act 1994 (c. 23)	In Schedule 4, paragraph 5(4A).
Finance Act 2003 (c. 14)	Section 22.

These repeals have effect in accordance with section 99 of this Act.

#### (2) VAT: TRANSFERS OF GOING CONCERNS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Value Added Tax Act 1994 (c. 23)	In section 49(1), paragraph (b) (together with the word “and” before it).

This repeal has effect in accordance with section 100 of this Act.

#### (3) REPEALS CONNECTED WITH GAMBLING ACT 2005

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 1966 (c. 18)	In Schedule 3, paragraph 6.
Betting and Gaming Duties Act 1981 (c. 63)	In section 3(1), paragraph (b) (together with the word “and” before it). In section 5C(5), paragraph (b) (together with the word “or” before it). In section 12(4)— (a) in the definition of “betting office licence”, paragraph (a) (together with the word “and” following it), (b) in the definition of “bookmaker’s permit”, paragraph (a) (together with the word “and” following it), and (c) the definitions of “meeting”, “totalisator” and “track”. In section 20A(1), paragraph (a) (together with the word “or” following it).

These repeals have effect in accordance with Schedule 25 to this Act.

*Status: Point in time view as at 16/12/2010.*

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	In Schedule 1— (a) paragraph 7, and (b) in paragraph 15, in sub-paragraph (2), the words “in England or Wales or Northern Ireland”, sub-paragraphs (3) to (4A), and in sub-paragraph (5), the words “in Northern Ireland”.
Finance Act 1986 (c. 41)	In Schedule 4— (a) paragraph 4(b), and (b) in paragraph 11, in sub-paragraph (1), the words from “in paragraph 7” to the end, and sub-paragraph (2)(a) and (b).
Finance Act 1993 (c. 34)	In section 24(4)— (a) in paragraph (a), the words “the Lotteries and Amusements Act 1976 or”, (b) in paragraph (b), the words “Act or”, (c) in paragraph (c), the words “Act or” and “section 5(3) of that Act or”, and (d) paragraph (d).
Finance Act 1997 (c. 16)	In section 10(3)— (a) paragraph (c), and (b) in paragraph (d), the words “section 41 of that Act or”.
Access to Justice Act 1999 (c. 22)	In Schedule 13, paragraph 120.
Finance Act 2002 (c. 23)	Section 13. In Schedule 4, paragraph 10(14).
Finance Act 2003 (c. 14)	Section 9(4).
Courts Act 2003 (c. 39)	In Schedule 8, paragraph 266.
Income Tax Act 2007 (c. 3)	In Schedule 1, in paragraph 94(2)(e), sub-paragraph (iii) (together with the word “and” before it).

These repeals have effect in accordance with Schedule 25 to this Act.

#### (4) DISCLOSURE OF TAX AVOIDANCE SCHEMES

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9)	In section 98C(2), the word “or” at the end of paragraph (c).

#### (5) MEANING OF “RECOGNISED STOCK EXCHANGE” ETC

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Income and Corporation Taxes Act 1988 (c. 1)	In Schedule 20, in paragraph 5, the words “, or which are dealt in on the Unlisted Securities Market”.

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Taxation of Chargeable Gains Act 1992 (c. 12)	In section 130(1)(a), the words “in the United Kingdom or elsewhere”. In section 146(4)(b), the words “in the United Kingdom or elsewhere”. Section 285.
Finance Act 1996 (c. 8)	In Schedule 38, paragraphs 7 and 12(1).
Financial Services and Markets Act 2000 (c. 8)	In Schedule 20, paragraph 4(6).
Income Tax (Trading and Other Income) Act 2005 (c. 5)	Section 443(2)(g). In section 460(3), the words “or 451”.
Income Tax Act 2007 (c. 3)	In section 295(3)(c), the words “on the Unlisted Securities Market or dealt in”. Section 1010. In Schedule 1, paragraph 227.

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**Status:**

Point in time view as at 16/12/2010.

**Changes to legislation:**

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